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# STUDY OF ESSENTIAL RAILROAD PASSENGER SERVICE

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## HEARINGS BEFORE THE COMMITTEE ON SURFACE TRANSPORTATION OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETIETH CONGRESS

SECOND SESSION

ON

### S. 3861

TO AMEND SECTION 13a OF THE INTERSTATE COMMERCE ACT,  
TO AUTHORIZE A STUDY OF ESSENTIAL RAILROAD PAS-  
SENGER SERVICE BY THE SECRETARY OF TRANSPORTATION,  
AND FOR OTHER PURPOSES

JULY 24, 25, AND 29, 1968

Serial No. 90-81

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# STUDY OF ESSENTIAL RAILROAD PASSENGER SERVICE

WEDNESDAY, JULY 24, 1968

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

The subcommittee met at 10:05 a.m., in room 1202, New Senate Office Building, Hon. James B. Pearson presiding.

## OPENING STATEMENT BY THE CHAIRMAN

Senator PEARSON. The committee will come to order.

Senator Lausche is at the Foreign Relations Committee meeting. He will be over as soon as he can. I am going to open these hearings at his request and make a short statement, which is the chairman's statement.

The hearings today and tomorrow are on the June 25, 1968, recommendations of the Interstate Commerce Commission proposing that (1) for 2 years following enactment a special test of public convenience and necessity and financial burden should be imposed on all passenger trains which represent the last remaining interstate service in either direction between two points provided by a rail carrier; and (2) the Secretary of Transportation, acting in cooperation with the Interstate Commerce Commission and other Federal agencies, should undertake and submit within 1 year following enactment a study of the existing and future potential for intercity railroad passenger service in the United States.

These recommendations of the ICC are contained in a bill, S. 3861, introduced on July 19, 1968, by request of the Commission. S. 3861 also includes proposed amendments to section 13a contained in the ICC's June 25, 1968, recommendations.

The Surface Transportation Subcommittee last year held a series of hearings (May 24, 25, July 31, August 1, 2, 3, and 25, 1967) on a number of passenger train service bills, including proposed amendments to section 13a of the Interstate Commerce Act recommended by the ICC; S. 512, introduced by Senator Williams of New Jersey, and S. 1685, introduced by Senator Case, to amend section 13a; and Senate Joint Resolution 52, introduced by Senator Moss, and Senate Concurrent Resolution 25, introduced by Senator Allott for himself and 25 other Senators, to provide for moratoriums and studies of passenger train service and related matters.

The Commerce Committee, at its July 18, 1968, executive session, voted to hold these additional hearings on the new June 25, 1968, ICC

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

proposals for a special test applicable to "last trains," and for a study of railway passenger service potential. The bill and agency comments will be placed in the record at this point.

(The information referred to follows:)

[S. 3861, 90th Cong., second sess.]

A BILL To amend section 13a of the Interstate Commerce Act, to authorize a study of essential railroad passenger service by the Secretary of Transportation, and for other purposes

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

"13a. (1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any passenger train or ferry operating between a point in one State, the District of Columbia, or a foreign country and a point in any other State or in the District of Columbia, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot, or other facility served thereby, including stations, depots, or facilities on the property of other carriers which share in the operation of said train, notice at least sixty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may, upon the expiration of, but not during, the notice period, discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said sixty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by its investigation order served upon the carrier or carriers affected thereby at least twenty days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than seven months beyond the date when such discontinuance or change would otherwise have become effective: *Provided*, That the Commission may further require such train or ferry to be continued in operation or service, in whole or in part, for a period of no longer than two months beyond the date specified in its investigation order, pending completion of the investigation or the Commission's determination of any petition or petitions for reconsideration of its decision and order in such investigation. However, if during the notice period, the carrier or carriers discontinue or change, in whole or in part, the operation or service of any train or ferry, the Commission shall retain jurisdiction to enter upon an investigation of the change or discontinuance and may require the immediate restoration or continuance of operation or service of such train or ferry until the expiration of the notice period. When an investigation by the Commission is instituted under this section, the carrier or carriers filing such notice shall have the burden of establishing that public convenience and necessity permit the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will unduly burden interstate or foreign commerce. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the public convenience and necessity permits the proposed discontinuance or change, in whole or in part, and that the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will unduly burden interstate or foreign commerce, the Commission shall by order permit discontinuance of operation or service of such train or ferry, in whole or in part. If, however, the Commission finds that the operation or service of such train or ferry is required by public convenience and

necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order: *Provided, however*, That, for two years following the enactment of this proviso, where any trains or ferry proposed to be discontinued represents the last remaining passenger train or ferry operated in either direction by the carrier or carriers proposing such discontinuance, between a point in one State and to a point in another State, the District of Columbia, or a foreign country or from a point in the District of Columbia to a point in any State or a foreign country, the Commission shall require the continuance of the operation or service in question for one year from the date of its order unless it finds that (1) the public convenience and necessity do not require its continuance, or (2) that it finds that continuance of the service or operation in question will impair the ability of carrier or carriers proposing such changes or discontinuance to meet its common carrier responsibilities, considering the overall financial condition of the carrier or carriers in question: *Provided further*, That in the case of operations and service covered by the first proviso of this sentence, the Commission may attach such conditions to its order, requiring the continuance of the operations or service in question, as are just and reasonable to assure the preservation of a reasonable level of service for the passenger trains or ferries required to be continued: *And provided further*, That the jurisdiction of the Commission over operations and service subject to the first and second provisos of this sentence shall be exclusive and the carrier or carriers proposing to discontinue or change any operation or service covered by these provisos shall file a notice with the Commission as provided in this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission, after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

"(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within seven months from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. Upon the filing of such a petition, such discontinuance or change shall be subject to all of the provisions of paragraph (1) of this section to the same extent as if the subject train or ferry operated as described in the first sentence of paragraph (1) of this section: *Provided*, That the first, second, and third provisos of the eighth sentence in paragraph (1) of this section shall not apply to petitions filed with the Commission under this paragraph. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records, and facilities of the authorities in such State in the performance of its functions under this paragraph.

"(3) Any State, administrative or regulatory agency of a State, or person, adversely affected or aggrieved by an order of the Commission entered pursuant to paragraph (1) or (2) of this section, may bring suit to obtain judicial review thereof under those provisions of law applicable in the case of suits to enjoin, suspend, or set aside orders of the Commission."

Sec. 2. The Secretary of Transportation, acting in cooperation with the Interstate Commerce Commission and other interested Federal agencies and departments, is authorized and directed to undertake and submit, within one

year after the date of enactment of this Act, a study of the existing and future potential for intercity railroad passenger service in the United States to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. In making this study, the Secretary shall consider, among other things:

(1) Existing resources of all types for meeting the Nation's present passenger transportation needs.

(2) Anticipated expansion of those resources by 1975 on the basis of current governmental or private activities (such as the interstate highway program, by Government, and auto production increased, by industry).

(3) The Nation's expected passenger transportation needs, including business, private, and defense movement, in the years 1975 and 1985.

(4) The ability of the existing resources, or resources as expanded by current governmental or private programs, to meet these anticipated needs adequately, efficiently, economically, expeditiously, safely, and comfortably, at least as far ahead as 1975.

(5) The ability of improved railroad passenger service to meet these anticipated needs.

(6) The proper role of the carriers and governmental bodies in developing the required quality and quantity of service, including methods of financing operations which are necessary but not economically viable.

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., July 31, 1968.*

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

DEAR MR. CHAIRMAN: Reference is made to your letter of July 22, 1968, requesting our comments on S. 3861, which would amend section 13a of the Interstate Commerce Act, 49 U.S.C. 13a, and authorize a study of essential railroad passenger service by the Secretary of Transportation.

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

S. 3861 is intended to impose on the railroads and on the Interstate Commerce Commission new criteria for the change or discontinuance of certain interstate and intrastate passenger train and ferry operations; also, it would authorize a study by the Secretary of Transportation, in cooperation with the Interstate Commerce Commission and other interested Federal agencies, of the existing and future potential for intercity railroad passenger service in the United States.

The enactment of S. 3861 would not directly affect the functions or operations of our Office, nor would it adversely affect the interest of the United States as a user of transportation. While we are aware of the need for viable solutions to the existing passenger transportation problems created in part by the increasing urbanization of sections of our country, we have no specialized knowledge of these problems and make no recommendation as to the action to be taken on the bill by your committee.

Sincerely yours,

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

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FEDERAL MARITIME COMMISSION,  
OFFICE OF THE CHAIRMAN,  
*Washington, D.C., August 2, 1968.*

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

DEAR MR. CHAIRMAN: This refers to your request of July 22, 1968, for the views of the Federal Maritime Commission with respect to S. 3861, a bill to amend

section 13a of the Interstate Commerce Act, to authorize a study of essential railroad passenger service by the Secretary of Transportation, 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 HARLEE,  
*Rear Admiral, U.S. Navy (Retired), Chairman.*

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OFFICE OF THE SECRETARY OF TRANSPORTATION,  
*Washington, D.C., July 10, 1968.*

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

DEAR MR. CHAIRMAN: In the Department's letter to you dated June 27, 1968, we presented our preliminary views on the Interstate Commerce Commission's Report concerning intercity rail passenger service and proposed amendments to Section 13(a) of the Interstate Commerce Act. We indicated that we would welcome the responsibility for conducting a study of the existing and future potential for intercity passenger service of the type proposed, provided sufficient funds and the power to compel the appearance of witnesses and the production of documents were authorized. We further indicated that views on the other recommendations of the Commission would be provided within the near future. Your Committee has since requested our views on S. 1175 (Committee Print #1). We are pleased at this time to offer our further views on the Commission's request and recommendations and on S. 1175 (Committee Print #1). The Department has posed no strong objections, and poses none now, to the various technical changes to Section 13(a) set forth in S. 1175 (Committee Print #1). For the most part they are either technical or limited in scope.

The Department supports the Commission's recommendation for a thorough study of the intercity passenger problem to assist in the creation of a more positive public policy. The general guidelines suggested by the Commission in its report are good ones. In particular, we would emphasize the Commission's admonition that any study of this problem should consider the overall intercity passenger transportation requirements of the country and should look at intercity railroad passenger service within this larger context.

At the same time, it should be understood that any such study will encounter substantial difficulties. The extensive investigation of intercity railroad passenger service conducted by the Interstate Commerce Commission in 1959 (306 I.C.C. 417) and the exhaustive study conducted by the Senate Committee on Commerce which culminated in the publication in 1961 of the so-called Doyle Report similarly concluded that by any usual tests the need for intercity railroad passenger service had largely disappeared.

Thus, any new study of this problem must develop some concept of public need different from that indicated by market preferences, or its conclusions will simply be a restatement of those already reached by two previous studies. We do not believe it will be enough merely to develop a new means of measuring need. We must also find a way to determine how much public or private money we are justified in spending to meet any identifiable extra-market need. There are no existing studies which provide satisfactory answers for either of these problems.

Another problem associated with any thorough study of intercity passenger transportation is that existing data on intercity passenger travel is at best fragmentary and incomplete. The information which we are collecting in connection with the Northeast Corridor Transportation Planning Study and the Northeast Corridor Passenger Train Demonstration projects will constitute the first reasonably complete profile of intercity passenger travel yet compiled. Compiling data complete for the country as a whole will require more years and more funds beyond those funds now available for such purposes.

If it is the judgment of the Congress that the Department of Transportation should assume responsibility for such a study, then we must respectfully urge that the expenditure of additional funds must be authorized beyond those presently

at our disposal. The Department must also be given the power to compel the appearance of witnesses and the production of relevant data and documents. Finally, we advise the Committee that at least two years would be required for us to produce any meaningful and constructive study results.

While the Department supports the need for a study and technical amendments to Section 13(a), we do oppose that section of the Commission's proposed legislation which would direct the Commission to require the continuance of any "last remaining passenger train . . . between a point in one state and to a point in another state . . . for one year from the date of its order" throughout a period of two years following the enactment of the legislation. In our judgment, this proviso could constitute an implicit moratorium on the discontinuance of something in excess of 40 percent of the presently remaining intercity railroad passenger service. Since alternative forms of transportation are available to the would-be traveler between virtually any and all points in this country, we can find no logic in the suggestion that the last unpatronized railroad passenger train between two points should be subjected to any different tests of public necessity than the first such unpatronized train.

In all of this, the Committee must be aware that the financial condition of the nation's privately-owned railroads is a cause for increasing public alarm. When the Congress enacted Section 13(a), the railroads were suffering from depressed earnings in deteriorating financial condition, and a shrinking market. We find that the situation today is, if anything, less comforting than it was then.

In 1958 the Class I railroads had net income of \$602 million, down from the previous five-year average of \$825 million. In 1967 their net income was \$555 million, down from an average of \$728 million for the previous five years. The railroads have experienced an accelerating rate of financial deterioration since the early 1950's. The ratio of debt to total capitalization is 36 percent. Additionally, the industry's share of the intercity freight market also has declined steadily. In 1958 the railroads' share in ton-miles was 46 percent. In 1967 their share had dropped to 42 percent. The decline of the railroads' dollar share, however, has been much more dramatic. In 1958 the railroads' share of the United States intercity freight bill was approximately 32 percent; by last year this figure had dropped to 24 percent, and it is still going down.

It should be noted that virtually all railroads in the Western world run a fiscal deficit on their passenger operations. This passenger deficit has in all cases been a principal contributor to the deepening overall financial problems of railroads everywhere. In fact, since the Dutch and Swiss national railways first went into the red in 1966, the only major railroads in the Western world which do not now run an overall operating fiscal deficit are the privately owned, tax-paying railroads of the U.S. and Canada.

With regard to the recommendation that the Post Office may curtail any additional reductions in mail contracts involving passenger trains for two years, we defer to the views of that Department. However, as we have stated previously to the Committee, we believe that the Post Office should be free to provide service to the public in the manner it deems most appropriate and efficient. We see no overriding reason for the Post Office to be burdened with the subsidization of any uneconomic service. Stated somewhat differently, the burdens and problems of rail passenger service, having arisen in part from more favored Federal treatment of other modes, should not be placed on the shoulders of the postal service any more than they should on hard-pressed railroad companies.

In summary, the Department poses no objections to the technical amendments to Section 13(a) as embodied in S. 1175 (Committee Print #1) and as recommended by the Interstate Commerce Commission. The Department does not favor that proviso in the Commission's proposed bill which would subject "last trains" to special criteria in a discontinuance proceeding. The Department would accept responsibility for a study of the type proposed by the Commission but urges additional funding for the study as well as extension of the time period to two years, with the right to subpoena witnesses and records.

The Bureau of the Budget advises that from the standpoint of the Administration's programs 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 PEARSON. The first witness this morning is Chairman Paul J. Tierney of the Interstate Commerce Commission.

We are very pleased to have you here, sir, and ask you to proceed as you desire.

**STATEMENT OF PAUL J. TIERNEY, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY MRS. VIRGINIA MAE BROWN, VICE CHAIRMAN; RICHARD BRIGGS, SPECIAL ASSISTANT TO CHAIRMAN; ROBERT CALHOUN, LEGISLATIVE COUNSEL; THADDEUS FORBES, DEPUTY DIRECTOR, BUREAU OF PROCEEDINGS; AND FRITZ KAHN, DEPUTY GENERAL COUNSEL**

Mr. TIERNEY. Thank you, Mr. Chairman.

Before I read my statement, Mr. Chairman, I would like to announce that with me at the hearing is the Vice Chairman, Mrs. Virginia Mae Brown.

I would also like to identify the gentlemen here at the witness table with me.

On my far right is Mr. Richard E. Briggs, Special Assistant to the Chairman.

On my immediate right, Mr. Robert L. Calhoun, Legislative Counsel.

On my immediate left, Thaddeus Forbes, Deputy Director of the Bureau of Proceedings.

To his left, Mr. Fritz Kahn, Deputy General Counsel.

Senator PEARSON. We are pleased that you are all here. I know you will help make a good contribution to the hearings on the subject.

Mr. Chairman, proceed if you will.

Mr. TIERNEY. On behalf of the Commission, I want to express to you our sincere appreciation for the opportunity to come before you on this most serious and important matter. We at the Commission fully appreciate the committee's setting aside time to hear, consider, and, hopefully, act on the Commission's recommendations in this area.

Since each member of the committee has been provided with our "Report on Intercity Rail Passenger Service in 1968" and its appendixes, my remarks will basically summarize the provisions of S. 3861 which implement the legislative recommendations made in the report.

I have brought along a map which shows graphically the extent to which various communities have lost regular intercity railroad passenger services since August 1958. The purple tracing of railroad routes shows areas with regular intercity passenger service in both August 1958 and May 1968.

The red dotted lines trace the routes of regular passenger service which have been abandoned over the near 10-year period.

The red hashmark lines paralleling certain of the purple lines show routes of services for which applications for discontinuance of the last remaining regular services are now pending before the Commission.

The map quite clearly highlights the drastic decline in the points served by regular intercity rail passenger operations during the last 10 years.

In New England, north of Albany, N.Y., and Boston, all non-commuter service has been discontinued, with one minor exception.



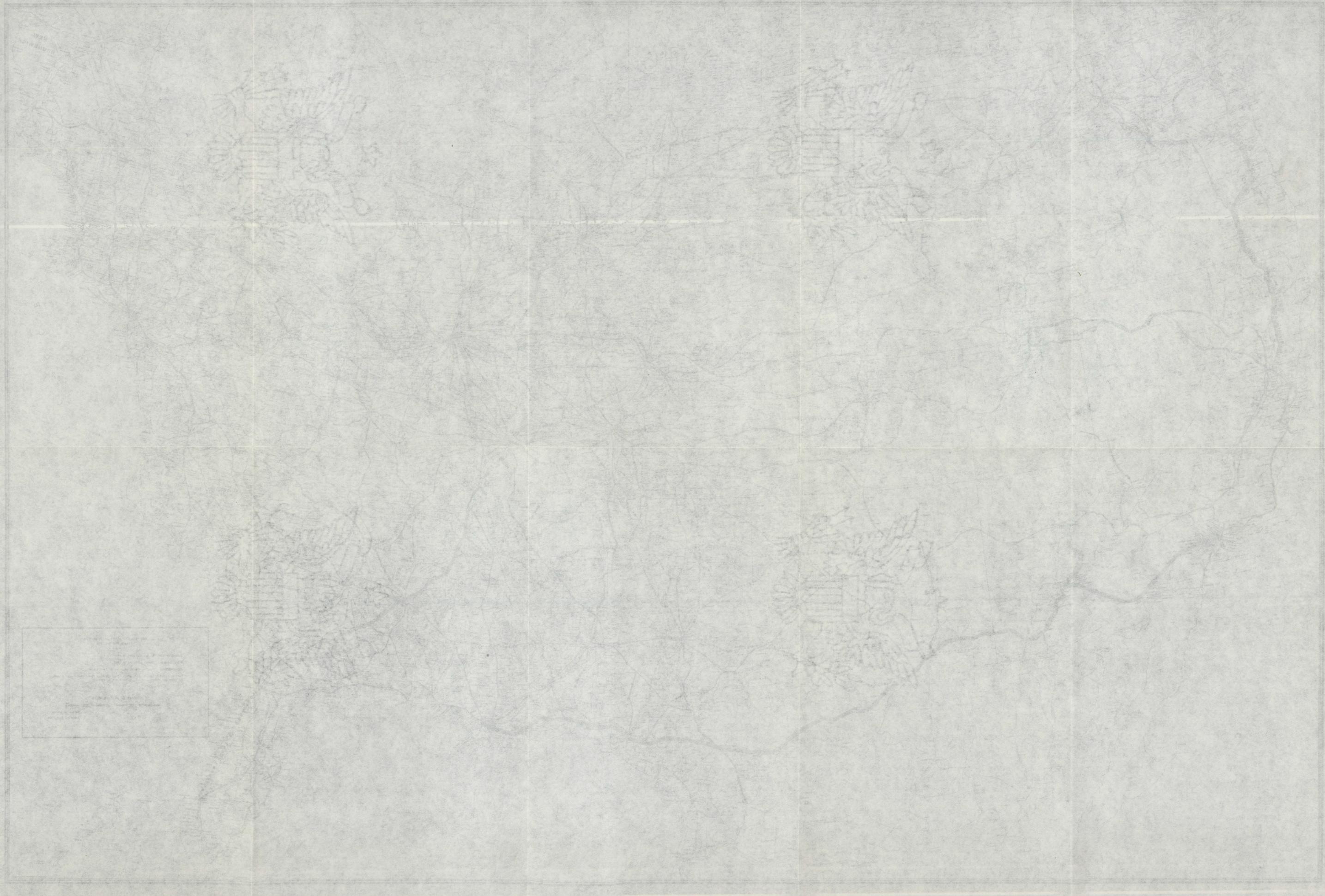
RAILROAD PASSENGER ROUTES IN THE UNITED STATES  
years 1958 and 1959

- Routes operated in 1958
- Routes operated in 1959
- Pending discontinuances of last trains

Excludes routes less than 75 miles long, operated fewer than 4 days a week, or offering seasonal or only at-grade train service.

SCALE OF STATUTE MILES

Bureau of Economics  
Prepared June 1960



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C. 20240

1988

While many passenger routes have been discontinued in the Middle and South Atlantic States, the basic route structure has remained essentially the same.

The greatest number of discontinued routes appears in the great midwestern section of the country. These are predominantly service routes which radiated from the population centers, and the routes connecting the Great Lakes region to the South.

For example, Memphis, which in 1958 had service routes radiating in 10 directions, now is served only by one north-south route. Substantial reductions in service also appear for such cities as Little Rock and Louisville.

The western transcontinental route structure remains essentially intact, although there has been a significant reduction in the frequency of service, which, of course, is not shown by the map. The future of long-haul intercity rail passengers is by no means assured, in view of the heavy increase in discontinuance notices during the past year.

Changes in Federal policy are urgently needed, and a comprehensive governmental review of the present and future need for intercity rail service should be undertaken at once. The northeast corridor project involves only a limited part of the problem. Beyond that, the existing governmental environment does little more than weakly support that level of service which the railroads themselves can afford. The quality and quantity of that service are deteriorating.

Senator PEARSON. Mr. Chairman, may I interrupt you for a question?

Mr. TIERNEY. Yes, sir.

Senator PEARSON. During this same 10-year period—and I want to make this map a part of our record here—I notice the decrease in passenger train service. What has been the increase or decrease in freight over these same lines? Do you have that? In a very general way, could you—

Mr. TIERNEY. I don't have that figure readily available, Mr. Chairman.

Senator PEARSON. It appears to me that from a half to a third of the passenger trains have been discontinued in the last 10 years, just generally. What has been the increase in freight? A third, perhaps?

Mr. TIERNEY. I hesitate to give you a precise figure on it, but there has been a modest increase in freight revenues and a substantial growth of traffic measured in revenue ton-miles. The relative proportion of the intercity freight that the railroads are handling is around 43 or 42 percent.

Their relative share of the freight transported in the United States has decreased.

Senator PEARSON. Decreased?

Mr. TIERNEY. Decreased, until—I think around 1967 it began to stabilize around 43 percent.

Senator PEARSON. Go ahead.

Mr. TIERNEY. The forces underlying this trend are growing stronger. Present programs—public and private—cannot reverse this decline. And we do not believe that any significant action will be taken until a consensus is developed on whether a national intercity rail system is needed.

The national ambivalence toward the problem not only fosters inaction and inconsistency in governmental policy, but it encourages railroads to continue the present trends.

Our report and the legislative recommendations reflected in S. 3861 represent an effort to draw attention to the need to carefully examine and resolve these problems.

Turning now to the specific provisions of S. 3861, I will outline in numerical order what the bill before you will do and why we who bear the responsibility for the public interest feel that it is imperative that this bill receive prompt attention by the Congress this session.

S. 3861 is composed of two sections. Section 1 contains in modified form the recommendations first made by the Commission over a year ago to amend section 13a, which were incorporated in S. 1175. It also contains our suggested alternative to Senate-passed S. 2711, which was contained in my testimony before the House Subcommittee on Transportation and Aeronautics on February 20, 1968, and two additional amendments to section 13a which we believe are desirable as a result of our study of railroad passenger service.

Section 2 of this bill sets forth our proposal for a study of the potential for intercity rail passenger service to be conducted by the Department of Transportation in cooperation with the Commission.

The provisions of this bill are essentially the same as the draft bill contained in appendix L of our report. The committee may, therefore, find it helpful to refer to the draft bill, since all of the changes in existing law are underlined for ease in reading. These provisions are also described and explained on pages 59-65 of our report. I am referring to the appendix of the report, Mr. Chairman, appendix F.

As I have previously noted, many of these changes are derived from S. 1175, which, in a somewhat modified form, was reported favorably to the committee by the Subcommittee on Surface Transportation on June 27, 1968.

Following my brief summary of the basic provisions of S. 3861, it may be helpful to the committee for me to refer back to certain provisions in this bill, particularly the so-called "last train" provision, which differ from the subcommittee version of S. 1175.

In essence, the changes made in section 13a by section 1 of this bill fall into six major categories. First, there are a number of procedural and minor jurisdictional changes in present section 13a(1), such as changing the notice from the present 30 days to 60 days; changing the time within which the Commission must complete its investigation and issue an order from 4 to 7 months, with provision for an additional 2 months if required to dispose of a petition for reconsideration; and clarifying the Commission's jurisdiction over trains operated physically between points in two or more States or a point in a State and a point in a foreign country.

Second, S. 3861 also imposes the burden of proving that a train or trains is not required by the public convenience and necessity and that its continuance will unduly burden interstate and foreign commerce on the carriers.

In response to the objections to this provision made in the earlier hearings by the carriers, and others, we have included a new sentence on lines 5-12 of page 4 of S. 3861 which requires the Commission to make specific findings in terms of the burden of proof and issue an

order permitting discontinuance where it determines that carriers have met their burden of proof.

Third, S. 3861 incorporates our previous suggestions to deal with the problem of a carrier discontinuing a train before the expiration of the notice period, which we believe are more workable and efficient than Senate-passed S. 2711 on the same subject. These suggestions include the insertion of the words "but not during" in line 12 of page 2 and the addition of the sentence beginning with "However" in lines 13-19 of page 3.

Fourth, it contains a new proposal for special handling of section 13a(1) cases which involve the last interstate train between two points. This provision is set forth in lines 19-25 of page 4, and lines 1-24 of page 5 of S. 3861. This provision of S. 3861 would establish reasonable means to preserve the last rail service by a particular carrier between a community now served by an interstate train and any other point served by that train where there is a real public need for that service. Any carrier proposing to eliminate its last remaining interstate service to a community would have to apply for such relief under section 13a and could not seek State relief as under the present law.

Although some questions could arise as to what constitutes the "last train" between any two cities, these are essentially questions of fact which necessarily must be resolved in context of each particular proceeding.

This bill would also grant the Commission jurisdiction to impose minimum standards for the quality of service provided by the "last train"—in particular intercity services. In requesting this authority, we are seeking clarification of our authority in this area as discussed at page 42 in our recent report to the Congress. Our authority to impose minimum service standards for passenger trains has never been tested. A court test would take 1 year, perhaps a year and one-half. We do not believe the public should await the outcome of this test. Perhaps we do not have the necessary jurisdiction. At least in this limited area, this bill would dispel these doubts and make clear what is now, at best, unclear.

Minimum standards refer to appropriate schedules, food services, sleeper and seating facilities, train consist, and other characteristics of a standard passenger service. We are not proposing hard and fast service standards at this time. What we do propose is that Congress state clearly that it desires us to exercise such jurisdiction. What is reasonable service for any train is a question of fact and must be decided as a matter of our discretion based on the public need and support for such services and the costs of operation to the carrier.

We do not intend to use this power to require all carriers to provide premium first-class services or to make exorbitant expenditures. In the past, we have even suggested the elimination of such services in order to maintain essential passenger operations. (*Seaboard Air Line Railroad Co., Discontinuance of Trains Nos. 17 and 18 between Portsmouth, Va., and Raleigh, N.C.*, 330 ICC 171 (1966).)

On the other hand, we believe that continuation of the last service should be accompanied by minimum safeguards to assure that the public receives adequate service.

Fifth, lines 8-10 page 2 of S. 3861 provide for more adequate notice to all rail patrons of a particular train.

Sixth, S. 3861 makes a number of minor changes in section 13a(2) so as to make that section dealing with intrastate service conform to section 13a(1) in essential respects. Thus, for example, the present provisions of section 13a(2) require that the appropriate State commission or agency be given 180 days within which to act favorably on an intrastate train discontinuance which S. 3861 changes to 7 months.

This bill also changes section 13a(2) by subjecting petitions filed under that section to all of the procedural requirements such as burden of proof, judicial review, et cetera, of section 13a(1) except those provisions dealing with the "last train" which are intended to apply only to "interstate" passenger service.

Seventh, this bill contains the substance of our original recommendation to specifically provide for judicial review of all of the Commission's orders issued under either section 13a(1) or section 13a(2).

As I have previously noted, the committee has before it an amended version of S. 1175 which was reported out by the subcommittee. With five exceptions, S. 1175, as amended, is substantially the same as S. 3861. Since the majority of these are technical, they are set forth on a comparative basis in an appendix attached to my prepared statement.

The two most important differences between the amended version of S. 1175 and S. 3861 is the lack in S. 1175 of any special provision for dealing with the last interstate train between two points and the lack of a provision for a study of the role of railroad passenger service in meeting the Nation's needs for adequate surface transportation facilities. Both of these closely related provisions are in S. 3861.

With respect to our proposal for a study of the railroad passenger service, we understand that the committee has before it two resolutions, Senate Concurrent Resolution 25 and Senate Joint Resolution 52, both of which, in differing forms, call for a study of this area.

With the exception of those parts of these resolutions which impose a flat moratorium on either discontinuances of passenger trains or approval of railroad mergers, we have supported these bills, and, in fact, used them to model the study proposed in section 2 of S. 3861.

In this regard, we understand that the Department of Transportation may propose certain additional amendments to this section to extend the study for 2 years, to authorize the Department to inspect records of the carriers, and so forth, as outlined in the testimony of Federal Railroad Administrator Lang before the House subcommittee hearing on a bill similar to S. 3861, H.R. 18212.

Although we have been in contact with the Department on these amendments, we have not seen any specific amendments as yet. Subject to such additional evaluation of the exact form of these amendments, as may be required, we see nothing objectionable in the Department's suggestions.

Although we are strongly opposed to a complete moratorium on railroad passenger train discontinuances during the pendency of any study of this subject, we nevertheless recognize that under present section 13a it is very likely that vital segments of the present network of rail passenger service may be eliminated before the conclusion of the proposed study. It is for these reasons that we have proposed the so-called last-train amendment.

I have previously described the essential aspects of the so-called last-train provisions. As set forth in more detail on pages 63-65 of

our report, it is our belief that for 2 years, during the preparation of the study and its submission to the Congress, special procedures are needed to govern the discontinuance of the last intercity train between any two interstate points.

Although, in his testimony before the House subcommittee on H.R. 18212, the Federal Railroad Administrator did not oppose any of the other amendments to section 13a, he did oppose this provision stating among other things that it appeared to constitute an "implicit moratorium."

A similar view was expressed by a spokesman for the railroad industry in opposing this provision and all other changes made in section 13a by H.R. 18212.

By definition, a "moratorium," whether implicit or explicit, implies the preservation of the status quo. In our judgment, a careful reading of this provision will show that no moratorium on passenger train discontinuance is implied or intended.

This provision clearly permits the discontinuance of passenger service for which there is no public need or, even where there is a public need, where the continuance of the service in question will generate losses of such a magnitude so as to place the carrier's ability to meet its other common carrier duties in jeopardy.

Rather than uncritically preserving the status quo, this provision is simply intended to insure in a meaningful way that vital segments of our intercity passenger service which are now patronized will not disappear during the completion of the study except in special circumstances.

Defining the future role of the intercity passenger train and the means to obtain that level of service will not be an easy task. No proposal will be popular to both the carriers and the traveling public.

The hour is late, Mr. Chairman. This may well be our last opportunity to begin the necessary redefinition of our Federal policies on intercity rail service before significant segments of that service are abandoned.

This Nation's future transportation needs are too great and our existing resources too limited to allow rail passenger trains to disappear without a thorough review of their potential.

(The appendix to the prepared statement follows:)

#### APPENDIX

##### MAJOR DIFFERENCES BETWEEN S. 1175, SUBCOMMITTEE PRINT NO. 1 AND S. 3861

1. *Notice provisions.*—As with present section 13a, S. 1175 requires the Commission to notify the carriers of its decision to investigate a proposed discontinuance within 10 days of the effective date of the discontinuance. S. 3861 changes this to 20 days.
2. *Time for investigation.*—Both S. 3861 and S. 1175 change the time within which the Commission can suspend a discontinuance from taking effect from 4 months to 7 months. S. 3861 also provides for an additional two months to dispose of a petition for reconsideration of a Commission decision. Such a provision is omitted from S. 1175.
3. *Conditioning authority.*—S. 1175 gives the Commission general authority to attach conditions to an order requiring continuance of an interstate train or discontinuance of an intrastate train "to assure the preservation of a reasonable level of service". No comparable provision in S. 3861 except as to the last interstate train (see item 4 below).
4. *Last interstate train.*—S. 3861 provides the Commission with (a) exclusive jurisdiction for two years over the last interstate train service provided by a

particular carrier between two interstate points; (b) imposes a special test of public need for such trains and financial burden of continued operation of such trains on the proponent carrier, and (c) authorizes the Commission to impose such conditions as "are just and reasonable to assure the preservation of a reasonable level of service" for the trains or ferries ordered to be continued. *No comparable provision in S. 1175.*

5. *Study of rail passenger service.*—Section 2 of S. 3861 provides for a one year study of rail passenger service and related areas to be conducted by the Department of Transportation in cooperation with the Commission. *No comparable provision in S. 1175.*

Mr. TIERNEY. That concludes my prepared statement, Mr. Chairman. I will be delighted to answer any questions that I can.

Senator PEARSON. It is the Commission's position that you have great reservations on moratoriums on just a blanket basis?

Mr. TIERNEY. Yes.

Senator PEARSON. And to alleviate that proposition, you propose the "last train" concept?

Mr. TIERNEY. That is correct, sir.

Senator PEARSON. I take it by the provisions of this bill, S. 3861, that the "last train" concept even then would only be acceptable in your view as concerns the public interest if you had jurisdiction to provide some sort of minimum standards of service as you have indicated.

Mr. TIERNEY. That is correct.

Senator PEARSON. You think the "last train" concept is essential to this further jurisdiction to provide minimum standards of service?

Mr. TIERNEY. That is right. We feel that that jurisdiction would make it much more effective and meaningful.

Senator PEARSON. At least to hold on to some service until we find out a little better where we are?

Mr. TIERNEY. That is essentially it, sir. Yes, sir.

Senator PEARSON. In the rush for discontinuances, do you believe that the acceptance of the "last train" provision in this act would lead a lot of the carriers to accelerate their discontinuances down to a "last train" concept?

I don't know if I made my question clear, but sometimes in the effort to slow up, we accelerate that very action that we are trying to stop.

Mr. TIERNEY. Well, that could be, sir. I would hesitate to make a prediction. But I would say that certainly as to those particular trains which were not the last, the same provisions of 13(a) as now exist would be applied.

Senator PEARSON. So all the procedures are still there?

Mr. TIERNEY. That is correct, sir.

Senator PEARSON. If we pass this entire act, you will have a considerable number of others.

Mr. TIERNEY. Yes, sir.

Senator PEARSON. I wish you would justify for the record, although I am sure you have done so, these jurisdictional or procedural points which constitute the first part of this particular bill.

The first point you addressed yourself to is a change of notice from 30 to 60 days; a change in the time for the Commission to complete its investigation and complete its report; and an additional 2 months to dispose of petition for reconsideration.

Do you want to go into further justification of those at this particular time?

Mr. TIERNEY. Yes, sir.

Senator PEARSON. They may be in the record in some other place.

Mr. TIERNEY. In effect, those procedural changes, Mr. Chairman, have been proposed by the Commission last year and are incorporated in S. 1175. In effect, what we are seeking here is more time to consider these cases.

Under the present procedure, a notice filed by a carrier for discontinuance under 13(a) (1) is effective within 30 days. The Commission is required to make a determination at least 10 days prior to that 30 days as to whether or not they will investigate it.

Now, we have requested an extension of that time to provide us more time. The cases today have become more complex and require more time.

Senator PEARSON. Go ahead.

Mr. TIERNEY. As to the second period, where the Commission decides to conduct its investigation, under the 13(a) provision as now constituted, we must complete our investigation and issue a report as to whether or not we will permit discontinuance within 4 months. If we do not complete that report in 4 months and do not issue an order, under the terms of the statute the carrier may discontinue the train, although on a later report and later order on our part we can require them to put it back in service again.

The justification is essentially the same. As the cases become more complex and more difficult, we feel we can do a much more creditable job on them with more time.

Senator PEARSON. Has there ever been a case where a railroad continued service after the time for issuing a report had passed?

Mr. TIERNEY. You mean after the investigation period?

Senator PEARSON. Yes.

Mr. TIERNEY. On most occasions, the railroads have volunteered to maintain service until a report has been issued.

In other words, we advise them and solicit their cooperation: "We can't complete this investigation. Would you continue the train for another month until we complete it?"

Yes; we can generally get the cooperation of the carriers in that way.

Senator PEARSON. Now, on the burden of proof, as a matter of practice, really, the railroads have always had the burden of proof, have they not?

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

Senator PEARSON. You want to make it a procedural requirement?

Mr. TIERNEY. That is right. In effect, it is a clarification of the practice that has been carried on in the past. In addition to that, it would require the Commission to specifically issue an order with findings supporting the decision.

Senator PEARSON. Mr. Sender, you go ahead with these questions.

I am going to ask Mr. Sender to put the questions to you prepared by our staff.

Mr. SENDER. Do you have an estimate, Mr. Chairman, of how many trains and what percentage of railroad passenger service would be subject to the "last train" special test?

Mr. TIERNEY. I don't think so. The Department of Transportation has estimated that it is in the neighborhood of 40 percent.

Mr. BRIGGS. It would be very difficult to determine precisely how many intercity trains would be subject to the last train provision.

We do know, for instance, of the 590 remaining intercity trains, over 100 of them are intrastate. They would not be subject to the provisions.

Approximately 200 of them, as a minimum, duplicate other trains operating over the same routes. For instance, the New Haven runs approximately 50 trains over two routes—Springfield-New York and Boston-New York. Obviously, all 50 couldn't be subject to the last train provisions.

Beyond that you run into problems in estimating the precise number of trains. For instance, between New York and Chicago, over the former New York Central route, there are trains which run only between New York and Albany, Albany and Buffalo, and Buffalo and Chicago, and a through train between New York and Chicago.

Now, if they maintain the through train between New York and Chicago, while eliminating the shorter operations, there would be only one train on that route subject to the "last train" provision, with some minor exceptions for points that might not be served.

If they cut out the through trains first, then there might be four subject to the provision. In other words, the sequence of trains proposed for discontinuance would substantially affect how many intercity trains that could be termed the last train.

We know as a minimum that approximately 60 percent could not fall under that provision. A significant part of the remaining trains could also be exempt from the provision.

Mr. SENDER. Under present law, Mr. Chairman, does the Commission apply the same test where a notice of discontinuance involves removal of the last train as it applies in cases where the notice of discontinuance does not involve the last train?

Mr. TIERNEY. I would say the fact that it is the last train, Mr. Sender, would certainly be a factor to be taken into consideration. In other words, it is an additional factor, particularly in the area of public need. On the other hand, the costs to be saved by eliminating the last train are also greater in most instances.

So from that standpoint I would say the last train would have an impact on our decision.

Senator PEARSON. This is really the pressure point, and it is one of the reasons why you want minimum service requirements, is it not? When you get down to the last train, then all the problems are accentuated more than ever.

Very frankly speaking, I assume you want these minimum service requirements because on the last train running between two points a railroad could very easily just put on any old contraption, run it back and forth, and, no matter how great the public needs, they may not be able to tolerate it.

Mr. TIERNEY. That's correct, sir. We think under the circumstances a minimum amount of service on the last train should be available to the public.

Mr. SENDER. With regard to the proposed study of the potential of railroad passenger service, would the Commission have any objection to the National Association of Regulatory and Utility Commissioners joining in making the study?

Mr. TIERNEY. Offhand, I wouldn't know of any objection. The intention was, of course, in this study, to cooperate to the fullest with

State agencies as well as the industry, labor, and other Federal agencies who may be interested in this.

Mr. SENDER. At last year's hearings, Chairman Tucker testified that the Legislative Committee of the Interstate Commerce Commission had written to the Department of Transportation suggesting the Department investigate the operations and service of all rail passenger carriers with a view toward designating certain trains as part of a national rail passenger system.

Would you advise what has happened to that proposal?

Mr. TIERNEY. Well, we haven't received a report, Mr. Sender, on that. I know they have done some preliminary work. They have some problems, I am sure.

But I think perhaps Mr. Lang could best answer that question.

Senator PEARSON. Mr. Chairman, you indicated some concern about the definition of a "last train." Does this bill provide a good enough definition for the purposes of this act at the present time?

Mr. TIERNEY. We think it does.

Senator PEARSON. Do you need more work on that?

Mr. TIERNEY. In effect, what we are asking is for some flexibility. I think it would be better to permit the regulatory agency to make that determination on the facts.

Senator PEARSON. Well, I thank you. I appreciate your appearance, all of you here this morning. This is a very able statement. It will be a great help to the committee.

I have no further questions. Thank you.

Mr. TIERNEY. Thank you very much, Mr. Chairman.

Senator PEARSON. Mr. Lang.

Mr. Lang is also a regular customer here. He is Administrator of the Federal Railroad Administration of the Department of Transportation.

#### STATEMENT OF A. SCHEFFER LANG, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Senator PEARSON. Did you hear the counsel's question, Mr. Lang, put to Mr. Tierney regarding this report?

I wondered if you would give us some help on that particular question at this time.

Perhaps counsel can restate it.

Mr. SENDER. When former Chairman Tucker testified a year ago, he advised that the Interstate Commerce Commission Legislative Committee had written to Assistant Secretary Mackey of the Department of Transportation suggesting that the Department investigate the operations and service of all rail passenger carriers with a view toward designating certain trains as part of a national rail passenger system.

And the question is: What is the status of that proposal?

Mr. LANG. Well, Mr. Chairman, of course I am familiar with the letter. We gave the letter at the time a great deal of thought and concluded that we were not at that point in time clear on how we should go about making such a study.

We since that time have devoted a good deal of staff effort to what might be termed a preliminary or pilot plant kind of a study of the questions which Chairman Tucker raised in his memorandum, and con-

cluded after several months of work—and I might add at this point that the matter took on additional complexity the more we got into it, so we kept delaying any direct response to the Chairman's request.

But we concluded on the basis of this preliminary work that any meaningful study would have to be conducted on a significantly larger scale than was possible with our existing staff resources.

I think I would have to say that we should not have lost sight of the fact, that we owe the Interstate Commerce Commission some kind of an answer in writing.

We have, of course, discussed the matter with them informally a number of times and informed them what we were trying to do and the difficulties we were encountering in trying to come to grips with this problem on just a limited staff basis.

Senator PEARSON. All right. Thank you, Mr. Lang. You may proceed with your statement.

Mr. LANG. Thank you, Mr. Chairman.

On behalf of the Department, I wish to thank the committee for this opportunity to present our views on the study of essential railroad passenger service by the Secretary of Transportation proposed by the Interstate Commerce Commission, and on related matters.

The facts and circumstances underlying the study and proposals to amend section 13a of the Interstate Commerce Act are discussed in the report of the Interstate Commerce Commission transmitted to this committee under date of June 25, 1968, a report which paints a dismal picture of the future for intercity rail passenger service. We can only agree with the Commission that if there is in fact a need for intercity rail passenger service, then we must identify that need more clearly and fashion a new and more positive public policy toward meeting it as soon as possible.

Accordingly, the Department of Transportation supports the Commission's recommendation for a thorough study of this problem to assist in the creation of such a policy. We think, moreover, that the general guidelines for such a study which have been suggested by the Commission in its report are good ones.

In particular, we would emphasize the Commission's admonition that any study of this problem should consider the overall intercity passenger transportation requirements of the country and should look at intercity railroad passenger service in this larger context.

At the same time, we must advise the committee that a thorough study of this problem will be neither easy to accomplish nor certain in its outcome.

Over the past year we have devoted much thought to this problem and have satisfied ourselves that any such study will encounter substantial difficulties.

The extensive investigation of intercity railroad passenger service conducted by the Interstate Commerce Commission in 1959—306 ICC 417—and the exhaustive study of transportation problems conducted by your committee which culminated in the publication in 1961 of the so-called Doyle report concluded that by any usual tests the need for intercity railroad passenger service had largely disappeared.

Thus, any new study of this problem must develop some concept of public need different from that indicated by market preferences, or its conclusions will simply be a restatement of those already reached by the two studies just mentioned.

It should be understood, moreover, that it will not be enough merely to develop some new means of measuring need; we must also find a way to determine how much public or private money we are justified in spending to meet these extra-market needs. There are no previous studies which provide satisfactory answers for either of these problems.

Nor are these the only problems to be encountered in any thorough study of intercity passenger transportation. As this committee is well aware, data on intercity passenger travel are at best fragmentary and incomplete. The information which we are collecting in connection with our "Northeast corridor transportation planning study" and our high speed ground transportation demonstration projects will constitute the first reasonably complete profile of intercity passenger travel yet compiled.

Compiling complete data such as this for the country as a whole will require many more years and many millions of dollars beyond those funds now available for such purposes.

Without data that describe completely the character of the demand for intercity travel, it is impossible to specify with precision the full spectrum of transportation services which ought ideally to be made available to the public.

The study we are discussing here will have to be made without complete data.

I am not suggesting that a meaningful study of the kind proposed by the Interstate Commerce Commission in its report is impossible. I am saying only that it will take time, it will be difficult of accomplishment; and it may well produce conclusions at variance with present public hopes and expectations.

Furthermore, if it is the judgment of the Congress that the Department of Transportation should assume responsibility for such a study, then we must respectfully urge that the expenditure of additional funds be authorized beyond those presently at our disposal.

The Department must also be given the power to compel the appearance of witnesses and the production of relevant data and documents.

In this connection, I want to assure the committee that while we believe the subpoena power to be necessary, we would expect to use it with great discretion and only as a last resort.

Finally, we would advise the committee that at least 2 years would be required for us to produce any meaningful and constructive study results. We have drafted legislative language incorporating these changes which is attached as an appendix to my statement and which we respectfully urge the committee to adopt.

In the meanwhile, I should like to direct the committee's particular attention to one of the important statements made in the June 25 report of the Interstate Commerce Commission, where on page 54 it says, "The development of a rail system adequate for future needs of the Nation cannot be attained simply by preserving those trains which operate today; the service must be extensively modernized."

In our judgment, the traveling public has made the validity of that statement regrettably clear.

The Department of Transportation believes that the time has not yet come to abandon the fundamental objectives of section 13a of the Interstate Commerce Act set forth by the Congress in 1958; namely, that when the cost of providing intercity passenger service reaches a point where it is unreasonably high considering the public use of this

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In our judgment, the traveling public has made the validity of that statement regrettably clear.

The Department of Transportation believes that the time has not yet come to abandon the fundamental objectives of section 13a of the Interstate Commerce Act set forth by the Congress in 1958; namely, that when the cost of providing intercity passenger service reaches a point where it is unreasonably high considering the public use of this

service, the carrier's financial position, and the availability of alternative forms of transportation, prompt discontinuance should be permitted.

Thus, while the Department has posed no strong objections, and poses none now, to the various technical changes to section 13a set forth in S. 1175 (Committee Print No. 1), we would oppose the imposition of any explicit or implicit moratorium on the further discontinuance of existing services.

Therefore, we must oppose that section of the ICC's proposal which would require the continuance of any "last remaining passenger train \* \* \* between a point in one State and to a point in another State \* \* \* for one year from the date of its order," which requirement would be in force throughout a period of 2 years following the enactment of the legislation.

In our judgment, this proviso could constitute an implicit moratorium on the discontinuance of something in excess of 40 percent of the presently remaining intercity railroad passenger service. Since alternative forms of transportation are in virtually every case available to the would-be traveler between any and all points in this country, we can find no logic in the suggestions that the last unpatronized railroad passenger train between two points should be subjected to any different tests of public necessity than the first such unpatronized train.

This committee is already aware that the financial condition of our privately owned railroads is a cause for increasing concern. When the Congress enacted section 13a of the Interstate Commerce Act in 1958, the railroads were suffering from depressed earnings, a deteriorating financial condition, and a shrinking market. The situation today, if anything, is less comforting than it was in 1958.

In 1958 the class I railroads had net income of \$602 million, down from a previous 5-year average of \$825 million.

In 1967 their net income was \$555 million, down from a previous 5-year average of \$728 million.

It is also important to note that the industry's share of the intercity freight market has declined steadily throughout this period. In 1958 the railroad's share of the U.S. intercity freight bill was approximately 32 percent; by last year this figure had dropped to 24 percent, and it is still going down.

Despite some modest increase in revenue ton-miles and the benefit of two recent freight-rate increases, moreover, net income for 1968 will still remain close to that of 1967.

In view of our Department's responsibility for the development of an efficient and economically viable transportation system, we can only be concerned about this situation. In fact, we cannot escape the conviction that, if the railroads are to continue doing their job for the public, they must begin to attack some of their own problems with a new sense of purpose and we in Government must take their circumstances and their problems seriously.

It should be noted that virtually all the railroads in the Western World run a fiscal deficit on their passenger operations. This passenger deficit has in all cases been an important contributing factor in the deepening, overall financial problems of railroads everywhere.

In fact, since the Dutch and Swiss national railways first went into the red in 1966, the only major railroads in the Western World which

do not now run an overall fiscal deficit are the privately owned, tax-paying railroads of the United States and Canada.

In summary, the Department poses no strong objections to the technical amendments to section 13a embodied by S. 1175 (Committee Print No. 1) and recommended by the Interstate Commerce Commission.

The Department does not favor that proviso in the Commission's presently proposed bill which would subject "last trains" to special criteria in a discontinuance proceeding. The Department would accept responsibility for a study of the type proposed by the Commission, but urges additional funding for the study, as well as extension of the time period to 2 years and the right to subpoena witnesses and records.

That concludes my statement, Mr. Chairman. I would be glad to answer any questions which the committee may have.

(The appendix to the prepared statement follows:)

#### APPENDIX

Section 2. The Secretary of Transportation, acting in cooperation with the Interstate Commerce Commission and other interested Federal agencies and departments, is authorized and directed to undertake and submit, within two years after the date of enactment of this Act, a study of the existing and future potential for intercity railroad passenger service in the United States to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. In making this study, the Secretary shall consider, among other things:

(1) Existing resources of all types for meeting the Nation's present passenger transportation needs.

(2) Anticipated expansion of those resources by 1975 on the basis of current governmental or private activities (such as the interstate highway program, by Government, and auto production increased, by industry.)

(3) The Nation's expected passenger transportation needs, including business, private, and defense movements, in the years 1975 and 1985.

(4) The ability of the existing resources, or resources as expanded by current governmental or private programs, to meet these anticipated needs adequately, efficiently, economically, expeditiously, safely and comfortably, at least as far ahead as 1975.

(5) The ability of improved railroad passenger service to meet these anticipated needs.

(6) The proper role of the carriers and governmental bodies in developing the required quality and quantity of service, including methods of financing operations which are necessary but not economically viable.

Section 3. (a) For the purpose of carrying out the provisions of Section 2 of this Act the Secretary or on the authorization of the Secretary any officer or employee of the Department of Transportation, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee deems advisable.

(b) In order to carry out the provisions of Section 2 of this Act, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any corporation, business firm, institution, or individual, having materials or information relevant to the study authorized by this joint resolution.

(c) The Secretary is authorized to require, by general or special orders, any corporation, business firm, or individual or any class of such corporation, firms, or individuals to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to the study authorized by Section 2 of this Act. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(d) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out Section 2 of this Act. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress.

Section 4. There are hereby authorized to be appropriated, without fiscal year limitation, such sums, not to exceed \$2,000,000, as may be necessary to carry out the provisions of Section 2 of this Act.

Senator PEARSON. Mr. Lang, first, I agree with you that if we are going to have this study, as complex as it will be, and do it on a crash basis, even on the basis of 2 years, you are going to have to have the power to make the investigation, which would include all of those powers of subpoena and appearance and otherwise, if you are going to get the job done.

Is one of the difficulties in such a study that you just can't really relate it only to railroads, that you are going to have to talk about buses and airlines and all other modes of transportation?

Mr. LANG. This is the greatest single problem that one faces in trying to address this specific issue.

It really makes no sense at all to talk in terms of looking at something which you call a "need" for intercity railroad passenger service without considering at the same time and to the same extent the kind of service alternatives that are available to the traveler and the extent to which they may in fact serve his needs better than something you call an intercity passenger train.

I might point out in connection with this problem of subpoena power, while we do not expect that it will be necessary, we can foresee difficulties in getting some of the kinds of data from other modes of transportation which we feel are necessary in order to get a sensible overall picture of the requirements for transportation and the extent to which different modes can meet them.

We certainly have no expectation that we would get anything other than cooperation out of the railroad industry in such a study, but we could visualize a situation where some of its competitors might prefer not to give us data which we consider important simply because they didn't want to get involved in the act.

Senator PEARSON. I think the other great problem is the question of whether or not you are staffed up to do this, even if you had the funds. Have you got the technical expertise available in your Department to undertake a job like this?

Mr. LANG. Well, we have a cadre of staff people who are knowledgeable about work of this sort. They are certainly fully occupied on other things.

But between those people and some of the contractors that we are using in our other studies—most importantly, the "Northeast Corridor Planning Study"—with whom we have developed a very close work-

ing relationship—these are private research organizations and universities—we feel that we ought to be able to put together the kind of team, the kind of expertise that could do a sensible job on this.

But getting organized would certainly take us several months, and a study that lasted for only a year I'm afraid would not produce very much.

Senator PEARSON. Do you have any idea as to the amount of additional funds that you think would be necessary?

Mr. LANG. Our estimate is that we should have an authorization of \$2 million. Whether we would actually have to ask for that much in appropriations would depend upon some further preliminary staffwork on structuring the study.

Senator PEARSON. I take it that your position on the moratorium on the last train is simply that in relation to the last train you either can justify a service or you can't justify a service, and you would rest it on that basis.

Mr. LANG. Yes, sir. We have given this a great deal of thought and have concluded, on the basis of the way in which the Commission has handled past train discontinuances under the present statute, that there really is no need for any special kind of test for something that you call last train, that the lack of patronage, the steady increase in costs relative to fare levels are things that are no different in connection with the last train than they are with the first one, and we think that the present statute provides adequately for this situation.

We are concerned with any kind of move to try to impose, even indirectly, a moratorium on discontinuances, because our study of this matter—and again I would refer back particularly to the work that we are doing in our high speed ground transportation demonstrations and in the "Northeast Corridor Planning Study"—indicates to us quite clearly that the present type of long-distance and even intermediate-distance intercity railroad passengers service is simply not competitive and never can be, that it will only be with some new form of service with new technology, new marketing concepts and service concepts that the public is going to get something that they want and what they need.

So we are very skeptical about the efficacy of merely preserving any of the present service once the patronage has dropped off to a point that by the tests that are presently applied under section 13a it can no longer justify operation of the train.

Senator PEARSON. I'm impressed by the point that you make that merely continuing present service isn't going to prove anything. And yet we are so far away from the new rail transportation systems, high-speed system, and the Northeast corridor, and so forth. There is a great deal of slippage. It is a very complex technical undertaking.

In the Armed Services Committee we see these new weapons systems come along. It's the same thing everywhere when we get into something as complex as this.

In this statement in relation to the last train, you say, "in our judgment, this proviso could constitute an implicit moratorium on the discontinuance of something in excess of 40 percent \* \* \*."

You indicate that the "last train" concept if documented would actually affect 40 percent of the passenger trains today?

Mr. LANG. Our estimate is that it could, but that would depend upon

the sequence in which service was discontinued, as I think Mr. Briggs outlined very well.

It might turn out to be considerably less than that, or it could turn out to be somewhat more than that, depending upon how long this kind of statutory provision remained in effect.

Senator PEARSON. Go ahead, Mr. Sender.

Mr. SENDER. Mr. Lang, the Department of Agriculture, commenting to the committee in support of the high-speed ground transportation bill, said:

There is need to facilitate access and provide better commuting systems between town and country, between rural and suburban areas, even between the cities. Improved transportation facilities are needed to stimulate economic development and to make the movement of people and goods easier among towns and small cities. Three out of 10 rural residents cannot now conveniently commute to a city of 25,000 population. Additional public transportation is needed to provide easy access to education, training and jobs.

Is this one of the matters that would be considered in the proposed study?

Mr. LANG. I think certainly this aspect of the use of existing service would have to be carefully considered, although in our thinking we have increasingly tended to separate the commuter transportation requirements from the intercity transportation requirements.

However, I should go on to point out that while this may be a useful concept for purposes of structuring studies and even programs, as a practical matter what constitutes commuter transportation on one hand and intercity transportation on the other hand often fuse into each other in ways that at the present time we don't clearly understand. Such phenomena have clearly begun to develop in this country as intercity transportation has improved in its quality. Here I am thinking of the improvement in highway transportation that has resulted from the construction of the Interstate System and of the improvement in air transportation. As these improvements have taken place, we find an increasing pattern of what is essentially commuter traffic moving between origins and destinations which even a few years ago would be adjudged simply and solely an intercity type of movement.

Improved transportation, in fact, widens the commuting range out of the metropolitan area, so that you have a situation today, for instance, where there are many, many, many people who are regular commuters between Washington and New York, Boston and New York, Philadelphia and New York, Hartford and New York, and similar patterns evolving in other major metropolitan areas around the country.

So when you look at something that you call intercity transportation, you can't really ignore the fact that this transportation is also being used to an increasing extent by people who are in fact commuting to and from work.

Mr. SENDER. Is it a correct summary of your statement, Mr. Lang, that your only opposition to the bill, S. 3861, is as to the "last train" provision, with a modification that the funds and other amendments you suggested be added to the study?

Mr. LANG. That's correct.

Senator PEARSON. Thank you very much, Mr. Lang.

Mr. LANG. Thank you, Mr. Chairman.

Senator PEARSON. We appreciate your coming in.

Our next witness this morning is Mr. Donald Beattie. Will you come up, Mr. Beattie?

Mr. Beattie is the executive secretary of the Railroad Labor Executives' Association with offices here in Washington. We are pleased to have you, Mr. Beattie, and pleased to have your statement on this particular subject.

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

Mr. BEATTIE. Thank you, Mr. Chairman.

I have a list of the member organizations of the Railway Labor Executives' Association attached to my statement.

On behalf of the railroad workers whom we represent, I want to urge you to act promptly and favorably on the Interstate Commerce Commission's bill, S. 3861, with the addition of two strengthening amendments.

Our general views are summarized in a resolution approved unanimously by the RLEA on June 27, 1968, and with your permission I should like to read you that resolution.

Senator PEARSON. Yes, of course, Mr. Beattie. Go right ahead. We have a copy of it here, and in addition to your statement, we will include this in the record.

Mr. BEATTIE. Thank you, sir. [Reading:]

Whereas the railroads, making use of section 13a of the Interstate Commerce Act, and other means, have killed off nearly 900 intercity passenger trains since 1958, leaving less than 600 in existence today, and

Whereas this drive by most of America's railroads to destroy their intercity passenger trains is a gross disservice to the nation, and

Whereas the attitude of most American railroads toward passenger service offers a shocking and shameful contrast to that of the European railways, which run Trans European Express (TEE) trains linking over 100 cities in fast, clean, comfortable service, and to the Japanese Railways whose new Tokaido Line is a model for the world, and

Whereas this Association has protested for years against the "public be damned" attitude of most American railroad corporations toward their passenger service and we have pleaded with Congress to halt the slaughter of passenger trains, and

Whereas public concern over this problem is steadily mounting, as shown for example by these developments:

On March 7, 1968, Interstate Commerce Commission Chairman Paul J. Tierney warned as follows: "Highway construction has not kept pace with the growth of traffic congestion. Air corridors in many metropolitan areas are rapidly developing their own congestion problems, and terminal facilities are becoming more difficult to reach. Yet the public's urge to travel is not abating. By 1984 we will have to provide the means to move twice the passenger traffic that moves today. Certainly, a viable rail network could make a major contribution in carrying that traffic without the huge investment, safety hazards, loss of valuable land and social dislocation inherent in providing alternative means of service. Rail passenger service will be transformed into an efficient national system only if there is a complete reversal of the traditional attitudes and policies of the industry, the public and government toward passenger service."

On April 22, 1968 ICC examiner John S. Messer, after finding that the Southern Pacific and other railroads have downgraded their passenger service, that "this has contributed materially to the decline in patronage," and that "the need for passenger rail transportation at present and especially in the future is clear," recommended that the ICC require the railroads to observe "certain minimal standards" in their passenger service and that "a National Rail Passenger Sys-

tem should be created capable of meeting present and future intercity rail transportation requirements."

On May 13, 1968 the New York Times in a lead editorial declared among other things: "Railroad companies have developed the propaganda myth that maintenance of passenger service is a matter of interest only to a dwindling number of train buffs. In reality, 98 million passengers, not counting daily commuters, traveled on intercity trains last year. Rather than dwindling the number of rail passengers is likely to rise in the coming decade as highway and airline congestion worsens. If highway traffic triples in the near future, as experts expect, the immensely expensive interstate highway system now being built will not be able to sustain the burden. A functioning network of passenger railroads connecting major points in this nation is not a matter of nostalgia and romance; it is a practical necessity." and

Whereas in contrast to the negative attitude of most of the railroad corporations, Mr. Stuart Saunders, chairman of Penn Central Company, on June 6, 1968 declared: "I would like to propose, either as a corollary or an alternative to Congressional review, that a National Railroad Passenger Council be created by appropriate governmental action to expedite solution of this (passenger service) problem. This council should be a group representative of the public, the railroads, and the governmental agencies concerned with transportation policy. It should move promptly, in as brief a time as possible, to study the problem and issue a report as a basis for formulating a railroad passenger service program within the larger context of the national transportation policy. Such a study is fundamental in determining the extent to which the Federal government must support rail passenger service. In addition to investigating the requirements of Federal participation in commuter, intercity and long-haul passenger service, it should analyze the need for Federal sponsorship of railroad research and development," and

Whereas the Interstate Commerce Commission on June 25, 1968 after warning that "changes in Federal policy are urgently needed," recommended: "(1) that a Federal study of the need and means for preserving a National Rail Passenger System be initiated as soon as possible; (2) that section 12a be amended to provide more effective and efficient regulation geared to present conditions, including a provision to preserve a minimum level of service while the study is in progress; and (3) that the Post Office Department temporarily redirect its policies on mail contracts to support the present level of passenger train service during this study." : Now, therefore, be it

*Resolved*, That the Railway Labor Executives Association :

1. Reiterates its previous appeals for suspension of section 13a of the Interstate Commerce Act under which the railroads have slaughtered their passenger trains,

2. Wholeheartedly supports the recommendations by Mr. John S. Messer for minimal standards for rail passenger service and for creation of a National Rail Passenger System, and

3. Strongly endorses the proposal by Mr. Stuart Saunders for a National Railroad Passenger Council, offers the full participation of railway labor in such a council, urges prompt creation of this council by the Federal government, and suggests that the Council should file its report and recommendations no later than March 31, 1969, and

4. Urges prompt action by Congress and the Post Office Department to implement the above-cited ICC recommendations of June 25, 1968 including enactment of a strong bill on the subject providing among other things for protective conditions for railroad employees adversely affected by passenger train abandonments and for a National Railroad Passenger Council along the general lines suggested by Mr. Stuart Saunders.

The two amendments to S. 3861 that we urge are (1) insertion of protective conditions for employees adversely affected by passenger train abandonments similar to those provided by law for employees adversely affected by abandonment of other railroad operations; and (2) creation of a National Railroad Passenger Council, with representatives from the Congress, the executive branch, the public, the railroads, and railroad labor, to make a study and recommendations regarding the future of rail passenger service.

We feel this council should make its report by next March 31. We also feel that the Council should not depend on a new appropriation of funds from Congress, but it should draw on whatever funds are already available for such a purpose in the executive branch plus private contributions.

One reason for suggesting such a National Railroad Passenger Council rather than a study by the Department of Transportation alone is that there will be a change of administration next year, which might involve some delay and confusion in pushing ahead this very urgent matter.

I am constrained to add that testimony by Mr. A. Scheffer Lang, the Federal Railroad Administrator, before the House Interstate and Foreign Commerce Committee, July 8, 1968, makes us feel even more strongly that Mr. Stuart Saunders' basic proposal for a National Railroad Passenger Council is a more fruitful approach than a study by the DOT.

The mandate of Congress to the Department of Transportation was to lead in the creation of a well-balanced, fully integrated and efficient transportation system to meet the needs of this and the next generation of Americans. By all of the standard productive criteria employed in the transportation field, the need for transportation will double in the next 12 years.

The evidence is all too apparent that we will not meet the challenge to provide the facilities for a doubled need if we proceed at our present rate. Indeed, the evidence is all too clear that we have failed to a significant degree to provide for today's needs. No competent observer now contends that our highways are adequate for transportation, nor that the passenger car is in itself the ideal vehicle for a great amount of transportation.

The charge of Congress to the DOT to embark upon a \$2 million study into auto insurance because of the questionable practices of the industry is indicative of only a small part of the problems which beset this country in relation to the automobile.

Air transportation, only a decade ago thought to be the wave of the future, has reached a saturation point at many city airports, a Time magazine article of June 14, 1968, cites Los Angeles Airport, designed to handle 15 million passengers a year with its seven highly automated "satellite terminals," as already obsolete. The article also reports that O'Hare Airport of Chicago has almost reached the saturation point. In short, as put by New York Port Authority Aviation Director John R. Wiley, "What we have is an air transportation crisis."

Yet, in the face of the present crisis in transporting our Nation's people safely and efficiently, what has the DOT proposed? Has it given us a broad outline for action to create the capacity that we need or to point out where innovation must be had because of present saturation? The simple answer is no. Instead, we have Mr. Lang commenting as follows: "Preserving today's outmoded intercity passenger service is and can be of little benefit to the public."

Yet in 1967, this outmoded passenger service carried 100 million passengers distances of 75 miles or farther. One can appreciate that the DOT would prefer to enter rail passenger service with a new slate. It is, of course, much less trouble to be involved in those programs like the Northeast corridor project because it is possible to deal with a new technology, and a new market.

Moreover, one can also sympathize with the Department's reluctance to become involved in trying to force an industry to perform a task when that industry has demonstrated such a uniform unwillingness to do so.

However, the DOT is supposed to operate in the interest of the public even though it means incurring the wrath of the various transportation industries from time to time.

This is the situation we have here. It is indeed ironic that the DOT, which has the responsibility for making highways and automobiles safer, would encourage the Congress to place another 100 million passenger Americans onto a highway system when that system has such an enormous record of destruction. For a department in which so much public trust has been placed, this is a very inauspicious performance.

We in railway labor feel very strongly that today's intercity passenger service should not be destroyed. It should be built upon to create the truly modern, comfortable, efficient service that is needed and wanted and that will be even more needed and wanted in the future.

The charge is made that America's railroads can't afford to continue running passenger trains. As to that, I refer you to appendix H of the ICC's report to you of June 25, 1968. This report shows the "deficit related solely to passenger and allied services" amounted to only \$30.9 million in 1966, the latest year available. The eastern railroads, on this basis, actually showed a passenger profit of \$16.8 million in 1966, with the southern roads showing a deficit of \$23.8 million and the western roads a deficit of \$23.9 million.

The "solely related" passenger deficit of \$30.9 million compares with a total railway net operating income of \$1,046 million in 1966. In 1967 the ICC suggested the railroads' "solely related" passenger deficit rose "significantly" from 1966. But it was undoubtedly still only a small fraction of their total 1967 net operating income of \$677 million.

Solely related expenses are relatively easy to identify. They consist of those expenses which are generated by or incurred on behalf of the passenger service only and have no relationship to other services performed by the railroad. Examples of this type of expense are repairs to passenger train cars, fuel consumed by locomotives in passenger trains, wages of ticket agents, and maintenance of passenger stations.

Maintenance and depreciation of the roadway used exclusively by passenger trains, including such items as replacement of rails, ties, ballast and other track material, repairs to bridges, trestles, culverts and other elevated structures, maintenance and depreciation of power transmission systems, the expenses of the entire passenger traffic department, wages of enginemen, trainmen, such as conductors and ticket takers and the wages of certain general office clerks are still further examples of solely related passenger expenses.

Clearly the railroads can afford present passenger service, even if they can't afford the desirable new equipment.

As to the future need for passenger service, the ICC report said :

Clearly, all levels of government will face extremely heavy burdens in order to enlarge the present highway and air systems to accommodate public and private transportation to the future expansion of intercity travel.

Therefore, it is imperative that a comprehensive review be initiated of the future contribution which a modernized rail passenger system could make before some vital services are abandoned.

Even in terms of present needs, the ICC said :

rail travel still provides a real service to those who fear flying. For those who do not own automobiles or prefer not to drive, the railroad has a distinct value.

Students, servicemen, the less affluent and senior citizens are the most frequent groups who use rail service. Some rail routes provide excellent service for tourists who want to view the country during their vacations rather than speed to and from a single destination.

Railroads also furnish passenger service that is less subject to cancellation because of weather conditions. Although its ability to prevent a near breakdown in intercity travel when the highways and airways are closed is tapped only infrequently, it is a very vital service during those periods.

Peak travel demands of holiday and vacation traffic are also substantially eased by rail service. Unfortunately for the carriers, a large part of the public uses the railroads only when they are crowded over the holidays or when the weather is bad.

The reserve capacity of railroads to transport large masses of people during periods of national emergency is another asset of an intercity rail passenger system.

Gentlemen, I predict that if Congress does nothing—if you let present intercity rail passenger service be destroyed—it will not be more than a few years before such a public demand will arise that you will see the Government paying the entire bill to create a wholly new rail passenger system. The time to begin a rescue operation is immediately at hand. The cost of corrective action now would be minimal; the cost of delayed action will mount exorbitantly.

(The list of the membership of the Railway Labor Executives' Association follows:)

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

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

Mr. BEATTIE. That concludes my statement.  
 Senator PEARSON. Thank you, Mr. Beattie.

It is no exaggeration to say that you lack confidence in the Department of Transportation to do an objective job on this study.

Let me ask you: Do you think that the proposed Council here can deal with this problem and make a report by March 31 of 1969? The Department of Transportation indicates 2 years. We are talking about what? Nine months?

Mr. BEATTIE. It would be something like 8 months. We have a great number of people in the country who are experts in the field, and the experts have a pretty good idea of what to look for, where to look, and our people are confident that they could complete such a study easily within that period of time and that we should have such a report as early as possible, March 31 of next year.

Senator PEARSON. In relation to the cost, the Department estimates, as you pointed out in your statement, \$2 million. Do you think we can finance this? I note the President's contingency fund gets called on for a lot of things. And then you make reference to private contributions. Perhaps studying in this particular manner would cost the same amount of money.

Mr. BEATTIE. A study of this type would not cost that kind of money I am sure. It would be funded in part by the contributions of private organizations and individuals.

Senator PEARSON. I note that most of your statement was in reference to the study. Do you have any recommendations as to the other provisions of S. 3861, with particular reference to the "last train" concept?

Mr. BEATTIE. I certainly agree with the ICC that the last train should be preserved. We have seen in recent years many of the larger cities of this country losing its last train, and until such time as we can develop a policy, a national policy, that would be a rational policy, I think that the industry should be required to maintain the last train, and the social cost involved is something to be considered as compared with the economic costs from the industry's standpoint.

Senator PEARSON. Any comments with reference to the procedural and jurisdictional changes?

Mr. BEATTIE. I think that the procedural changes suggested here are badly needed. During the past several months I have maintained a check of the number of applications pending at any given time, and all you need do is take a look at the number.

I think right now we have about 22 or 23 applications pending involving 50-some trains. And the ICC staff is completely overburdened endeavoring to meet its responsibilities under the law with such a large number of applications pending at any given time.

It has been this way now for several months. They need more time.

Senator PEARSON. We take special note of those amendments that you propose.

Mr. Beattie, I don't have any further questions. Counsel, do you have any?

Mr. SENDER. No questions.

Senator PEARSON. Well, I thank you very much, Mr. Beattie, for your contribution here today. I want to make an announcement that we will continue the hearings on this particular bill and start tomorrow.

row morning at 9 a.m. in room 5110. That is our normal hearing room on the fifth floor of this building.

Mr. BEATTIE. Thank you, Mr. Chairman.

Senator PEARSON. Thank you.

(Whereupon, at 11:27 a.m., the subcommittee recessed, to reconvene at 9 a.m., Thursday, July 25, 1968.)

# STUDY OF ESSENTIAL RAILROAD PASSENGER SERVICE

THURSDAY, JULY 25, 1968

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

The subcommittee met at 9:05 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche (chairman of the subcommittee) presiding.

Present: Senators Lausche, Moss, Pearson, and Cotton.

Senator LAUSCHE. The meeting will come to order.

This morning we will have a continuation of the hearing on S. 3861, the purpose, to amend section 13a of the Interstate Commerce Act, to authorize a study of essential railroad passenger service by the Secretary of Transportation, and for other purposes.

The Commerce Committee at its July 18, 1968, executive session voted to hold these additional hearings on the June 25, 1968, ICC proposals incorporated in S. 3861, (1) proposing a special test applicable to "last trains," and (2) proposing a study of railway passenger service potential.

The first witness this morning will be Hon. Lee Metcalf, U.S. Senator from Montana.

## STATEMENT OF HON. LEE METCALF, U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. Mr. Chairman.

Senator LAUSCHE. Yes, sir, Mr. Metcalf.

Senator METCALF. I am delighted to be here before this committee, and I appreciate your courtesy in giving me time to tell you some of my views on S. 3861 which you have described as a bill, among other things, authorizing the study of essential rail passenger service.

Senator Mansfield, the majority leader and my distinguished colleague, has read my remarks and asks that they also be considered his.

Mr. Chairman, the importance of such a study and a halt, if only temporary, in the present trend of discontinuances cannot be exaggerated if we are to meet with equal force the velocity of the rail industry's dash toward ever-diminishing public service.

I understand there was some discussion at yesterday's hearing regarding the length of the study, and whether there should be a moratorium on further discontinuances of passenger train service until the results of the study are in. I would like to point out that final action on two proposed discontinuances affecting my State—the Northern Pacific Mainstreeter case and Union Pacific service from Salt Lake City to Butte, Mont.—were postponed by the ICC this year.

They will be considered again next spring. If we are going to provide for a real study of passenger service, as we should, then it is obvious that the information produced by the study should be available to the Congress, the Commission and the public when these discontinuances are again considered. It would be most inept to permit more discontinuances—then come out a year later with a scholarly report filled with statistics which would have been useful in making the case for continuance.

So I trust that the timetables are arranged to delay action on these proposed discontinuances until after the study is completed.

Also, I have grave reservations about the proposal made yesterday to finance and produce the study by a combination of private and Government resources. We are dealing here urgently with a public policy and the study should be funded promptly by the public generally, through congressional appropriation, not by any special-interest groups.

I am a cosponsor of Senate Concurrent Resolution 25, along with Senator Mansfield, and we testified last year on this bill.

And from now on as I have a rather long statement, I will summarize it, if I may, and submit the statement for the record.

Senator LAUSCHE. The statement will be fully printed in the record.

Senator METCALF. Mr. Chairman, we have been talking about deteriorating rail passenger service for a long time. I recall that when Senator Mansfield and I spoke out against the Milwaukee discontinuance in 1963 we were joined by mayors and chamber of commerce officials and other leading citizens of town after town who told similar stories. The trains weren't on time, the food was cold, the sleeper was unhooked, the railroad did not encourage passenger service. Some prospective passengers had great difficulty getting hold of a ticket agent in order to purchase a ticket.

In the Milwaukee case the railroad pointed to the availability of air transportation, at about the same time the airline was trying to reduce local service in the Northwest pointing to the availability of railroad service which the public was about to lose.

Early this year, after Christmas vacation, hundreds of Montana University students were left stranded in towns in eastern Montana because the railroads simply did not put on enough cars to take care of them.

Meanwhile the railroad—this is the Northern Pacific I am talking about now, a corporation with vast nonrailroad interests—was letting the phone ring unanswered in the Minneapolis depot, had unhooked the sleeper of the Mainstreeter; and within the past week, Mr. Chairman, the principal public alternative to rail passenger service, the airlines, reached their saturation point.

In a story about the weekend airport stackup, the Washington Post said a reservations clerk employed by a major airline advised her customer, "I am sorry, sir, but if you really need to get to New York take the train from Washington. Our flights are running 4 hours behind schedule." The passenger followed the airline's advice.

Now, Mr. Chairman, I have touched in detail in the rest of my statement on some of the reasons why there should be in this study a public interest and a public convenience and necessity test rather than the present test.

In a conference in my office relative to the merger of the Northern Pacific and the Great Northern, Mr. Menk of the Northern Pacific said that there are no longer going to be railroads; they are taking the name "railroad" out of the title of the company. They are large industrial, commercial, conglomerates. The Northern Pacific with the holdings in oil in the Williston Basin, its development of pipelines and oil products, and spreading out into meatpacking and sawmill industries, is no longer a railroad. Nor is the Santa Fe. Frankly, an article in Forbes recently said that the Santa Fe was becoming one of the huge conglomerates of the country.

Now millions of acres in our country at least were given to these railroads. The basis for these grants was to develop passenger and freight service in those areas. And even in those days when the Great Northern was accepting millions of square miles of Montana and North Dakota and parts of Washington and Idaho, Jim Hill said that passenger service is like teats on a male, not very attractive and not very useful.

Now that was the attitude in those days, that is the attitude today—that they would like to accept all of these benefactions, all these gifts that the country has given them, but fail to carry out the essential passenger services that are necessary.

Now I voted, as many of the members of this committee and this Senate voted, for the relief of the railroads when it seemed that there was an undue burden placed upon them, and I am not sorry I voted for it. I think it was necessary. But at the same time they have a public responsibility.

And so I urge this committee to go forward with the study, to find out about these extra outside activities other than passenger and freight transportation activities, to find out how they affect the whole rail operations, to find out what the total effect is, to make a determination of the public responsibility of the railroads to take care of the public through not only a fast corridor such as Senator Pell would have us work out here on the eastern seaboard, and something I certainly support, but through the isolated and sparsely populated areas such as central Montana which has lost its passenger service and hasn't any airline service and has only infrequent bus service.

In fact, we have less service in central Montana as far as passengers are concerned, unless you have a car to travel interstate, than we had at the turn of the century. And so in my statement I have developed this in greater detail, but this is an area of great importance to all of the United States, to have a policy of passenger transportation.

The Interstate Commerce Commission is coming around to seeing the importance of a special policy of service to the public, and the greatest service we can offer the development of our transportation in all lines, airlines, railway lines, buslines, is to go into a uniform policy, Mr. Chairman.

Thank you very much for this opportunity.

Senator LAUSCHE. Senator, what would be your judgment in a matter where the proof shows that the proportion of passenger service in the railroad is extraordinarily large compared to the proportion of freight service and that that railroad is constantly losing money? Take the New Haven. We pumped \$50 million into it, and it contends that its losses have been primarily as a consequence of hauling pas-

sengers. Would you order the railroad to continue hauling the passengers if it is evident that a loss results?

Senator METCALF. Well, Mr. Chairman, I would have to agree that every such case would have to be determined upon the basis of the facts and the evidence submitted to the Commission, and certainly if the overall losses—and I know very little about the New Haven, I know more about the railroads in my area, in sparsely populated areas—but, if the case was that they were consistently losing money for the stockholders and that the only solution was abandonment or curtailment of passenger service, of course, I would concur with the Commission that a curtailment would have to take place, or perhaps a complete abandonment.

Senator LAUSCHE. The same answer, I suppose, would be given in instances where passenger service is provided and there are no passengers available?

Senator METCALF. Well, now this was a question in the Milwaukee case, Mr. Chairman, and as I say, time after time the railroad kept on telling us that the passengers weren't there to ride the Milwaukee; but you couldn't buy a ticket on the Milwaukee in Minneapolis or St. Paul. And finally they cut the service off only as far as Butte, so they didn't have any coast-to-coast service, and they kept telling us that the trains were dirty, they would forget to make the reservations that are necessary, and so they deliberately drove away those passengers. Now those matters should be taken into consideration, too, when they come in and tell us, "Well, we don't have the passengers, and they are not riding the trains." We would ride those trains.

There are no better trains anywhere than the North Coast Limited and the Great Northern Empire Builder. And people fill those trains up. Sometimes you have to get reservations days in advance. At other times, during the slack tourist season, you don't. But they provide service and they provide food on the train, and good food, and they provide a car so you can see the magnificent scenery out there.

So all those have to be taken into consideration, Mr. Chairman.

Senator LAUSCHE. Now then, you are urging the committee to approve the bill that is now being discussed and now pending immediately before this committee?

Senator METCALF. I am urging the committee to pass this bill and have this study instituted and implemented immediately, and I am urging the committee to have a congressional study financed by congressional appropriation rather than by either the Railroad Brotherhoods, the railroad corporations, or any other—this should be an independent study on our part to take into consideration all these matters that I have briefly touched on today and outlined for part of the study.

Senator LAUSCHE. Page 7 of the bill, line 23, section 2 reads as follows:

The Secretary of Transportation acting in cooperation with the Interstate Commerce Commission and other interested federal agencies and departments is authorized and directed to undertake and submit within one year after the date of enactment of this Act a study of the existing and future potential for intercity railroad passenger service in the United States to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. In making this study the Secretary shall consider among other things existing resources of all types for meeting the nation's present passenger transportation needs.

Well, I think these are guidelines. I was not here yesterday, Senator Metcalf. Was there a suggestion made that the study be made by private individuals?

Senator METCALF. Yes, by a combination of private and Government resources. I wasn't here either. It was reported to me by a staff member who was here monitoring and auditing the hearing.

Senator LAUSCHE. Well, I understand that the witness representing the railroad labor unions suggested two amendments to S. 3861, one, that we urge insertion of protective conditions for employees; two, creation of a national railroad passenger council.

Mr. Donald S. Beattie further testified: "We also feel that the council should not depend on a new appropriation for funds from Congress, but should draw on whatever funds are already available for such purpose in the executive branch plus private contributions."

Well, any questions?

Senator PEARSON. No.

Senator MOSS. No.

Senator LAUSCHE. Thanks very much.

Senator METCALF. Thank you very much, Mr. Chairman.

(Prepared statement of Senator Metcalf follows:)

STATEMENT BY HON. LEE METCALF, U.S. SENATOR FROM THE STATE OF MONTANA

Mr. Chairman, I very much appreciate your courtesy in giving me time this morning to offer some views in support of S. 3861, a bill authorizing a study of essential rail passenger service. Senator Mansfield has read these remarks and asks that they also be considered his.

The importance of such a study and a halt, if only temporary, in the present trend of discontinuances cannot be exaggerated if we are to meet with equal force the velocity of the rail industry's dash toward ever diminishing public service.

I understand there was some discussion at yesterday's hearing regarding the length of the study, and whether there should be a moratorium on further discontinuances of passenger train service until the results of the study are in. I would like to point out that final action on two proposed discontinuances affecting my State in my region—the North Pacific Mainstreeter case and Union Pacific service from Salt Lake City to Butte, Mont.—were postponed by the ICC this year. They will be considered again next spring. If we are going to provide for a real study of passenger service, as we should, then it is obvious that the information produced by the study should be available to the Congress, the commission and the public when these discontinuances are again considered. It would be most inept to permit more discontinuances—then come out a year later with a scholarly report filled with statistics which would have been useful in making the case for continuance.

So I trust that the timetables are arranged to delay action on proposed discontinuances until after the study is completed.

Also, I have grave reservations about the proposal made yesterday to finance and produce the study by a combination of private and government resources. We are dealing here urgently with a public policy and the study should be funded promptly by the public generally, through Congressional appropriation, not by any special interest groups.

I am a co-sponsor of S. Con. Res. 25, which called for a study of rail transportation and a moratorium on curtailments of railway post office service. I testified before this committee last year in behalf of the bill. Senator Mansfield and I, with other Senators, introduced S. 2822, which is pending in your committee and which would provide that railroad mergers whether or not approved by the Interstate Commerce Commission, should be subject to the operation of the antitrust laws unless the Department of Justice determines that such merger shall not be prosecuted because of the public interest. In numerous statements over a period of years before this committee, and on the Senate floor and in proceedings before the Interstate Commerce Commission, I have joined with others in protesting the trend of reduced rail service.

Mr. Chairman, we have been talking about deteriorating rail passenger service for a long time. I recall that when Senator Mansfield and I spoke out against the Milwaukee discontinuance in 1963 we were joined by mayors and Chambers of Commerce officials and other leading citizens of town after town, who told similar stories. The trains weren't on time, the food was cold, the sleeper was unhooked and the railroad did not encourage passenger service. Some prospective passengers had great difficulty getting hold of a ticket agent, in order to purchase a ticket. In the Milwaukee case the railroad pointed to the availability of air transportation. At about the same time the airline was trying to reduce local service in the Northwest, pointing to the availability of railroad service which the public was about to lose. Early this year, after Christmas vacation, hundreds of Montana University students were left stranded in towns in eastern Montana because the railroad simply did not put on enough cars to take care of them. Meanwhile the railroad—this is the Northern Pacific I am talking about, a corporation with vast non-railroad interests—was letting the phone ring unanswered in the Minneapolis depot, had unhooked the sleeper of the Main-streeter and rationed the pillows. And within the past week, Mr. Chairman, the principal public alternative to rail passenger service, the airlines, reached their saturation point. In a story about the weekend airport stackup, the Washington Post said: "A reservations clerk employed by a major airline advises her customers: 'I'm sorry, sir, but if you really need to get to New York, take the train from Washington. Our flights are running four hours behind schedule.' The passenger follows the airline's advice."

So now we have, on a national scale, what we had in Montana five years ago. Both the railroads and airlines are trying to push passengers to their competitor! Obviously the industries alone have not come up with long-range plans. It is our responsibility to do so.

In the West, declining and deteriorating passenger service, increased freight rates and maddeningly slow mail delivery leave no citizen without his complaint against the railroads. He does not understand why so essential a service, established with the unparalleled incentives offered by a benevolent government, should continue to deteriorate in the face of public need.

It appears to him that passenger service is the arm that offends railroads and they would therefore cut it off.

Since 1958 the "undue burden" procedures, together with a formula for computing expenses, have been used by the industry to prove how very unprofitable passenger service is. However, the Association of Western Railways states in the 1968 Yearbook of Railroad Facts that "the stated deficit does not necessarily represent an amount which could be saved by elimination of passenger service."

Under the provisions of Section 13a a carrier is permitted to discontinue its passenger train service unless the Commission, after hearing, finds that the operation or service of such train is required by public convenience and necessity and will not unduly burden interstate and foreign commerce. Instead of such a test, the burden should be placed on the railroad to prove that present or future public convenience or necessity permits such abandonment. Further, the railroads should be required to obtain a certificate from the Commission before they are allowed to discontinue passenger service.

There are indications that the formula for computing expenses may be altered but the fact remains that it has been used by the industry to justify discontinuances.

More perhaps than most other Americans, the westerner has tangible evidence of railroad wealth and he is therefore baffled by the industry's claims of poverty that require reduction of service. The westerner knows well the value of the timber and the mineral deposits including oil and gas which the railroads have developed on the lands given them by a generous government and from which they derive a vast annual income.

He may know that the Union Pacific system reported a non-operating income in excess of \$46 million in 1966, representing nearly half of its total net income for the year. Or that the 1967 Annual Report of the Southern Pacific Company and Subsidiary Companies states: "Non-rail income from trucking, pipeline, and other operations, and from interest, property rentals and sales contributed measurably to the net income gain. Earnings from such sources, before income taxes, rose 50%, from \$38.2 million for 1960 to \$57.3 million in 1967." This was well over half their income before taxes from railway operations last year.

In 1966, when Southern Pacific's total income before taxes was over \$136 million, nearly half from non-railway operations, the Interstate Commerce

Commission required the continued operation of two SP trains in a finding which reads in part:

"The evidence in this proceeding makes it abundantly clear that Southern Pacific has continued to discourage use of these trains by passengers. In fact, it has intensified its efforts in that direction. Whenever it appears, as it does in this proceeding, that a carrier has deliberately downgraded its service in order to justify discontinuance of a train irrespective of the actual or potential needs of the traveling public, the Commission will order the service to be continued \* \* \*. The Commission will not find burdens on interstate commerce within the meaning of section 13a of the act to be 'undue' if those burdens are voluntarily created by carriers for the purpose of obtaining a favorable decision from the Commission."

In view of this finding, in the face of the extent of railroad non-operating income and in the face of the conglomerates being fostered by mergers, it is not strange that the public should be asking what, exactly, is the extent of the railroad's responsibility to provide service for the public? How were findings of undue burden made if supported by a formula which the industry itself admitted did not necessarily represent the amount to be saved by elimination of passenger service? What part of railroad assets may be exactly assigned for use in the public interest?

We do not believe that the Congress ever contemplated the number of discontinuances that would flow from the "undue burden". Indeed, the report of the Subcommittee on Surface Transportation (30 April 1958) as approved by the Committee on Interstate and Foreign Commerce, chaired, then as now, by my distinguished friend Senator Magnuson, stated:

"The railroads are attempting to eliminate a great deal of this unprofitable passenger service. The Subcommittee believes, however, that the railroads should retain a certain amount of passenger service whether profitable or not, as part of the railroads' obligation to serve the public and to provide for the national defense."

We hope that the study of rail passenger service contemplated in S. 3861 may be broadened to include an examination in depth of the financial operations of the conglomerates and the carriers with whom they are associated, particularly as the bill calls for examination of "the proper role of the carriers and governmental bodies in developing the required quality and quantity of service, including methods of financing operations which are necessary but not economically viable."

If only operating income (and assets) are to be considered, as under existing formula, clearly the government's contribution to financing necessary operations that may not be economically "sound" would necessarily be heavier than if total income is considered. But if this study is to be the basis for a rail policy, and we hope it will, nothing less than the whole picture will be enough. As Chairman Magnuson said in his vigorous dissenting statement on S. 757, ". . . if railroads are permitted to become conglomerates, what controls should be imposed to prevent rail revenues and earnings from being drained out of the rail industry to the disadvantage of the public?" Senator Magnuson quite properly pointed also to the related problem of the tax treatment accorded these giants which provides a tax dodge for the manufacturing arm.

Logically, the study of essential rail passenger service should be undertaken by the agency which can take the broad view that gives a place to air, motor and rail travel.

With our airports growing ever more congested we do not look sensibly for our answers in more airports, even more distantly located from the urban centers. The bill says that the Secretary of Transportation shall consider "existing resources of all types for meeting the Nation's present passenger transportation needs." We are confident that the study will bear not only on how existing rail service might be improved, but how it might supplant or supplement other types of service that may have grown obsolete or will, shortly do so.

Maybe the public would be better served by fast trains on short hauls than by fast planes which cannot land because there is no room at the airport.

That there is need for expanded passenger service by rail we have no doubt. That there is room for improvement of existing service there is equally no doubt. It may be a very different service. Certainly there is great popular interest in the fast corridor concept and the commuters by automobile would welcome respite from constant driving that is both more dangerous and not nearly as pleasant as train travel can be. With imagination and promotion (travel by train, let

us carry your camping equipment), rail travel to recreation areas could no doubt be increased.

The needs, the resources, the growth to be expected and the role of the carriers and government are all to be examined. But we think we will not have all that is necessary unless we scrutinize the other operations of what are truly no longer railroads; with diversification they call themselves companies and industries instead of railroads. Their assets, their income from other than rail operations and the effect on rail operations of these other interests, all should be investigated. We should like to see this Committee form an *ad hoc* group with the responsibility of making an investigation in conjunction with the study by the Secretary of Transportation. It may be that the Congress will find that the present formula for determining expenses should be changed. It may be that the additional activities of the carriers should be reported and used by the ICC in determining rates and in requiring service. It may be that government assistance to maintain rail service in a given area should be provided, or perhaps there should be competitive bidding for a franchise to operate a given service at a given level.

But these judgments cannot be made unless we have before us all of the information that might bear on the intelligent transportation policy, which will come, we all hope, from the study authorized under the bill. We believe the purposes of S. 3861 would be well served if this Committee would undertake an additional area of study, along the lines we have suggested.

Senator LAUSCHE. The next witness is W. Ashley Gray, President of General Steel Industries, Inc., St. Louis, Mo., and chairman of Railway Progress Institute of Washington, D.C.

Mr. Gray.

**STATEMENT OF W. ASHLEY GRAY, JR., PRESIDENT, GENERAL STEEL INDUSTRIES, INC., AND CHAIRMAN, THE RAILWAY PROGRESS INSTITUTE; ACCOMPANIED BY NILS A. LENNARTSON, PRESIDENT, THE RAILWAY PROGRESS INSTITUTE**

Mr. GRAY. Mr. Chairman, members of the committee, I am W. Ashley Gray, Jr., president of General Steel Industries of St. Louis, and chairman of the Railway Progress Institute, the national trade association of the railway supply industry based in Washington. With me is Nils A. Lennartson, who is president of RPI.

We appreciate having the opportunity to appear here today on behalf of the railway supply industry in opposition to S. 3861 and all similar legislation pending before Congress.

I would like to explain that the Railway Progress Institute, known as RPI, is made up of 190 railway supply companies of all sizes, located throughout the United States. We provide the railroads with rolling stock, locomotives, components, and other equipment and services of all kinds.

Our industry normally employs approximately 600,000 people in over 900 plants in 45 States. As supplies we have a tremendous stake in the economic health and well-being of the railroad industry. At the present time we have some serious problems because of the railroad economic plight. I will speak a little later on about this situation.

Railroads are important, not only to the railway supply business but to the whole Nation. Their strength and future success must be of concern to every responsible member of all our business and economic community. Other industries—farmers, miners, wholesalers, retailers, housewives, in fact, producers and consumers of all kinds—depend, whether they are immediately aware of it or not, on the services of the railroad industry.

In our high-volume, price-conscious economy, railroads have an absolutely essential role in this Nation's continuing economic survival. Railroads are among the oldest of our modern modes of transportation, but that does not mean they are obsolete or can be looked upon as having had an important history but a doubtful future. The fact of the matter is railroads will be called upon in the coming decade to provide more and better service than at any time in their history.

Last year railroads carried 720 billion revenue ton-miles in intercity freight hauls, or 42 percent of all intercity freight traffic. In addition to the key role they already play in our economy, we must recognize that railroads are the only mode of freight transportation that can readily be expanded to provide increased service without requiring a huge public expenditure. In simple terms, railroads can greatly increase the volume of freight service by simply running more trains over existing tracks.

So the railroads have great unused potential for service and we believe this service will be increasingly required in our expanding economy and by our growing population. Yet railroads today face serious problems that must be solved. They are in a gigantic economic struggle for survival. The net return on investment after depreciation last year for the industry as a whole was only 2.45 percent. Gentlemen, this compares to 10 to 12 percent for the typical unregulated industrial company.

We oppose any legislation that would reduce the railroads' opportunity to improve earnings. We feel that S. 3861 would have this effect. It just does not seem reasonable to enact legislation that would prevent or delay removal of uneconomic rail passenger service. As railway suppliers, we know that following World War II railroads made a strong effort to make trains popular. In the first 10 years after the war, they spent more than \$1 billion modernizing their passenger fleet, but the effort to increase traffic failed because the public prefers airplanes, automobiles, or buses, and has virtually turned its back on rail passenger service.

I would like to comment here that we definitely believe rail service has an important mission and a strong future as the backbone of balanced transportation systems in heavily populated corridors, such as the one between Washington, New York, and Boston. Also, rail rapid transit will be increasingly used in solving urban transportation problems. But the day of the long-haul passenger train is gone, and we must recognize this fact of life and live accordingly.

As a railroad supplier, I know what the \$485 million lost on passenger service last year would make possible in new and improved freight equipment to provide a service that the American public does need and want; \$485 million will buy 32,000 freight cars or 2,000 locomotives, for example.

Railroads must continually modernize their equipment and maintain their facilities. They must do more, and have been doing more, to develop specialized freight cars, computerize their operation, and provide other types of customerized service to save on cost to shippers, to be able to compete in their marketplace with other modes of transportation.

All of this takes money, but with the railroads' present depressed earnings they do not have the capital required to meet the public needs for modernizing the freight car and locomotive fleets. A standard 50-

foot, general-purpose boxcar costs about \$15,000 and there are almost 2 million freight cars, many of them costing more than that, in the American railroad fleet.

Many of these are obsolete and need replacement. A typical new diesel freight locomotive costs about \$250,000, and the railroads have nearly 30,000 such locomotives and need more, and some of these need replacing. Yet, as the Wall Street Journal of this past Monday reported last month—June 1968—orders for freight cars plunged 61 percent below levels of June a year ago, and the Journal saw this as a result of what they call financial stringency on railroad capital spending.

I would like to call your attention to the chart that we have on my right. On July 1, 1968, private freight car builders had a backlog of orders totaling about 48,000 cars. On July 1, 1967, this backlog dropped to about 23,000 cars. On July 1 of this year it was only about 11,000 cars. As a result, two freight car builders have gone out of business and thousands of highly skilled employees in hundreds of other plants across the country are being laid off or lost to other industry.

Incidentally, the RPI is conducting a survey of our major companies now to determine just exactly what this backlog means or is for them individually, and when these figures are available if this committee would like to have them, we would be glad to submit them.

The critical railroad financial situation was confirmed by a recent report from the U.S. Department of Commerce and the Securities and Exchange Commission on capital spending in 1968. Their research showed that industry generally plans to spend 7 percent more this year than in 1967 on capital improvements. In contrast, the railroads will spend 6 percent less than last year.

The problems facing the railroad and supply industries now are critical. Unless they are solved, railroads may be permanently crippled or may ultimately require huge public subsidy. Therefore, the cash flow that is now being drained off by unwanted and unused passenger service must be freed up.

It is obvious that the railroads should be allowed to operate as business enterprises. As such, they are trying to disengage themselves from providing a product that their customers do not want. This is no more or less than any responsible business decision would dictate, regardless of the industry. Please let us remember that railroading is a business essential to our national economic security. It must be allowed to function accordingly.

Mr. Chairman, this completes our statement. Thank you very much.

Senator LAUSCHE. Senator Moss.

Senator Moss. Thank you very much. This is a very fine statement, Mr. Gray, and I compliment you on it.

You can understand one of the dilemmas we face in this committee when we are asked to authorize and have just authorized additional Federal funds for research and development and trial of carrying passengers on railways at high speeds between population areas. But at the same time we are confronted with a decline, and in some cases complete elimination of railroad transportation in other areas. Isn't that a conflict that puts us in a position where we can hardly explain our action on one side or the other?

Mr. GRAY. Senator, I think this emphasizes the need for supporting the position that we take in our statement here. You make reference to the Northeast corridor. This is really one major city from Washington to New York to Boston. If it isn't now it is soon going to be. You can hardly tell when you are in one city and out of another. This is a major corridor. I think there will be others that will be developing.

I can visualize these between Philadelphia and Harrisburg, perhaps Pittsburgh and Cleveland, Cleveland-Detroit, et cetera. And I think in this area the railroads can and will perform a great service.

I think we are late in getting this supplemental work done on the Northeast corridor, and I think the railroads will have a prominent part here, and I think passengers will ride this kind of service.

In Japan with the Tokaido line which has been quite successful there they had a situation very similar to that that we have in our Northeast corridor with major metropolitan, large numbers of people living in confined areas. They have proven there that they would ride the trains, and I think they will here. I think the railroads' problem is that they are running trains in areas where there just aren't enough people.

The previous witness, Senator Metcalf, made reference to the problems facing him in his State, and certainly we have to be sympathetic to this. But it covers an area where there just aren't the same numbers of people, and if these people are driving their own automobiles or their pickup trucks or using buses or some other mode, they just aren't using the railroads, and it is this kind of service we feel very strongly must be eliminated if we are going to increase the earnings of the railroads and thereby increase their effectiveness to serve our Nation.

Senator Moss. What is your opinion on the criticism that is often leveled against the railroads that they have permitted their passenger service to deteriorate and thus contributed to the decline in passenger use in this manner?

Mr. GRAY. Well, Senator Moss, I guess I am like most citizens of the United States. I am not riding the trains because I find airplanes a more convenient and quicker way to get about, so I don't have any firsthand knowledge on this.

I do know that immediately following the war railroads made an all-out effort to do something about the passenger car business. I am in this business and it is to my interest that we sell them equipment. We don't care whether we are selling them mainline, long-haul passenger equipment or whether we are selling them rapid transit or commuter cars. So we are naturally interested in this, and I hoped that the long haul or the long runs from New York to St. Louis or St. Louis to San Francisco would continue. But they just didn't. People didn't ride them. The service was good, and very good in those days.

I think they just plain can't afford to continue to provide the kind of accommodations that they used to provide when the riding public just doesn't want to go that way. And I think most of us in this room, if we stop and analyze when was the last time any of us rode on a passenger train, even where there is now equipment available for it—I commute between here and New York and New York and Boston by rail because it is pretty tough getting there by air, but I do not do this between my home in St. Louis and here.

Senator Moss. Thank you, Mr. Gray. I appreciate it.

Thank you, Mr. Chairman.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. Mr. Gray, I was interested in your statement in reference to the financial plight of the railroads today. Do I understand from your statement and directly related to and the primary reason for it is because of the \$480 million loss on passenger service?

Mr. GRAY. No, Senator Pearson. I think this is a part of it, the \$480 million loss, of course, and it will be even greater or is anticipated to be even greater this year. may go to the magnitude of 600 million. I think every possible thing that can be done for the railroads must be done to improve their earning capability.

I think the railroads find themselves at a great disadvantage as they compete with the trucks and the barges and the airlines because, as all of us know, all of these other modes of transportation are getting substantial benefits from Government funding, and I hope that some day we will see this equalized by those other methods of transportation paying a greater share of the cost of maintaining the highways and the locks and the dams and the airports.

But I do not mean to convey that this is the only reason for it. I think it is one of them, and I think that when you have got a business that is only returning 2.45 percent this is pretty tough. It would be very difficult for me to face my stockholders with such a record.

Senator PEARSON. Well, I note your chart there, the boxcar shortage is no longer sectional and it is no longer regional. It exists all over the United States in reference to almost every industry, and yet the orders for new freight cars have declined to a considerable extent as exhibited by your chart there. What is the explanation of that?

Mr. GRAY. Well, Senator, this started with the suspension of the 7-percent investment credit.

Senator PEARSON. That is about gone now.

Mr. GRAY. Yes, sir. That came back in about June, a year ago. The railroads have not been buying. They have not been buying because I feel they are not getting a satisfactory return on their investment, and the capital funds are not being generated so they can continue the vast program they had.

They had a 5-year period in which they were spending almost a billion dollars a year in capital improvement for the 5 years prior to the slideoff that we started to get in 1966. And I think if the business conditions returned to a more normal level that they will be back as buyers.

Senator PEARSON. I think it is unfair to ask you to make any precise estimate, but what extent does this passenger train deficit represent in the economic plight of railroads?

Mr. GRAY. I don't know in percentage, Senator. I do know that \$600 million estimated for this year—we have other witnesses who will be testifying for the railroads and they are probably better able to answer that than I am. I do not have those figures available.

Senator PEARSON. Well, you oppose this bill. What is your comment regarding the proposition of the last train concept?

Mr. GRAY. Well, Senator Pearson, again I think that people more familiar with the operations of railroads would be better to comment on this. My personal opinion is that if the last train is as unprofitable as the first train it wouldn't make much difference to me—if I

were the president of these railroads I think they ought to be eliminated whether they are the first one or the last one.

Senator PEARSON. Well, the other part of this bill has reference to procedural changes for the ICC. Do you have any comment about those?

Mr. GRAY. I think the procedural changes have the effect of delaying the railroad's ability to eliminate the unwanted, really, rail passenger service, and therefore I would oppose them.

Senator PEARSON. Do you know of any railroad today that is making a sincere and strong effort similar to that after World War II to maintain and build passenger traffic?

Mr. GRAY. I believe that the western railroads such as the Santa Fe and the ones serving the western part of the country are continuing to make an all-out effort. I just believe they haven't given up on it yet as the eastern railroads have.

I think the Northwestern made an all-out effort to prove that commuter service could work in the Chicago area, and is working quite successfully.

Senator PEARSON. Thank you, Mr. Gray.

Thank you, Mr. Chairman.

Senator LAUSCHE. Mr. Gray, I would like to ask you a few questions. You state the net return on investment after depreciation last year for the industry as a whole as only 2.45 percent. This compares to 10 to 12 percent for the typical unregulated industrial company. What is the source of your 2.45 percent figure?

Mr. GRAY. It came from the AAR, Mr. Chairman.

Senator LAUSCHE. AER. What is that?

Mr. GRAY. AAR.

Senator LAUSCHE. Oh, Association of American Railroads?

Mr. GRAY. Yes.

Senator LAUSCHE. I am not challenging the figure. There is, however, a New York bank that regularly issues reports on the relative earnings of different types of industry, and I would like the staff to get a copy of its latest report on that subject and have it placed in the record.

Mr. GRAY. If I might comment on that, Mr. Chairman, the First National City Bank of New York—

Senator LAUSCHE. That's it.

Mr. GRAY (continuing). Had a monthly letter in April of 1968. The rate of return on net worth of leading corporations in various transportations for the calendar year 1967 showed air transport at 19 percent; common carrier trucking at 16.4 percent; railway equipment at 11.4 percent.

Senator LAUSCHE. I have here the hearings of last year, 1967, and on page 323 of those hearings is a tabulation of the earnings of leading nonfinancial corporations for the second quarter and first half of the year.

Well, anyhow, we will have the First National City Bank letter placed in the record.

(The information requested follows:)

FIRST NATIONAL CITY BANK, 399 PARK AVENUE, NEW YORK, N. Y. 10022  
 NET INCOME OF LEADING CORPORATIONS FOR THE YEARS 1966 AND 1967  
 [Dollar amounts in thousands]

Industrial groups	Number of cos.	Reported net income after taxes		Percent change	Net worth <sup>1</sup> beginning of year		Percent return on net worth		Percent margin on sales <sup>2</sup>	
		1966	1967		1966	1967	1966	1967	1966	1967
Baking.....	15	\$84,521	\$95,188	+14	\$608,756	\$641,701	13.9	15.0	3.0	3.0
Dairy products.....	11	209,384	287,756	+33	1,666,748	1,830,842	12.6	11.8	3.3	3.3
Meat packing.....	25	59,841	68,991	+15	1,083,279	1,077,210	5.2	7.9	3.0	3.0
Sugar.....	15	49,601	49,601	0	489,400	504,935	9.1	9.9	3.3	3.3
Other food products.....	87	639,878	621,018	-3	4,795,543	5,124,543	13.3	12.1	4.3	4.3
Soft drinks.....	17	157,564	171,367	+9	717,478	791,407	22.0	21.7	7.2	7.2
Brewing.....	13	84,888	88,464	+4	635,407	682,436	13.4	13.0	5.8	5.8
Distilling.....	11	176,509	186,955	+6	1,692,429	1,784,660	10.4	10.4	4.7	4.7
Tobacco products.....	12	326,058	355,265	+9	2,384,022	2,409,995	13.9	14.7	5.7	5.8
Textile products.....	67	376,990	278,038	-26	3,332,184	3,332,184	12.3	8.3	4.8	4.8
Clothing and apparel.....	81	187,943	185,621	-1	1,356,357	1,356,357	16.2	13.9	4.2	4.2
Shoes, leather, etc.....	58	89,005	91,792	+3	1,659,590	1,659,590	12.8	13.1	3.7	3.6
Rubber and allied products.....	25	436,742	389,027	-11	3,409,609	3,490,380	13.5	10.6	4.7	4.7
Lumber and wood products.....	27	214,800	187,976	-12	1,959,178	2,097,989	11.0	9.0	3.4	3.4
Furniture and fixtures.....	36	69,079	64,190	-7	1,484,136	1,527,974	14.3	12.2	4.7	4.7
Printing and allied products.....	71	700,113	624,340	-11	5,940,501	6,387,846	11.8	9.8	3.9	3.9
Paper and allied products.....	72	325,124	301,158	-7	1,818,812	2,050,346	17.9	14.7	6.9	6.9
Chemical products.....	20	1,811,406	1,535,387	-15	12,382,334	13,435,222	14.9	11.4	3.0	3.0
Drugs and medicines.....	39	729,172	763,452	+5	855,263	907,266	21.7	21.1	10.2	10.2
Paint and allied products.....	34	349,748	401,991	+15	3,240,240	3,611,824	22.5	19.3	6.5	6.5
Soap, cosmetics.....	107	5,161,340	5,695,759	+10	41,043,675	44,211,452	17.6	16.8	7.6	7.6
Petroleum products and refining.....	17	76,356	67,879	-11	978,441	993,681	7.8	6.8	2.4	2.4
Cement.....	12	215,499	189,060	-12	1,696,129	1,771,510	12.7	10.7	7.1	7.1
Glass products.....	12	230,002	187,756	-18	2,488,867	2,577,858	6.2	7.3	6.1	6.1
Other stone, clay products.....	44	1,206,195	965,041	-18	12,846,135	12,966,665	9.4	7.4	5.9	5.9
Iron and steel.....	80	1,053,038	870,095	-18	6,781,526	7,468,836	15.7	11.6	9.1	9.1
Nonferrous metals.....	66	40,163,599	161,774	-24	848,259	964,040	19.3	16.8	7.3	7.3
Hardware and tools.....	52	164,819	176,438	+7	1,375,250	1,470,190	12.0	12.0	6.9	6.9
Building, heating, plumbing equipment.....	57	253,465	266,085	+5	1,801,022	1,955,822	14.1	13.6	4.5	4.5
Other metal products.....	44	541,834	413,404	-24	3,689,882	4,006,658	14.7	10.3	5.2	5.2
Farm, construction, material-handling equipment.....	45	742,844	895,354	+21	4,099,984	5,069,809	18.1	17.7	6.0	6.0
Office, computing equipment.....	209	809,021	788,782	-3	4,800,295	5,412,764	16.9	14.6	8.3	8.3
Electrical machinery.....	339	1,622,073	1,625,070	0	9,695,092	10,942,946	16.7	14.9	5.7	5.7
Household appliances.....	21	214,329	211,644	-1	1,541,444	1,541,444	15.0	13.7	4.9	4.9
Autos and trucks.....	13	2,633,995	1,876,923	-29	14,838,050	15,759,127	17.8	11.9	4.8	4.8
Automotive parts.....	39	254,089	219,843	-13	1,809,207	1,967,017	14.0	11.2	6.5	6.5
Railway equipment.....	8	124,147	105,399	-13	875,251	928,597	14.2	11.4	5.1	5.1
Aircraft and space.....	55	651,714	625,097	-4	4,141,911	4,695,247	15.7	13.3	5.8	5.8
Instruments, photo goods, etc.....	114	908,695	951,588	+5	4,293,130	4,920,010	21.2	19.3	9.5	9.5
Miscellaneous manufacturing.....	99	199,523	212,226	+6	1,652,187	1,759,913	12.1	12.1	4.4	4.4
Total manufacturing.....	2,292	24,429,155	23,307,498	-5	172,141,726	186,379,830	14.2	12.5	6.3	6.3

19	74,268	79,817	+8	601,724	652,303	12.3	14.7	15.1
9	30,976	33,979	+10	301,712	323,245	10.3	6.4	6.9
9	90,719	126,988	+40	502,405	565,657	18.1	19.8	20.8
37	195,954	240,784	+23	1,405,841	1,541,205	13.9	13.3	14.6
61	333,143	314,298	-6	2,702,580	2,864,216	12.3	1.3	1.1
83	286,610	307,923	+7	2,129,489	2,334,141	13.5	3.2	3.1
69	460,776	480,342	+4	3,328,742	3,639,658	13.8	3.1	3.0
8	387,998	407,391	+5	2,869,577	3,045,479	13.5	4.7	4.3
174	371,994	410,722	+10	2,450,102	2,726,930	15.2	2.8	2.9
395	1,840,521	1,920,676	+4	13,480,490	14,610,424	13.7	2.6	2.5
76	906,377	554,741	-39	17,746,696	18,194,059	5.1	3.0	5.4
34	82,980	72,298	-13	366,631	441,468	22.6	16.4	3.5
11	69,903	61,537	-12	752,350	816,880	9.3	7.5	8.4
34	419,348	442,839	+6	1,782,711	2,330,353	23.5	19.0	6.5
28	97,021	95,975	-1	622,108	681,508	15.6	6.9	6.5
183	1,575,629	1,227,390	-22	21,270,496	22,464,268	7.4	5.5	5.7
233	3,408,611	8,603,359	+6	29,660,473	31,202,649	11.5	13.9	13.8
23	2,345,962	2,422,406	+3	22,622,180	23,907,959	10.4	10.1	14.0
256	5,754,573	6,025,765	+5	52,282,653	55,110,608	11.0	10.9	13.9
46	97,379	120,795	+24	722,103	795,426	13.5	5.3	6.3
49	65,238	76,772	+18	561,226	625,822	11.6	12.3	3.3
159	280,070	278,157	-1	1,317,876	1,552,150	21.3	17.9	5.8
25	87,491	101,911	+16	681,041	730,255	12.8	14.6	4.5
279	530,198	577,635	+9	3,282,246	3,703,653	16.2	15.6	4.9
( <sup>1</sup> )	2,09,000	2,609,000	+18	25,627,000	27,204,000	8.6	9.6	---
35	312,413	326,667	+5	5,166,329	4,701,712	6.0	6.9	---
243	1,149,574	1,195,087	+5	41,073,476	39,756,615	2.8	3.0	---
9	326,522	335,269	+2	2,671,141	2,816,079	12.3	11.9	---
63	43,762	46,617	-2	664,422	581,948	8.8	8.4	---
425	4,038,991	4,514,640	+12	75,102,368	75,060,354	5.4	6.0	---
3,867	38,365,021	37,814,388	-1	338,965,820	358,870,342	11.3	10.5	5.9

<sup>1</sup> Net worth, shareholders' equity, or "hook net assets" is the excess of total balance sheet assets over liabilities; the amounts at which assets are carried on the books may not represent present-day values.

<sup>2</sup> Profit margins are computed for all companies publishing sales or gross income figures, which represent 98 percent of the total number of reporting companies, excluding the finance group, and 99 percent of net income; includes revenues from investments and other sources as well as from sales.

<sup>3</sup> Net income is reported before depletion charges in some cases.

<sup>4</sup> Due to the large proportion of capital investment in the form of funded debt, rate of return on total property in this report would be lower than that shown on net worth only.

<sup>5</sup> Association of American Railroads tabulation; excludes effect of \$275,400,000 charge against earnings to cover merger costs for Penn-Central in 1967.

<sup>6</sup> Federal Reserve Board tabulation of all member banks; number of banks (6,071) is not included in total number of companies; earnings include profits and losses on sale of securities; net worth figures are annual averages.

<sup>7</sup> Income in most cases excludes capital gains or losses on investments.

Senator LAUSCHE. You state in the first 10 years after the war their—that is, the railroads—spent more than \$1 billion modernizing their passenger fleet. Will you elaborate upon that statement if you can? Who are the leaders in the movement, what was done, what type of modernized equipment was introduced?

Mr. GRAY. Mr. Chairman, at that particular time many railroads came out with the so-called bullet trains, the streamlined appearing trains. To click each one of them off from memory, I don't know that I can do this. But at that time it was such railroad trains as the Broadway Limited. I remember a terrific effort was made to make this one profitable. The Spirit of St. Louis—new equipment was added to this train that had been in existence for some time prior to then. The western railroads in the form of one that ran between San Francisco and Los Angeles, the one that ran from Los Angeles to New Orleans—the Sunshine Special, I believe. Again my railroad friends who are following me will probably be able to identify these better.

Senator LAUSCHE. Well, my recollection is that Robert Young was one of the real leaders in attempting to introduce modernized equipment, believing that the introduction of such equipment would attract passengers. Many of the railroad industry disagreed with him, but he went forward on the Chesapeake & Ohio and proceeded to develop modern high-speed trains, sky views, and other accommodations, and entertainment, believing that that would bring passengers to the railroad. Do you know what were the results of his experience? Do you know? If you don't know, say so.

Mr. GRAY. I do not know, Mr. Chairman.

Senator LAUSCHE. Now you state "I would like to comment here that we definitely believe rail service has an important mission and a strong future as the backbone of balanced transportation systems in heavily populated corridors."

Are you familiar with the Doyle report and the 1958 Smathers report?

Mr. GRAY. I am not, Mr. Chairman.

Senator LAUSCHE. Well, in both of those reports it was declared that of the five modes of transportation, pipelines, water carriers, air carriers, trucking carriers, railroad carriers, the railroad was the most important to our country, that that was demonstrated in World War I and World War II, and that without them in existence our problem would have been very acute, probably destructive.

Now you talk about this chart, that on July 1, 1966, freight car builders had a backlog of orders totaling about 48,000 cars. In your association are there members who are freight car builders?

Mr. GRAY. There are, Mr. Chairman, yes, sir.

Senator LAUSCHE. And you state that there was a backlog of 48,000 cars ordered as of July 1, 1966?

Mr. GRAY. Yes, sir.

Senator LAUSCHE. Now on July 1, 1967, this backlog dropped to about 23,000 cars. Was it because you had filled the orders or because orders were cancelled, or what was the reason?

Mr. GRAY. The railroad just did not continue to buy. In other words, we built cars and they were not—the backlog was not built up by the railroads continuing to buy, sir.

Senator LAUSCHE. Then as of July 1 of this year—that is about 25 days ago—there was a backlog of about 11,000 cars.

Mr. GRAY. That's right, sir.

Senator LAUSCHE. Are you familiar with the number of cars that the system ought to have in order to meet the needs of the times and meet their needs?

Mr. GRAY. I think my railroad friends following me can better answer that question, Mr. Chairman.

Senator PEARSON. If the chairman will yield, the need has increased steadily, has it not, without reference to numbers or percentages? The need for freight and boxcars has increased month by month and year by year, has it not, for replacement and new cars?

Mr. GRAY. I would think there is a definite need for increased numbers of cars on the railroad system.

Senator LAUSCHE. Does your assistant know the answer?

Mr. LENNARTSON. Only in a general sense. I think the railroad witnesses would be much more competent in this.

Senator LAUSCHE. Now you made some mention about other modes of transportation being given financial aid by the Government. Are you familiar with how much subsidy has been provided by the U.S. taxpayers to the water carriers on the high seas, the subsidy being used to build ships and to operate ships, statistics showing that for every passenger that goes both ways across the Atlantic and buys a ticket the taxpayer contributes \$275? Are you familiar with those figures?

Mr. GRAY. No, Mr. Chairman; I am not familiar with them, but I wish our railroad friends had the same advantages as they move their commodities across the country.

Senator LAUSCHE. All right, no further questions.

Mr. GRAY. Thank you, Mr. Chairman.

Senator LAUSCHE. The next witness will be Prof. George W. Hilton, department of economics, University of California.

Mr. Hilton, your statement will be fully transcribed into the record. Now you can proceed to read it or you may go forward discussing the highlights of what you want to say knowing that the entire statement will be in the record.

**STATEMENT OF PROF. GEORGE W. HILTON, DEPARTMENT OF ECONOMICS, UNIVERSITY OF CALIFORNIA, ACTING CURATOR OF LAND TRANSPORTATION, SMITHSONIAN INSTITUTION**

Mr. HILTON. Yes, I would prefer to summarize it more briefly, thank you.

I have argued in my statement that the passenger train has been declining relatively since the middle 1890's, absolutely since 1921; that it has been declining for very good and sufficient reasons; that it is absolutely hopeless, that it cannot be preserved through measures such as Congress is considering in the present bill, and therefore that public policy should either be unchanged or should move in the opposite direction of providing an explicit market test of profitability in discontinuance actions so as to accelerate its extinction, which is, as I argue, inevitable in any case.

I reach this conclusion on the basis of academic evaluations of the relative income elasticities of the various means of public and private passenger transportation.

Citing the works of three economists, I pointed out that the income elasticity of demand for the railroad passenger train is estimated, on page 3 of my statement, to be minus 0.6. The income elasticity of demand for automobile transportation is estimated to be plus 1.2, and of airplane transportation of plus 2.5.

Senator LAUSCHE. Before you proceed, do not assume that the members of this committee are familiar with this nomenclature.

Mr. HILTON. Yes, I was about to rephrase this. I was about to translate this out of the jargon of economists. It is a fairly simple concept. That is, the average American family will respond to a 1-percent increase in income through increasing its expenditures on automobile transportation by 1.2 percent, by increasing its expenditure on airline tickets by 2.5 percent, and by reducing its demand for railroad passenger tickets by 0.6 of 1 percent.

This is to say that as people get richer they use their automobiles more fully, they buy larger automobiles, and they buy second or third automobiles. They buy more airline tickets, and they buy successively less railroad tickets.

The reason that they behave this way is easy to identify. If you compare the relative attractions of moving between Chicago and Los Angeles by air and by rail—and I have chosen an example where the standard of passenger service is probably the highest in the country and is not in controversy—no one, so far as I know, has accused the Santa Fe of discouraging passengers—one can save approximately \$20 at the expenditure of approximately 35 hours in time.

One is likely to take this alternative only under three circumstances: first, if he is a person of low income so that his time doesn't have a very high value to him; second, if he is retired; or third, if he gets a satisfaction and consumption value from rail transportation. The people who get a consumption value out of it, enthusiasts, are probably only about 100,000 in number. The present generation of elderly is probably the principal support of rail passenger trains. They have a low evaluation of time, as retired people usually do, and fear of flying is most highly concentrated in high age brackets because such people are familiar with the risks of early aviation.

Senator PEARSON. May I interrupt? You say that under this economic theory that with an increase in income of so much percent there is an increase in airline traffic, and so forth, and a decrease in railroad use?

Mr. HILTON. Yes, that's right.

Senator PEARSON. In contrast, with a decrease of income is there an increase in railroad use?

Mr. HILTON. Well, there haven't been any decreases in income since the 1930's. We naturally hope that there won't be any.

Senator PEARSON. You haven't talked to any Kansas farmers lately. [Laughter.]

Mr. HILTON. People in rural areas in general have deserted railroad trains rather thoroughly for the automobile. So I can't say precisely what the behavior of those specific farmers would be. Local passenger transportation has already very largely deserted rails. It was the first thing to go.

Unfortunately, from the point of view of anyone who wants to preserve railroad passenger transportation one can predict with per-

fect accuracy that the two major groups who support it will atrophy continuously in numbers. The present generation of elderly will die, and low income people get into successively higher income brackets. The manifestation of what I have been arguing, that people are deserting railroad trains because the value of their time is too high to travel on them, can be seen in the relative declines of Pullman and coach service. You would expect from this that the first people to desert railroad trains would be businessmen, and so they were, because their time is relatively valuable. You would expect Pullman travel to decline more rapidly than coach travel, and it does: approximately, not quite twice as rapidly, 24 percent as versus 14 percent in 1967.

Consequently railroad trains become successively more competitive with buses and successively less competitive with airplanes as time passes. This manifests itself in a reduction in demand for luxury on passenger trains, and railroads respond to this.

Unfortunately, the people who want to preserve passenger trains largely interpret this decline in the standards of service not as responses to the nature of the changing demand conditions, the increasing concentration of passengers in low income brackets, but rather as efforts to discourage passenger travel. That is, when tablecloths are taken out of dining cars, then when the dining car is replaced by a coffee shop or vending machine, when the Pullmans are taken off, all of which are manifestations of this negative income elasticity that I have mentioned, people who want to preserve passenger trains take this as discouragement.

But the industry has not discouraged passengers; industries typically do not do this. The industry probably made a more concentrated effort to make something which was absolutely hopeless viable than any other one, partly because there is in declining industries a characteristic bias that things won't get any worse. In the late 1940's it was widely felt that the local train may have been hopeless but people would ride the limited forever; partly because there is a lot of capital irrecoverably committed to railroad passenger service—stations, and so forth—there is a lot of equipment which was not fully depreciated, and probably most important of all, there was restriction on exit from the activity. So it was probably pushed more seriously than any other hopeless activity in the economic history, and it has run up welfare losses in its decline which are probably worse than anything else in economic history.

It has run up welfare losses as measured by the ICC's passenger deficit—which probably grossly understates the actual losses as the experience of railroads which have given up passenger service seems to indicate—of over \$10 billion since World War II. And as I have endeavored to argue, this is very severe—

Senator LAUSCHE. Would you pause for a moment? Are the ICC figures tabulated in some sort of a bulletin or book?

Mr. HILTON. Well, yes, the ICC issues them annually. It is in the Statistics of Railways, as it used to be called, or the ICC's Statistics of Transportation annually, and also the Association of American Railroads publishes it in its Statistics of Railroads of Class One.

Senator LAUSCHE. I want the staff to get the latest report and have it included in the record, please.

(The information referred to, follows:)

## RAILWAY PASSENGER DEFICIT BY CLASS I RAILROADS (1958-66)

[Aggregates in thousands]

Year	United States	Eastern district	Southern district	Western district
1958.....	\$610,424	\$206,391	\$92,150	\$311,883
1959.....	543,820	177,716	78,509	287,595
1960.....	485,170	156,029	70,041	259,100
1961.....	408,208	137,531	65,843	204,834
1962.....	394,277	133,643	70,459	190,175
1963.....	398,875	126,329	77,884	194,662
1964.....	410,195	130,652	85,371	194,172
1965.....	420,647	133,162	88,543	198,942
1966.....	399,645	126,782	87,536	185,327
1967.....	485,049	162,797	102,877	219,375

## RAILWAY PASSENGER DEFICIT RELATED SOLELY TO PASSENGER AND ALLIED SERVICES

Year	United States	Eastern district	Southern district	Western district
1958.....	\$82,262	(\$7,822)	\$20,337	\$69,747
1959.....	37,815	(22,288)	10,915	49,188
1960.....	10,262	(29,978)	6,279	33,961
1961.....	(17,184)	(25,274)	3,809	4,281
1962.....	(12,383)	(21,920)	6,180	3,357
1963.....	8,787	(24,409)	16,597	16,599
1964.....	17,938	(18,047)	18,696	17,289
1965.....	43,706	(9,480)	22,179	31,007
1966.....	30,942	(16,757)	23,837	23,862
1967.....	138,236	25,080	41,411	71,745

Note: Parentheses indicate not a deficit.

Source: Transport Statistics in the United States, pt. I: Railroads.

Mr. HILTON. I have been arguing that the market test of profitability shows that the public has wanted a large volume of resources which have in fact been devoted to railroad passenger service devoted to other activities.

The railroad passenger train has been financed by an implicit tax through requiring the railroads to operate it unprofitably, equivalent to operating it under a tax which amounts to about 27 percent of the net profitability from freight of the railroad industry, as of last year. It will be worse this year, owing to the withdrawal of the railway post offices.

One of the reasons that I am opposed to this bill is because the bill will change the present framework less than superficially it appears to do. The outcome of the inquiry into passenger service which the ICC proposes, if I read the last clause in the bill correctly, might be a decision of the Government to carry on passenger service under subsidy. But it is actually currently being carried on under an implicit subsidy, but not a very intelligent subsidy. The only difference which an implicit subsidy would make would be that public authorities could then provide the passenger service without regard to the profitability of an individual railroad.

At present the railroads in the arid west are best able to bear this implicit tax of a passenger deficit, but owing to the light population there, there is relatively little pressure there for them to do so.

The railroad which has the greatest pressure on them to do so because of its heavy population density is New York, New Haven &

Hartford, which partly, but only partly for that reason, is the weakest American railroad and thus is least able to bear the deficit.

So to that extent an explicit subsidy would be preferable to the present situation, but it couldn't preserve the passenger train because—

Senator LAUSCHE. Just stop for a moment. Are you stating that it may develop that out of this study will come the proposal for a subsidy?

Mr. HILTON. Yes; I think that is the proper inference from the last section of the bill, section 6 on page 9. One of the subjects for inquiry by the proposed commission is "The proper role of carriers and governmental bodies developing the required quality and quantity of service, including methods of financing operations which are necessary but not economically viable." I think that is a correct interpretation.

Senator LAUSCHE. Well, this is the first time that I have heard that this is going to be a vehicle of some kind calling upon the taxpayers to subsidize the railroads. We already have too many subsidies in the transportation industry.

Mr. HILTON. I agree with you.

Senator LAUSCHE. Achievement should be the elimination of subsidies to competing carriers.

Mr. HILTON. I think you are perfectly correct. But, unfortunately, I can't make an alternative interpretation of what I have just quoted.

Senator PEARSON. Pardon me. Would you yield?

Senator LAUSCHE. Yes.

Senator PEARSON. Would your comments apply in general to the efforts made in the northeast corridor in the rapid transportation or high-speed rail work we are doing there now?

Mr. HILTON. Yes; in general they do. However, I agree that we should reserve judgment until—

Senator PEARSON. Well, in the northeast corridor the high-speed train is really sort of a wasted effort in your judgment?

Mr. HILTON. Admittedly it is being put in the place where it is most likely to be successful, according to the population density, degree of congestion, and other considerations. So if it can be successful at all it would be there.

My guess is that the universality of the pattern of decline of rail passenger trains, streetcars, interurbans, and so forth will also apply on this.

The Pennsylvania Railroad has lost a very large percentage of its passengers between New York and Washington which is, as we have said, an ideal place to generate demand for rail passenger traffic, since 1946.

My guess is that introduction of new and faster equipment will result in a short-run increase in the volume of traffic followed by the long steady decline in utilization which has characterized every other form of rail passenger transportation.

Senator PEARSON. So the answer to my question is that it is a wasted effort in your judgment?

Mr. HILTON. This was my judgment at the time the program was instituted.

Senator PEARSON. And continues to be so?

Mr. HILTON. Yes.

Senator LAUSCHE. Well, proceed. You were discussing the implicit as distinguished from the explicit—

Mr. HILTON. Yes. I argued that an explicit subsidy would be preferable to the present arrangement, but it couldn't arrest the decline of rail passenger service because the decline has occurred because of the valuation of people's time. They value their time too highly to use this form of transportation, and this is essentially something which a subsidy wouldn't cure. So either requiring a railroad to provide the service through more stringent requirements for discontinuance or a subsidy would both be devices which would not accomplish the end of preserving the passenger train.

Further, the passenger train's costs will continue to increase. They are about double those of either of the alternative means of providing the service, bus or aircraft. Aircraft are about to be improved so greatly that the ratio will probably go from 2 to 1 to 4 to 1.

In part this is true because the rules of railroad service are adverse to fast main line services in which railroad passenger trains have increasingly been concentrated—since the local services went first. But that is only a part of it, and it is overstated.

More important is that it is a service-intensive activity which has to compete with manufacturing activities for employees and service activities, whether they be railroad passenger trains, hospitals, or whatever, cannot match the increases in productivity in manufacturing activities, and so they become successively more expensive. It is particularly characteristic of railroad passenger travel because the demand is also declining.

So by 1975, as I indicated, it will probably cost four times as much to move someone by a railroad train as by Boeing 747 or a Lockheed 1011 type of aircraft even though the person will be moving at only 10 percent of the speed he would be on the aircraft.

Senator LAUSCHE. Why will it cost, you say, four times as much to move him by train than it would to move him by air? Did you say four times?

Mr. HILTON. I think by the 1970's probably, because the next generation of aircraft will be able to handle passengers at very much less than the present generation. You will have very much higher capacities. They will be much more economical in their use of labor; whereas passenger trains are essentially incapable of any major improvement.

One of the things which I think the northeast corridor project is showing is this. The difficulties of adapting them to higher speed service is an indication that what they can do is what they have been doing for decades. The railroad train, owing to the fact that it provides the service much more slowly than the aircraft, requires an enormous volume of labor in order to provide the service. This is true only partly because of the nature of the rules. It would be true even if the rules weren't so restrictive as they are.

Senator LAUSCHE. Are you familiar with the pilot test that was made up in the Boston area where Federal subsidies were increased and more frequent service was provided, passenger tickets were reduced in price, and all the steps were taken to attract the passengers? Do you remember that study?

Mr. HILTON. Well, there are similar studies. There were Federal grants in several major cities. There have been efforts especially in Philadelphia and Boston which have attracted some volume of commuters away from buses and to some degree out of automobiles. These are largely upper income people who work in the financial community in Boston and also in Philadelphia. Both of these are cities with rather well defined central business districts because of a large number of financial firms and because of water barriers in one or more directions constricting their growth. As a result they are the sort of places which create a lot of demand for public transportation for the trip in and out of the central business district.

These are the same people whose value of time is likely to be extremely high in intercity passenger service, however.

Senator LAUSCHE. Proceed. We are not talking of the same one. I am talking of a pilot test in which all accommodations were expanded, cost of passage was reduced, more frequent services were installed. I don't remember how many millions we put in, but at the end of the test it showed that no more rode the system than did before these superlative services were provided.

Mr. HILTON. I'm sorry, then we are talking about other ones. What you have said is consistent with what I argue.

If it is desired to retain intercity passenger service the best hope would be operating trains of the character of the City of New Orleans; that is, with a fairly spartan standard of service, snack bar food service, quite high concentrations of people in coaches, to attract people who would otherwise be on buses—that is to say, people of low valuation of time.

One of the reasons I feel this bill is so undesirable is that it would try to raise the average standard of service which would have the effect which you have just mentioned, that it wouldn't attract people in any large numbers, whereas it would increase the deficit—whoever was paying the deficit.

Senator LAUSCHE. In the 1958 hearings one professor from Northwestern I think testified that tests which he made indicated that to induce people to use the railroad rather than the automobile you would have to pay them to take the railroad train rather than have them pay the railroad for carrying them.

Mr. HILTON. Yes, I think you are referring to testimony by Prof. Stanley Berge of the Business School of Northwestern University. On experience of the north-south line of the Chicago Transit Authority he estimated, as I remember—it is some years since I read this—that if it were free it would about double the utilization of it, and for a subsidy of 35 cents, direct payment of 35 cents to the passenger—I have forgotten exactly what number of people would come out of their automobiles. But the typical driver would have remained in his automobile even so.

But here again we are talking about urban transportation.

Senator LAUSCHE. Well, pardon me for interrupting you or breaking your chain of thought. Will you continue?

Mr. HILTON. Well, I would rather answer questions which the Senators would put to me.

Senator PEARSON. Well, now in its simplest form your argument is

based on the fact that all economic indicators show that the passenger train is a thing of the past?

Mr. HILTON. Yes.

Senator PEARSON. And it is futile to try to pump it up and keep it going?

Mr. HILTON. That's right.

Senator PEARSON. And that a moratorium would be of little value and the last train concept of little value, and this is all because of the economic facts that exist today and because of the public attitude?

Mr. HILTON. Yes. We have already had plenty of moratoriums. The Interstate Commerce Commission under the present framework, about which, as I have said in my statement, one chapter of my pending book on the Transportation Act of 1958 is concerned, the Commission has had the power to provide moratoriums of 1 year for specific trains—

Senator PEARSON. Just a moment. Do you have a copy of Lang's testimony to give to the professor?

All right, go ahead.

Mr. HILTON. Excuse me. Whose testimony?

Senator PEARSON. Did you read Mr. Lang's testimony yesterday?

Mr. HILTON. I didn't. I have read his testimony before the House.

Senator PEARSON. I am going to make reference to a statement on page 6, and I want it to be before you. But you go ahead.

Mr. HILTON. May I continue?

Senator PEARSON. Yes.

Mr. HILTON. The Commission has required moratoriums for individual trains for periods of a year. It has done this very arbitrarily. I think it is impossible to make any conceptualization of what the Commission has done, to say that it has behaved consistently in its allowing discontinuance on the first application, or requiring moratorium and then permitting the train to be taken off. But where it has required a moratorium of this sort the atrophy has continued.

As I have said, this can be predicted with perfect accuracy on the basis of the income elasticities. If Congress provides a general moratorium you will simply have the same thing.

Senator PEARSON. Well, now if all that you said is true aren't all the signs likewise existing on the freight revenue, and I am making reference now to the "Yearbook of Railroad Facts," the AAR, which indicates in 1967 the freight revenue was down over 1966. Actually it continued the past decade or about the same.

And then I make reference to page 6 of Mr. Lang's testimony where it says, if you will look down to the middle of the last paragraph, professor, there on page 6, "It is also important to note that the industry's share of the intercity freight market has declined steadily throughout this period." That is the last decade. "In 1958 the railroads' share of the United States intercity freight bill was approximately 32 percent; by last year this figure had dropped to 24 percent, and it is still going down."

Mr. HILTON. Yes. I think you are perfectly correct. I think that this is a judgment which one cannot avoid. This is an industry which has been in secular decline since approximately 1915-16. Its percentage of everything with the exception of new automobiles has been declining secularly. It is not a consequence of public policy, as representatives of

the industry argue. It is a consequence of very real factors in the technology of the industry.

It is an industry which has a high incidence of damage claims. They are so great that they amount to a tax on the industry of approximately 18 percent per year.

It has a great deal of fixed capital which invites the depredations of unions and also tax collectors. It has a pricing structure traditionally which is not cost based, and so almost the entire economy as of the time the decline began had an incentive to try to find alternatives to it, and this doesn't exhaust the industry's shortcomings.

Railroads decline in every country with the exception of those few such as South Africa which virtually prohibit rival forms of transportation. It has had a very slow decline partly because of restrictions on exit, partly because it has so much fixed capital committed to it.

Admittedly it is declining at a rate such that it will still be around through all our lifetimes. But if pressed for a judgment, my guess is it will probably decline for another 125 to 150 years and then pass out of existence. A secular decline of a length of this kind is essentially never reversed.

Senator PEARSON. Do you see the decline in freight revenue as rapidly as passenger revenue?

Mr. HILTON. I don't see any source of optimism for the industry. It is a declining industry mainly dependent on two other declining industries. Its main source of revenue has traditionally been coal, which itself is a declining industry, likely to be largely replaced by nuclear energy. This is likely to bring the coal-hauling railroads, which have historically been the strongest, to about the level of weakness of the rest of the industry.

The eastern railroads are mainly dependent on steel inputs. The steel industry is apparently also a declining industry; we are likely to be increasingly dependent on foreign sources of steel.

Senator PEARSON. Are we at a point now if we are going to continue passenger service it is going to have to be a Government-operated or Government subsidy program?

Mr. HILTON. My guess is that the industry will become so weak that if the decision is not already whether the Government should take over passenger service from the railroads it shortly will be. As I have said, I interpret the present bill as an effort to take up this question at the present time, and my recommendations obviously are in the opposite direction—that the passenger service be recognized as absolutely hopeless; and what I didn't discuss in my statement because I felt it was too broad, that the industry should be organized competitively, given carte blanche to get out of unprofitable activities and into other activities, organized as integrated transportation companies and as companies in transportation and other industries so that it is not shackled to the technology of this industry, which I must say in all honesty I think is hopeless.

Senator PEARSON. Thank you very much, Professor.

Mr. HILTON. Any further questions, or am I excused?

Senator LAUSCHE. Yes, I have some questions.

You are of the opinion that the transportation of freight will diminish in the railroad industry as time goes on. What are the causes of the lessening of the freight carriage?

Mr. HILTON. As I mentioned, first because it has a very heavy incidence of damage claims. Intrinsic to the technology at least up to date is that the locomotive can keep rolling much more than it can start. As a result it is necessary to build what is called slack into freight cars, approximately a foot of—

Senator LAUSCHE. Damage claims is one of them. Now how does that induce the shipper not to use the railroad to carry his freight? Is it because the cost of carriage is greater and the efficiency less than in the competing modes?

Mr. HILTON. Well, there are a great variety of such incentives. For anything perishable or fragile the incentive to avoid using a railroad is considerable, partly because of these damage claims. Second, railroad freight service is relatively slow, not so much because freight trains have low average speeds as that cars spend a long time when being interchanged between railroads. Third, railroads are inflexible in destinations relative to trucks. Trucks essentially can go everywhere. Trucks have more favorable experience on all three of these grounds.

Further, the establishment of the Interstate Commerce Commission rather perpetuated the pricing structure of the railroad in the 19th century whereby they priced according to the value of the service rather than the cost of service. As a result, cost based transportation such as private trucking, private barge lines, and exempt carriage of all sorts, has been able to attract an enormous volume of freight away from the railroads and, incidentally, other regulated carriers.

Senator LAUSCHE. Well, then I would construe what you have said, one, the efficiency of delivery because of flexibility, the speed of delivery. Does the cost charged have any—

Mr. HILTON. Yes, there is no getting around it, that for a large number of commodities a railroad is a relatively expensive method of moving things. There are many other things for which it is still the lowest cost carrier. For coal, ores of various sorts, at least in inland areas where there is no barge transportation, it is the cheapest means of moving things. There are many things which are cheaper to move by truck in the more populous areas of the East, but which are more economic to move by rail for long distances. The railroads have very heavy terminal expenses, and as a consequence they have a certain advantage for long-distance movements where those terminal expenses are averaged out over long mileages.

Senator LAUSCHE. If the railroads were spared the losses resulting from passenger service would they be in a better position to compete with other modes of transportation in carrying freight?

Mr. HILTON. Yes, there is no question about this, the passenger deficit, as I mentioned, amounts to an implicit tax on the industry of about 27 percent, with every prospect of becoming worse.

Senator LAUSCHE. Did I understand you to say that 27 percent of the profits made from carrying freight are used to finance the deficit in carrying passengers?

Mr. HILTON. Yes. It is probably, if anything, even worse than that.

I mentioned just in passing that there have been various interrogations of the presidents of railroads which have given up passenger service, such as the Colorado & Southern and the Maine Central, to see what their experience was after they gave it up, whether they saved more or less than the ICC formula. In general they have found

that they saved more than the ICC formula indicated. So the tax is probably worse than 27 percent.

If the deficit is of the order of magnitude of \$600 million which the AAR anticipates this year it will certainly be worse than this. But this, like any other tax, reduces the profitability of the industry, reduces its ability to attract capital for other purposes, and there are certain other purposes in which the industry might possibly grow: providing unit and integral trains for certain bulk movements, for example.

Senator LAUSCHE. Now I want to get into another field of questioning. There is now pending in the Congress a bill to allow trucks of larger size and larger carrying capacity to use the Interstate Highway System and, incidentally, the intrastate highways. I believe the width of the truck will be expanded to 102 inches from 96 inches, and the weight that will be allowed to be carried over a stretched tandem will be twice the size. What, if any, impact will that have on the railroads?

Mr. HILTON. I don't think there is any question it can only work to the detriment of the railroads. I should say that I don't honestly have an opinion on whether this is a good thing or not. It seems to me a question to put to a highway engineer rather than to a transportation economist.

But the question you put to me does seem to be an appropriate one for an economist. I don't think there is any question that this will result in an increased diversion of traffic from the railroads.

The truck lines have a problem of relatively high labor expenses for long trips, one man to the equivalent of approximately a boxcar. However, if this liberalization is passed, this will help them deal with one of their principal present problems.

Senator LAUSCHE. Now, are you familiar with the subsidies provided to the high-sea carriers of the United States; that is, the merchant marine?

Mr. HILTON. Yes.

Senator LAUSCHE. The amount of the aggregate subsidies that we provided for that system, I think, it is about \$2 billion since 1936. We subsidized their shipbuilding, we subsidized the operations of the system. Have you given any study to whether or not we are subsidizing the inland water carriers?

Mr. HILTON. I don't think there is any question that we are. They have the right to use the navigable waterways without any user charges. There is no question that this enables them to attract quite a bit of freight which would otherwise move by railroad, and some, probably not very much, which would otherwise move by truck.

Senator LAUSCHE. Do you construe the deepening of the inland waterways and the building of locks, and all of the other facilities that go with that system, as an indirect subsidy to the inland water carriers?

Mr. HILTON. Yes; it certainly is.

Senator LAUSCHE. Now, what about the airlines? Do you see any elements of subsidy to them at the present time?

Mr. HILTON. Well, much less than there was. The subsidy in the airline industry at present is almost entirely a subsidy of the so-called feeder airlines which fly to smaller points.

Senator LAUSCHE. All right; now stop at that point. Do you have any other phase of it that would seem to have the attributes of subsidy?

Mr. HILTON. It is becoming increasingly expensive to provide the services of the FAA for the maintenance of aerial navigation as aerial traffic congestion increases. It is widely argued at least that the present user charge in the form of a 5-percent tax on tickets is not adequate to provide for this.

Senator LAUSCHE. Well, No. 1, we do provide the navigational directions for them. No. 2, we build the airports for them.

Mr. HILTON. Yes.

Senator LAUSCHE. There was a time while it was in its infancy that we provided subsidies through direct subsidies. We have turned over all of the mail service to them. Now we have dealt with the high seas carriers, the inland water carriers, the truckers, the airline services.

Now taking a look at the railroads, what about the taxation of their rights-of-way?

Mr. Hilton. Well, it seems to me that this is an inevitable consequence of the technology of the industry. A railroad can't pick up and leave as anything else would. The railroads have been inveighing for many years, though not particularly at present, against the level of taxation in New Jersey. There was very good reason for this. If anything else was taxed as heavily as the railroads it would have left New Jersey. They have to get across that State to get to New York Harbor, so they have no alternative.

Senator LAUSCHE. Do you think it would be in the interest of our country for the Government to take over the railroads?

Mr. HILTON. No. I don't. I think it would be thoroughly undesirable. It would result in either of two circumstances. First, what you have—

Senator LAUSCHE. Just one moment. If it is not desirable to take over the railroads don't you in effect take them over by making them render services which are non-profitable and destructive of their ability to survive?

Mr. HILTON. Well, it certainly makes them more unprofitable. It certainly increases the likelihood of this coming about.

May I continue with a sentence or so on your previous question? You asked me whether I thought it was desirable to take over the railroads, and I felt that it was not, for two reasons. A state-owned railroad system becomes either of two things on the basis of experience in other countries. First it becomes a nonmaximizing enterprise like the British or Italian state railways which don't make any effort to produce a profit, which are used for a variety of subsidies; or alternatively it becomes a monopoly like the South African Railway or the state railways in certain other English-speaking countries that are protected against rival forms of transportation. They are just monopolies, open to all of the objection to other monopolies except possibly they don't create private monopoly gain, but open to an even further objection that they are usually better buttressed against the market forces which cause monopolies to decline than private ones are.

So I think it would be thoroughly undesirable to move toward publicly owned railroads here.

Senator LAUSCHE. Is there anything further you desire to say?

Mr. HILTON. No, I think I have covered all the points I wanted to raise.

Senator LAUSCHE. We are glad to have you here, Dr. Hilton.

Do you have any further questions? Go ahead.

Senator PEARSON. I don't think so. But I just come back to the fundamental judgment you made really that the railroads are going to go, and that is another reason for the Government not to take them over, I suppose, because they are going to go on us if they go on private industry.

I have reference to your article in *Trains* of January 1967. I always shudder when I go back and read what I wrote a year later. I have reference to your comment about the sources of the illness of railroads, the five reasons you set forth there, the first being the railroad is a technology that fractures freight; second, that it is an inflexible form of transportation; third, that it is slow; fourth, the railroad traditionally has a number of monopoly elements, making it a sitting duck for competition, as you say, and the investment of railroad is irrecoverable.

I think if the chairman would permit it, I would just make that part of the record, this particular article, and ask you to make any comments you want on it.

(Article referred to follows on p. 67.)

Mr. HILTON. I continue to be of the opinion I was in that article. The one remaining thing I would like to say is simply to second what Senator Lausche said earlier, that he felt the proper course of public policy was to get away from the existing subsidies and not to add one additional subsidy to this. I think this is perfectly correct.

The transportation industry inherently at present hasn't any characteristics which particularly differentiate it from other industries. If the ordinary policy pursued under the Sherman Act toward other industries had been followed on this one like any other one it wouldn't require as much of the Senate's time or of academic time as it does. It would probably be a reasonably competitive industry which wouldn't present any more problems for public policy than, say, the motel business does, or retailing does.

The problems essentially derive from perpetuation of the cartelization of the industry in the 19th century which has been brought down to us; and I think Senator Lausche is quite correct that we ought to move in the direction of market allocation of resources away from subsidies and the other aspects of the present problem.

Senator PEARSON. Well, let me ask you one more thing then. The purpose of this bill and the purpose of all those resolutions introduced for moratorium or the last train concept are indeed the work of the ICC itself, represent some manifestation of the public interest. Would it be your feeling that this so-called public interest is such that it is largely exaggerated and that we are trying to really protect something that doesn't really exist?

Mr. HILTON. Yes, a regulatory commission actually gets a warped view of the public interest. Only people who have an incentive to perpetuate passenger trains typically come before it. Even though only approximately 1½ percent of intercity trips are made by passenger trains, the people who make the other 98½ percent have no incentive to go before a regulatory body to present their views unless they are, as I am, professionally concerned with this sort of thing. Consequently, the Commission won't use a market test which really is the test of public interest.

Senator PEARSON. That is true with every issue that comes before the Congress.

Mr. HILTON. That is true. Congress must bear this in mind. I think in general it does so.

Senator PEARSON. And some of us don't last around here very long.

Senator LAUSCHE. Yes, that's right.

Mr. HILTON. It is a problem, as you point out. I think you identify it very well.

Senator LAUSCHE. I don't want these questions which I put to you, Dr. Hilton, about the subsidies provided either directly or indirectly for the different modes of transportation to mean at all that I am arguing that we ought to pile another evil upon the other evils.

Mr. HILTON. Yes, you argued very effectively I thought in the opposite direction.

Senator LAUSCHE. Well, my position is clear, that the \$2 billion in subsidy that we have given to the high seas carriers have been an opiate. They have destroyed the dynamics or the purpose of the industry to develop itself in a competitive market. We have told the carriers and we have told the labor leaders you go ahead and do whatever you want, the taxpayer will give you the money to finance your indifferent attitude toward development of the industry.

Mr. HILTON. And once again it doesn't work. The subsidy isn't enough. We have no comparative advantage for merchant marine activity. We probably have less—not probably—as far as I know, we have less comparative advantage for the operation of a merchant marine than any other major country. The market forces for annihilation of the merchant marine are too strong for the policy which we have followed to be able to undo. We would find the same thing true in what we are currently considering concerning the passenger train.

Senator PEARSON. Is the national security argument a very valid one? We use that in relation to the merchant marine and we use it in relation to the railroads.

Mr. HILTON. I don't think it is valid with respect to either. I don't particularly want to go into it with respect to the merchant marine. But in the case of the railroads, as of the late 1940's and early 1950's there were some worries about this. Prof. Robert Harbeson of the University of Illinois wrote an article in the early 1950's arguing that the plight of the railroads was presenting a real problem with respect to national defense. But with respect to passenger trains I don't think you hear this any longer.

The Defense Department stockpiled Pullman cars for troop movement in the late forties and early fifties, and has given up this practice. It now moves troops by air because it is faster and more flexible. So this argument, as you expect, has lost its force over the years.

Senator PEARSON. I want to say to the chairman that the professor's testimony has been very helpful to me today. I very much appreciate his discussion.

Senator LAUSCHE. I want to put into the record the accurate figures on the subsidy to the merchant marine. Since 1936 the U.S. Government has provided for the carriers in the merchant marine as an operating subsidy the sum of \$2,316 million. Secondly, it has provided for the private operators of the merchant marine sailing on the high seas \$920 million. The total moneys given by the taxpayers of the United

States to the merchant marine to build their ships in part and to operate the ships on the seas has been \$3,300 million.

In addition, by law we make it obligatory that all military items be carried in American bottoms. We also provide that 50 percent of the food shipped under Public Law 480 must be carried in American bottoms.

The Department of Defense has submitted a bill which would give to the President the power when he finds that excessive charges are made under this mandate that all military equipment be shipped in American bottoms, he may use his discretion in hiring foreign bottoms. It looks as if that bill is not going to get out of this committee.

I pause in silence. I just want to meditate. When the provision is that they are making excessive charges, give the President the right to hire foreign bottoms. The bill is seemingly not going to get out of the committee. Think of it.

Mr. HILTON. I find it unpleasant to think of. Once again I agree with you entirely. Flag discrimination is once again an implicit tax. It tends to be popular because it is not necessary to make an appropriation, and thus requiring railroads to provide passenger service is popular because it doesn't require an appropriation. Even though these policies are implicit taxes they are still dealing with the problem of allocation of resources between alternatives. There are alternative uses for the resources which we put into the merchant marine and which we put into the passenger train. The public wants them used in other purposes. If there are no alternative uses of these resources presumably we wouldn't have to worry about these things.

Senator LAUSCHE. President Kennedy early in his administration made recommendations about balancing the help that is being given to various modes of transportation. He recommended that there be user charges to the inland water carriers. He recommended, I believe, a relaxation of the regulatory power over the railroads.

Well, we have done none of those things, and the result is instead of having different modes of transportation dealt with equally and equitably by the Government we find that they are dealt with inequitably and unequally.

Mr. HILTON. As I mentioned in my statement, I was chairman of President Johnson's Task Force on Transportation Policy in 1964. We made similar recommendations, though in much greater detail, working toward the same end, and also in the direction of what you have been arguing, of moving away from subsidies, requiring carriers of various sorts to bear the full cost of their use of public facilities. As is, I think, implicit in your statement, I don't think there is any alternative to moving toward market allocation of resources in this sort of thing.

As Prof. John Meyer of Harvard pointed out, even economists who are not particularly laissez-faire oriented in other fields are usually very much in favor of market orientation and market allocation in transportation because they see the consequences of the alternatives.

Senator LAUSCHE. Well, if we adopt another subsidy it is just like those Greeks who wanted to get to heaven and they thought if they put Mount Parnassus on top of Mount Olympus that that would get them up close, but that didn't get them up there so they put them on top another mountain. We are going to put another mountain on top

of Parnassus, and the more mountains that they piled the worse off they were. They became shaky, and the inevitable result was a complete collapse.

Mr. HILTON. There is a further problem. When subsidies are initiated it is extremely difficult to get rid of them because when the resources are committed to the subsidized field, the owners of those resources do not want to reallocate them to other fields.

Senator LAUSCHE. With that, Dr. Hilton, thanks very much for your testimony.

Mr. HILTON. Thank you. I appreciated the opportunity.  
(Prepared statement of Mr. Hilton follows:)

STATEMENT OF PROF. GEORGE W. HILTON

I am George W. Hilton, Professor of Economics at the University of California, Los Angeles. I am the specialist in transportation of the UCLA economics department, and have written extensively on ICC policy. In 1964 I was chairman of President Johnson's Task Force on Transportation Policy, and subsequently, I have written a book, currently pending publication at Indiana University Press, *The Transportation Act of 1958*, a chapter of which concerns the Commission's control of discontinuance of passenger trains under Sections 13a (1) and (2). My testimony today is based on my research for that book, and on my conclusions in it. I speak only as an individual, not as a representative of any group. During the current academic year I am serving as acting curator of land transportation of the Smithsonian Institution; I would particularly stress that I do not purport to speak for the Smithsonian Institution, which does not concern itself with policy problems of this character.

If I read the bill correctly, it embodies eight major changes in policy toward discontinuance of passenger trains:

1. It provides a more lengthy period of suspension and investigation of discontinuances, notably extending the time for investigation from four months to seven, with an additional two months if needed.

2. It grants the Commission power to order restoration of trains discontinued during the investigation period.

3. It places the burden of proof explicitly on the carrier proposing to discontinue a train, and requires issuance of an order for discontinuance by the Commission as distinct from the present arrangement whereby the Commission simply vacates the proceeding.

4. For a two year period, the bill will require the ICC to order continuance of the last train between points unless it finds that the public convenience and necessity do not require the train or that its continued operation will impair the railroad's ability to discharge its common-carrier responsibilities. This provision will initiate explicit consideration of a railroad's ability to bear its passenger deficit.

5. In orders for continuance of last trains, the Commission would be empowered to demand a reasonable standard of service.

6. The bill would grant the ICC sole authority over discontinuance of last trains on routes.

7. Any aggrieved party would be entitled to bring an action for judicial review of an order for discontinuance.

8. The bill would authorize an investigation of the nation's need for rail passenger transportation, "including methods of financing operations which are necessary but not economically viable."

The over-all purpose of the bill is nowhere stated, but it appears designed mainly to preserve a basic network of intercity passenger trains for a two-year period through more rigid conditions for discontinuance while The Department of Transportation, the ICC and Congress consider preservation of an intercity network of passenger trains under public subsidy.

This end, I shall argue, is in the short run undesirable and in the long run impossible, and therefore the Senate would be well advised to reject the bill in its entirety. That is to say, inauguration of such a policy would be perpetuation of one of the most serious malallocations of resources in the economy, one which Congress should seek to terminate, rather than to perpetuate.

The passenger train has declined to the present bare network of major inter-city routes for good and sufficient reason, because the public turned to alternatives which it considered superior, not because of dereliction of responsibility of railroads, failure to develop the passenger train to its full potential, or other reasons which would justify the continuation of this form of transportation under either private or public auspices. The public began its long conversion from the passenger train in the 1890's when the rural trolley lines and interurbans began to be built. The most obvious shortcoming of the passenger train was its inflexibility, which rendered it incapable of providing short trips to varied destinations. Accordingly, first the interurban electric lines and later the automobile diverted short-distance travellers from the railroads almost entirely. The growth of long-distance travel was enough to cause passenger-miles to show a net growth to 1921. Subsequently, the decline has been absolute. With the exception of the years of World War II, patronage has declined virtually monotonically. The passenger train has gone from producing about 95 percent of inter-city trips in the 1890's to producing about 1.5 per cent at present. The automobile, which alone is capable of offering point-to-point transportation at the times determined by the traveller, came to dominate intercity movements nearly as thoroughly as the passenger train once had done, providing about 90 per cent of intercity trips. The bus also proved a cheaper and more flexible public carrier. The airplane, after an early unfavorable experience in safety and comfort, was improved steadily, especially after the introduction of jet aircraft in 1958, until at present it is able to provide intercity travel at more than ten times the speed of passenger trains at about half the cost to the carrier, and with comparable safety. The passenger train is in imminent prospect of being entirely replaced by these rivals, and the question before Congress is essentially whether to permit this to happen, or to seek to impede this through measures such as the bill under consideration.

In light of the behavior of travellers as their incomes increase, it is demonstrably impossible to preserve the passenger train through either of the measures proposed currently: stiffening the regulatory requirements for discontinuance or subsidy. Economists who specialize in evaluating consumer responses to changes in income have estimated the relative income elasticities as follows:

Railroad passenger train	-----	-0.6
Automobile	-----	+1.2
Airplane	-----	+2.5

(Rail estimate from Louis J. Paradiso and Clement Wilson, "Consumer Expenditure Income Patterns," *Survey of Current Business*, XXXV (September 1955), 29. Automobile estimate from Walter Oi and Paul W. Shuldiner, *An Analysis of Urban Travel Demands* (Evanston: Northwestern University Press, 1962), p. 182. Airline estimate from Norman Asher, *et alia*, *Demand Analysis for Air Travel by Supersonic Transport* (Washington: Institute for Defense Analysis, 1966), Report No. R-118, I, 8).

Alternatively stated, the average American family responds to a 1 percent increase in income by decreasing its consumption of rail passenger travel by 0.6 per cent, but by expanding its consumption of services related to the automobile by 1.2 per cent, and of air transportation by 2.5 per cent.

It is impossible to preserve something with a strongly negative income elasticity through a measure of the sort being considered. This conclusion follows from a consideration why the income elasticity for rail passenger travel should be negative. To take an example where the quality of the service is not in controversy, the Santa Fe charges \$75.73 for a one-way coach ticket between Chicago and Los Angeles, a trip of about 39 hours. The four airlines between the two cities charge a minimum fare of \$94.50, including tax, and provide the trip in about 4 hours. Relative to the risks which Americans are willing to run regularly in automobile travel, the difference in risk of accident by rail and air is negligible. Consequently, it is rational to take the train only if one is willing to spend about 35 hours to save about \$20.00, which is to say that one evaluates his time well under 60¢ an hour.

It is obviously true that a large segment of the population evaluates its time at less than this figure, either because it is of low income, or it is retired. But one can predict with perfect confidence that this segment of the population will decline in absolute numbers. The secular growth in income of the population will result in successively fewer people evaluating their time at such a low level. Similarly, the present generation of elderly are motivated to travel by train partly by the low evaluation of time characteristic of retired people, but also by habit and by an erroneous estimate of the risks of flying, based on the accident

experience of early aviation. The next generation of elderly may reasonably also have a low evaluation of its time, but it will not share the habitual pattern of rail travel and the fear of flying prevalent in the current generation of aged. Thus, the elderly, the one segment of the population most loyal to the passenger train, can also be expected with perfect certainty to desert it as the present generation of elderly die.

The foregoing analysis indicates that the atrophy of railroad passenger travel is not a phenomenon which can be arrested, either through greater stringency in regulatory proceedings or by a subsidy. Neither Congress nor the regulatory agencies can lower the public's valuation of time, and nothing could make the passenger train viable unless it did this.

Specifically, a public subsidy could not accomplish this end. The passenger train already survives by means of a subsidy, but it is an implicit and therefore poorly conceived one. That is to say, the passenger train survives because the railroads are forced to bear its deficits out of their earnings from freight transportation. This is the equivalent of financing the passenger train by a tax currently amounting to about 27 per cent of the net earnings from freight of the railroad industry. This is an unsatisfactory method of financing, because the ability of a railroad to bear the implicit tax is, in general, inversely related to the political pressures for perpetuation of passenger trains. The railroads best able to bear the implicit tax are in the west, but the political pressure to provide passenger service is greatest in the east, where the railroads are weakest. The only attraction of an explicit subsidy, relative to present policy is that it would free public authorities to provide rail passenger service where they prefer, without regard to the profitability of individual railroads. It could not, however, alter the public's evaluation of time, and thus it could not change the negative income elasticity for the service. It could also not alter the secular movement of costs working against the passenger train. Thus, the prospect of preserving the passenger train which a subsidy presents is essentially an illusion.

The passenger train might be viable at least for some years if it were competitive in costs with buses. It might then be a major mover of low income persons between cities. Evidence introduced before the California commission in the first proposed discontinuance of the *Lark* in 1966 indicated that a passenger could be moved by Greyhound bus between Los Angeles and San Francisco for \$9.10, by a plane of one of the airlines for \$9.89, and the *Daylight*, the more economical of the Southern Pacific's two remaining trains, for \$18.41. Moving passengers by rail coach is about twice as expensive as either of its rivals. Since the great majority of travelers evaluate trains as intermediate in quality between planes and buses, it must be priced intermediate between the two. Consequently, there is no way in which it can be made profitable. Further, one can predict with as much confidence as one can predict atrophy of patronage that the costs will increase steadily relative to the alternatives. Even apart from the inappropriateness of many railroad work rules to passenger service, this is a labor-intensive activity which shares the characteristic of other service industries (hotels, hospitals, restaurants) of inability to match the advances in productivity of employees in manufacturing industries, with which they must compete for labor. The costs of such service industries increase steadily relative to the rest of the economy: for rail passenger service, the experience is aggravated by the secularly declining demand. The introduction of the second generation of jet aircraft of the size of the Boeing 747 and the Lockheed or Douglas air buses will reduce the cost of moving passengers by air, possibly by a third. The airlines' cost advantage over the railroads in passenger service is likely to go from 2:1 to 4:1 as early as the mid-1970's.

A corollary of the argument I have been presenting is that there is no prospect of making the passenger train viable through improving the standard of service, one of the purposes of the bill at hand. I have argued that passengers should desert the railroads in direct proportion to the value of their time. Business men should have been the first to desert trains for planes because the value of their time is highest. Expense-account travel in Pullman cars should have disappeared almost entirely, and Pullman traffic should be declining much more rapidly than coach traffic. This is consistent with observed experiences: in 1967 Pullman traffic declined 24 per cent and coach traffic 14 percent. The consequence of this is that the standard of service demanded by rail passengers falls steadily; it is not rational to expend 35 hours to save \$20.00 and then to pay for luxurious meals or surroundings *en route*. The only exceptions to this are some of the affluent elderly who may rationally evaluate their time at a low level, but wish to enjoy a degree of luxury, or rail enthusiasts, who are too small in numbers,

possibly 100,000, to provide a significant market. The affluent aged and enthusiasts often interpret the decline in the standard of service which a railroad provides on a given train as an effort to discourage passenger traffic. Complaints on standards of service before regulatory bodies come largely from these groups. Apart from these groups, rail passengers become successively more bus-competitive and successively less plane-competitive, and so the standard of service offered becomes successively closer to what Greyhound and Trailways offer.

A failure to comprehend the reason for the decline in the standard of service seems to underly the Commission's effort in the present bill to secure jurisdiction over standards of service on last trains. Precisely what the Commission envisions if vested with such authority is not clear, but it is reasonable to suppose the Commission will endeavor to require standards on the order of those proposed by Examiner John S. Messer in the current investigation of standards of service on the Southern Pacific between New Orleans and Los Angeles. (Docket No. 3473) The examiner recommended requiring sleeping cars on trains operating between 10:00 PM and 8:00 AM, dining facilities on trains traveling more than 250 miles, and running times not inferior to the line's fastest freight, together with some less important requirements. Such changes could only add to the passenger deficit without reducing the attrition of patronage. The Commission has itself recognized as much in suggesting that the Seaboard drop dining and sleeping car service on its Portsmouth-Raleigh train in an effort to make it viable. (3301CC171)

Requiring dining and sleeping-car services would provide something which a rapidly diminishing number of people, mainly the affluent aged, would want. Similarly, requiring perpetuation of the passenger train as a whole would provide a service which a somewhat more slowly diminishing number of people, mainly of low income, prefer to the alternatives. Should not such people be provided with services which they want? Contrary to a large number of arguments which hold that the passenger train has unique properties, it is merely one service offered by a series of multi-product firms. It is no longer widely enough utilized that it yields significant external benefits in reduction of traffic congestion, atmospheric pollution or otherwise. Similarly, the typical regulatory commission grants a regulated firm a monopoly position or enrolls it in a cartel, generates some monopoly gain, and then requires the firm to dissipate some of the monopoly gain in uneconomic services. This process is inapplicable to the railroads, since they comprise the most important declining industry in the country, have no significant monopoly position currently, and have the lowest rate of return, collectively, of any major industry.

It is not in the nature of the economy to provide everyone with a service in precisely the manner he prefers it. That is, the economy provides popular amusement of various sorts, but it does not provide vaudeville theaters, which presumably several hundred thousand people would still prefer to the alternatives which replaced them entirely when the majority of the economy found these alternatives preferable. More immediately relevant, if the night boats, a type of transportation which became extinct in 1962, were still in existence, several hundred people daily would presumably elect to travel between New York and Boston via the Fall River Line, at least in the summer months. The economy provides abundant means of going between New York and Boston, but does not guarantee one the option of making the trip by boat, simply because a majority of travellers found the alternatives superior in speed and flexibility. This is a particularly relevant example, because the night boat was, like the passenger train, a labor-intensive activity, the costs of which rose secularly relative to the rest of the economy. It was a pleasant way to travel, more so, in general, than the passenger train. A large number of people would still prefer it to the alternatives, but since it was in the main free of restrictions on exit, it passed out of existence because a majority preferred the alternatives which became available.

The analysis which I have presented leads to the conclusion that the passenger train is absolutely hopeless, has been so for some years, and should be allowed to pass out of existence unimpeded. There is no point in undertaking a further enquiry into the passenger train, such as the present bill would authorize. The passenger train was the subject of an exemplary investigation, carried on between 1956 and 1958 by Examiner Howard Hosmer of the ICC, at the Commission's directive. Examiner Hosmer analysed the passenger train in a fashion similar to what I have argued here, reaching the same conclusion that it was hopeless and that it should be allowed to pass out of existence freely. Examiner Hosmer reported this conclusion to the ICC in September, 1958, only a month after the Commission was vested with authority over discontinuance of passenger trains.

(*Railroad Passenger Train Deficit*, Docket No. 31954) The Commission, unfortunately, was unwilling to accept the Hosmer Report, largely because of the Report's unpopularity among the state commissions, and instead held that the passenger train was "essential for the nation's well being" and that it should be a permanent part of the transportation system. It recommended a variety of measures for the preservation of the passenger train, none of which has been implemented. (306 ICC 417)

The Commission's refusal to accept the Hosmer Report launched it upon an effort to pursue two inconsistent and irreconcilable policies simultaneously. On the one hand, the Commission was committed to a policy that the passenger train as a national institution could be and should be preserved. The Commission purported to be making a specific evaluation of the costs, revenues and external benefits of the operations of trains proposed for discontinuance individually. It specifically denied using a market test of profitability as the criterion for discontinuance, explicitly holding such an approach to be "sterile." (*New York, New Haven & Hartford RR, Trustee, Discontinuance of All Passenger Trains*, 327 ICC 151 at 205) On the other hand, the Commission in its first major case of train discontinuance held that it would not indefinitely require continuance of an unprofitable train, merely because the railroad as a whole was profitable. (*Great Northern Ry. Discontinuance of Service*, 307 ICC 59 at 69) This was both an application of the Commission's traditional doctrine toward branch-line abandonment, and a manifestation of the obligation of a regulatory commission to refrain from confiscating the property of a regulated firm through requiring indefinite unprofitable operation. Thus, although the Commission denied using a market test in actions under Sections 13a (1) and (2), it was ultimately doing so by application of the doctrine of the Great Northern Railway case.

The consequence of this situation is what might easily have been predicted. The Commission has vacillated unpredictably between allowing discontinuances on the application in the majority of cases and denying them in the minority. In reapplication, railroads have invariably been able to secure permission to discontinue trains on the second or at the latest, third application. The Commission has also wasted time and resources on developing jurisprudence as to the separation of costs and other aspects of defining losses. Had the Commission adopted the Hosmer Report, it would consistently have treated the unprofitability of any individual train as merely the manifestation of the forces operating inexorably to extinguish this form of transportation. It would, further, have recognized that any train which was not currently unambiguously unprofitable would shortly become so.

In part, the Commission is not to be blamed for its inconsistent behavior, since Congress provided it with no specific directive for its behavior in discontinuance actions. As a consequence, vacillation and yielding to casual qualitative argument were essentially inevitable. Congress forewent an opportunity to provide an explicit market test of profitability such as it was inevitable the Commission would ultimately, if only implicitly, use. Senator Javits of New York induced the Senate to remove a provision of the first draft of the Transportation Act of 1958 whereby the Commission would have had to assure itself that a train was profitable in order to require its continuance. He did so at the request of the New York commission, which feared early withdrawal of most of the passenger service out of New York City.

A market test of profitability would square with the usual presumption of economists that the costs of providing a service represent the sacrificed alternatives which the resources used to provide the service might alternatively have brought forth if used for other purposes, and that the expenditure of society on the service approximately represents its benefits to society. I have argued previously that the passenger train is so lightly utilized that it no longer yields any significant external benefits, except insofar as all economic activity entails both external benefits and social costs. The passenger deficit is the symptom of the malallocation of resources; the aggregate passenger deficit of over \$10 billion since World War II is an indication that society has wanted a very substantial volume of resources which have been devoted to running passenger trains devoted to some other purpose. I stress that only a market test is a measure of the public interest in this matter. The usual effort of regulatory bodies to identify the public interest in an adversary hearing is not a suitable means of doing so, since in general only people with some interest in preservation of passenger trains have an incentive to appear. Thus, the usual hearing in a discontinuance action gives a grossly biased view of the public interest.

Accordingly, I recommend that Congress move in a direction opposite to that of S. 3861, toward providing an explicit market test in the existing Sections 13a (1) and (2). Under present policy, the intercity passenger train will probably have become extinct by 1975, thus terminating the resource malallocation in this activity. Consequently, leaving present policy unchanged has much to be said for it. Changes in policy which accelerate the end of the resource malallocation would be preferable; adoption of an explicit market test would clearly do this. I recommend that Congress add to the present Sections 13a (1) and (2) a provision of sort removed from the first Senate draft of 1958, that any demonstrably unprofitable passenger train may be withdrawn. The Commission's actual behavior, as distinct from what it says it is doing, will bring about this withdrawal no later than the third application for discontinuance; the change I suggest will only prevent the additional losses during a transitional period, the worsening experience during which can be predicted with perfect accuracy.

Ideally, however, public policy should go beyond even this, and grant any railroad statutory authority to discontinue any passenger train on 90 days notice without recourse to regulatory bodies. The waiting period of 90 days would give all affected parties the opportunity to convert to the alternatives which are readily available for all remaining passenger trains. Such a policy would bring about a quick end to an activity that is doomed to extinction in any case, and so would truncate the welfare losses to society from the perpetuation of the passenger train, which have already been excessive.

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A DISTINGUISHED TRANSPORTATION SCHOLAR EXHUMES THE CAUSES OF THE RAILROAD DILEMMA AND EXPLAINS WHAT WENT WRONG AND WHAT TO DO ABOUT IT. HE CONCLUDES THAT THE I.C.C. MUST GO

(By George W. Hilton)\*

\*George W. Hilton has kept his name in *Trains'* pages since the magazine published a letter to the editor from him in 1942. At the time he was a freshman at Dartmouth College, where he shortly conceived the idea of uniting his avocational and professional activities by pursuing economics and specializing in transportation. Hilton took his Ph. D. at the University of Chicago and also studied at the London School of Economics. He has taught at Maryland, Stanford, California, and Northwestern and currently is Professor of Economics at UCLA. He has written six articles on I.C.C. policy, one of which, "Experience Under the Reed-Bulwinkle Act," won him the Clyde B. Aitchison Essay Award of the I.C.C. Practitioners' Association in 1961; and a book on the Transportation Act of 1958 is near completion. He has also consulted for the World Bank and for engineering firms on transportation projects in the underdeveloped countries. In 1964 he was chairman of President Johnson's Task Force on Transportation Policy.

Hilton admits that he writes on the I.C.C. because he thinks it is important, not because he enjoys it. For amusement he writes for his fellow rail and marine enthusiasts. *Trains* carried his article on the Isle of Man in September 1966, and Howell-North has published his "The Great Lakes Car Ferries" and "The Ma & Pa." He is currently working on what he hopes will be his finest work, "The Cable Car in America."

The year 1966 marked an important, if not particularly joyous, anniversary in railroading. It was the 50th anniversary of the beginning of the decline of the railroads. The industry, by most standards, reached its peak about 1915, and has been declining absolutely or relatively ever since. In some respects—mileage, employment, passengers—the decline has been absolute; in most respects it has been relative.

We want to examine the extent of the decline; the causes for it; and finally, what ought to be done about it. One doesn't usually get a very accurate view of the ebb of an industry from journals such as *TRAINS*, for they typically stress the more positive aspects of the situation—what the industry is doing to regain its market; its successes in reattracting business; and its technological improvements rather than those of its rivals. If a historian wrote an account of the interurbans exclusively from the *Electric Railway Journal*, he would conclude that the industry was dealing with its problems rather well in the face of difficult pressures, that some weak lines which should never have been built were abandoned, and then the *Journal* went out of business. Consequently, the following analysis will be particularly cold-blooded.

In 1926, the first year of large-scale intercity trucking, the railroads were still handling 76.56 per cent of intercity ton-miles. The percentage dipped below 75 per cent for the first time in 1929, below 60 per cent in 1949, and below 50 per cent in 1955. The rails' competitive situation became markedly worse about that time, and the percentage skidded to 42.96 in 1961. In the following year,

tonnage poked above 43 per cent and subsequently has held its own around that level.

For the most part, these figures don't represent an absolute decline in rail traffic. Rail ton-miles in the postwar period held at around 600 billion per year, with a wide amplitude in response to business fluctuations. The steel industry deserted the railroads to a lesser extent than any other; and accordingly, traffic—especially of the Eastern railroads—demonstrated an exaggerated response to steel output. The level of 600 billion ton-miles per year was some 40 per cent above the levels of the late 1920's. The problem was that the industry wasn't participating in the growth of traffic in the economy as a whole. By the mid-1950's trucks were producing approximately 14 times the ton-miles they had in 1926.

As dismal as tonnage figures are, they understate the decline of the railroads on two grounds. First, the statistics don't include natural gas movements. Natural gas has replaced coal, oil, and other fuels which common carriers handle. If it weighed anything so that we could include it in tonnage figures, the relative decline of the railroads would look considerably worse. Second, the railroads have done better in keeping heavy bulk commodities than higher-rated traffic. Consequently, while the rails' ton-miles fell from 72 per cent of the total in 1929 to 49 per cent in 1956, their share of gross revenue fell from 87 per cent to 34 per cent. Truckers' share of tonnage rose only from 3 per cent to 18 per cent, but their share of revenue rose from 7 to 59 per cent. In the same period, river and canal traffic rose from 2 per cent to 8 per cent of ton-miles, but went only from 1 per cent to 2.5 per cent of total revenue. Thus it was the truckers who were responsible for most of the railroads' decline. This continues to be true. The railroads' notable stabilization in relative ton-miles since 1962 hasn't been accompanied by a similar success in relative revenues. The favorable performance in tonnage is the consequence of the high levels of prosperity since 1961, and especially the high volume of steel output, several technological advances in railroading, and greater freedom in ratemaking given the railroads in the Transportation Act of 1958. The London *Economist* estimates that American rail rates have fallen 15 per cent since 1958. Consequently, since relative ton-miles are about the same percentage as in the early 1960's the railroads in revenues are still declining in comparison with the rest of the transportation industries. Of course, their absolute revenues have enormously increased during the current prosperity.

The most obvious measure of the depression of the industry is its chronically low rate of return. For the war years of 1941-1945, the industry earned a respectable 4.95 per cent on investment. Thereafter the rate never approached that level. The average for 1946-1950 was only 3.54 per cent. Things were a little better in the early 1950's, and the rate of return hit 4.22 per cent in 1955. This is only about two-thirds of the return in a normally healthy industry. Even that began to skid rapidly. The rate of decline accelerated about 1955, and the rate of return fell steadily, hitting bottom at 1.97 in 1961. Since 1963 it has improved to levels above 3 per cent. This is half the rate of return which would be necessary to allow a net attraction of capital. In spite of the gains in traffic in the last four years, the industry operates at something analogous in the steel industry to 50 per cent capacity. In short, even though the revival of the past four years has been notable, the railroad industry is sick, sick, sick.

What is the source of the illness? If you drive along beside the Union Pacific, watching 100-car freights roll along like trains on the Lexington Avenue subway, you're likely to think that the steel wheel on the flanged rail is the greatest technology for moving freight ever developed.

That isn't true. There are five reasons:

1. The railroad is a technology that fractures freight. If you've ever ridden in a caboose, you remember what the taking in and letting out of slack did to you. It does the same to cargo. Switching impact is even worse. The railroads are characterized by a heavy incidence of damage claims, which on the one hand are a major cost, and on the other divert a great deal of freight to truckers, who have much more favorable damage experience.

2. It is an inflexible form of transportation. It goes where the rails are; the truckers go anywhere.

3. It is slow. The problem isn't so much that freight trains don't make fast time, but rather that cars sit around an excessive length of time when they are interchanged. Traffic men figure that an interchange between lines takes a day, and that threading Chicago is a three-day proposition.

4. Railroading traditionally has had a number of monopoly elements. Notably, it has priced collusively, with rates based on the value of service rather than

costs. This made the industry a sitting duck for competition that was cost-based, such as most trucking was before 1935 and private trucking still is.

5. The investment in railroading is irrecoverable. This doesn't sound as if it were a disadvantage, but it really is the worst of the lot. Most of the investment in a railroad is embodied in the right of way, which the company can't pick up and move. A variety of consequences result—all bad.

First, since there isn't anything else to do with most of the investment, a railroad typically will drag on longer under unprofitable conditions than any other enterprise. This accounts for situations such as the dragging on for decades of the New York, Ontario & Western—which shouldn't have been built at all—before the sponge was thrown in in 1957. Worse, the investment is mostly still there, although only hikers, campers, and railfans are likely to find it. Accordingly, once the industry began to decline, it was assured a particularly long and painful period of disinvestment.

Second, the irrecoverability of investment in railroads makes them more liable to pressure from labor unions and tax collectors than other enterprises. A union is successful in direct proportion to the amount of economic activity it can bring to a screeching halt with a strike. Conceiving of a technology more ideal for unions is almost impossible. The employees sensibly organized along narrow craft lines so that the strike of any one group would tie up enough capital that the management would rather accede to demands than face a work stoppage. The locomotive engineers were obviously in the most favorable position to halt things, and until fairly recently they were thought to have the largest monopoly gain of any union in the economy—20 to 25 per cent (not surprisingly, the airline pilots have taken over the top spot, with a 25 to 35 per cent gain). The conductors and telegraphers were also in good positions, but the humble gandy dancers were on too low a skill level and performed a task that could be deferred. They never got far.

An incidental consequence of the industry's technology is the location all over the map of the members of the Brotherhoods. The political pressure of the United Auto Workers is exerted mainly on members of Congress from Michigan, but hardly a Congressman is without railroadmen in his district. Only the Postal Clerks are equally ubiquitous; but they don't have much skill, and in any case, can't strike by law. The Brotherhood's political pressure was responsible for early adoption of a rigid collective bargaining system under the Railway Labor Act of 1926 and a Federal pension program in the form of the Railroad Retirement Act considerably more expensive to the railroads than Social Security.

Similarly, when the tax collector casts his eye about for a source of loot, nothing quite matches a railroad. The Great Northern believes it is educating most of the children in North Dakota, and was paying more in taxes for the maintenance of the airport at Cut Bank, Mont., than Western Airlines was for using it. New Jersey, of course, is in a class by itself. It taxes railroads at about five times the national average. Why should this state be so rapacious? It's very simple: the railroads have to get across New Jersey to reach New York harbor. There isn't much point to a double-track railroad from Chicago to Port Jervis. Any industrial firm taxed so heavily would pick up and move to another state. The technology of the railroads doesn't give them this option. Incidentally, you'd also expect New Jersey to go in heavily for toll roads rather than freeways, just to make sure it gets user charges out of motorists and truckers who cross it; and to have no income taxes—too many people who live there have the option of living in New York or Pennsylvania. That's New Jersey.

Finally, the irrecoverability of investment to railroads was basically responsible for the policy toward the industry which Congress adopted in 1887 when it set up the Interstate Commerce Commission. Congress feared that if it made the railroads compete, they'd lose money, and have a long period of depressed earnings without any rapid disinvestment from the industry.

The railroads had enough wrong with them that everybody had some reason to try to find alternatives for rail transportation. And I do mean *everybody*. But not everybody accomplished the end with the same speed. Passengers started going first. The interurbans gave the first tip-off on what was coming. They were mainly built between 1900 and 1908 to handle local passengers, express, and l.c.l. freight. Their history was dismal, but they did demonstrate that a more flexible carrier could take away quite a piece of traffic from the railroads. The trucks, buses, and automobiles were to do the job better, and had pretty well killed the interurbans by 1935. Society switched from a 95 per cent dependence on the passenger train for intercity travel in the late 19th century to only 2 per cent at present.

Oil went next. In 1887 the shippers most irate against the railroads were the oil

producers in northwestern Pennsylvania, who considered themselves victims of chronically discriminatory rate structures. They were located in the mountains, without water transportation, and they thought they were entirely dependent on the railroads. The example is a good one of how transitory monopoly problems are. The unfavorable rates on oil movements gave oil producers an incentive to develop a new technology; and not surprisingly, pipelines were to take over crude oil movements as completely as the automobile took over passengers.

After 1926 the truckers began attracting anything breakable, anything in a hurry, anything valuable in regard to its weight, and anything that wasn't going far. The diesel towboat was bringing the rivers back. One of the most menacing aspects of the decline was the diminishing of the rails' share of *everything*. Passengers, coal, oranges, mail, you name it—it was usually declining. On the eve of the revival in the rails' fortunes during the present prosperity, their share of every major commodity except new automobiles was dwindling. In 1961 it was estimated that 23 per cent of the freight traffic that was left wasn't paying its way either.

The question arises how well the railroads' managements responded to the decline of the industry. Generally, they could hardly have done better. Implicitly or explicitly, they recognized everything that was wrong with the industry and tried to deal with it. Equipment with improved dunnage, such as "Damage Free" box cars and especially cars with long-travel hydraulic draft gear, are efforts to reduce injury to freight. Piggybacking deals with the inherent inflexibility of the rails, and provides service off the line. Damage experience in piggyback equipment is quite favorable, too. Finally, piggybacking is a method of getting away from the traditional monopolistically discriminatory pricing system. In Plan III piggybacking, the railroad handles the semitrailer of the shipper or a freight forwarder, frequently at a flat rate per vehicle, without regard to contents. This is a cost-based pricing system of the sort which the industry sorely needs.

Just as piggybacking simulates the technology of the truckers, unit trains simulate pipeline technology. This is most important, since pipelines for solid commodities are waiting in the wings—practicable but still too expensive to be economic. Laying pipelines on railroad property is a particularly sensible innovation, for it finally finds an alternative or incidental use for a railroad right of way. It is not difficult to foresee the Southern Pacific and the Pennsylvania eventually making more money off their pipelines than out of railroading.

Whatever may be wrong with railroading, lack of technological progress isn't it. The diesel locomotive was an improvement that would be difficult to match in any industry. So great was it that it managed to be labor-saving and capital-saving simultaneously. It increased train lengths; allowed the elimination of firemen; cut the need for shop facilities and along-the-line service installations; and along with C.T.C., allowed the removal of a great deal of multiple track. All this is well known, but an incidental benefit not widely noticed is the lowering of the skill level required for running a locomotive, and thus a reducing of the strength of the Brotherhood of Locomotive Engineers. The Florida East Coast's operation through a lengthy strike would have been impossible in the days of steam. C.T.C. reduced the power of the telegraphers, incidental to a large number of other benefits.

Even some inconspicuous improvements paid off handsomely. Dieselization in some of the early installations yielded a return of 40 per cent per year, but automatic crossing protection sometimes had more than a 100 per cent return. The industry was producing its 40 per cent more ton-miles than in the 1920's with half the labor force. Few industries could show a better record, yet the railroads kept declining anyway.

In retrospect, about the worst that can be said of railroad management is that on some roads they were slow to react to the incentives presented them. Several Eastern roads, notably the Pennsylvania, weakened themselves by sticking with the steam locomotive far too long. To go further into the past, the industry was slow to get into motor transportation. Roads which had networks of highway transport before restriction of entry was imposed in 1935—Southern Pacific, Rock Island, and Burlington, especially—found their truck routes money in the bank.

A similar criticism of railroad management during the decline is that many roads, perhaps most of them, were too slow in facing up to the hopelessness of passenger service. This is the one part of railroading which, above all others, was in an absolute decline with no reason to believe that a reversal would ever take place. The automobile was more flexible, the bus was cheaper, the plane was faster; all you could say for the train was that it was safer. The airlines managed

to cut the passenger's chance of a fatal accident from around 14 times that of the rails in the late 1940's to 2.8 times in 1964. Since the risk in an automobile is about 48 times the rails, the railroads' advantage over the airlines was so little that anybody who was willing to travel in an auto was irrational in fearing to fly.

As a consequence, rail passenger service became increasingly limited to people who enjoyed rail travel—who, however laudable, aren't very numerous—and people over 50, who retained either a fear of flying or the habits of their youth. The time of the aged has few vital demands on it, so that the time sacrifice involved in riding the train wasn't very great. The typical businessman couldn't afford the sacrifice in time, even if the fare was below that of air. The experience with rail passenger transport—from rapid load transit to mainline railroading—indicates that traffic is usually not highly sensitive to small changes in fares, and that it is negatively related to income—the richer one gets, the less he wants of the rails. For the trains that have survived, a mixture of the aged and low income groups is the ideal combination; not surprisingly, the patronage on East Coast-Florida trains holds up better than on almost any others. The IC's *City of New Orleans*, running the length of Mississippi, is typically one of the strongest trains in the country, and passenger service in prosperous California is sick unto the death.

On the coast side, rail passenger service is expensive beyond any other way of moving people. The SP estimates that with a 45 per cent load factor, which would be quite favorable, moving a passenger from Los Angeles to San Francisco on the *Lark* costs \$24 and on the *Daylight* \$18.50. One of the four airlines on the route can do it for about \$9.89, and Greyhound for about \$9.10. The ratio may not have been as bad in the late 1940's, but the passenger deficit was in the hundreds of millions, and the hopelessness should have been apparent throughout the industry. The railroads continued to invest in new passenger equipment; some still do. However, most—explicitly or implicitly—have faced up to the extinction of the passenger train.

Recently the industry has become rather good about disinvestment, too. The main implement the industry needs is the ax. Mainline railroading, especially in the West and South, is still a reasonably profitable activity. UP, SP, and Santa Fe, which are primarily long-haul mainline railroads, earn 5 to 6 per cent on their investment and are not declining enterprises, even though their industry is declining. What is decreasing, without hope is a huge mileage of lightly utilized branch lines and redundant main lines. At minimum, 35 per cent of the mileage of the industry can't justify itself with current or prospective traffic. This, of course, is the principal motivation for mergers in the industry. The executives of the industry are avid enough at trying to merge facilities and purge themselves of superfluous trackage, but public policy has made this difficult, partly by state and Federal limitations on abandonment and partly by continued worry about monopoly problems in merger proceedings even though the industry is so far advanced in its decline that it hasn't enough monopoly power to be worth taking seriously.

That public policy is less dynamic than railroad management is not surprising. It is embodied in a set of statutes and some highly legalistic procedures which are incapable of much dynamism. What railroad management can do is become considerably more hostile than it has been to public policy toward the industry. Ever since the mid-1950's the industry has continually voiced sentiments for more freedom in pricing and for more reliance on the market processes relative to regulation. I am going to argue that the position most of the industry has taken on this issue has been half-hearted and far short of what is really needed. In fact, that's why I yielded to the Editor's blandishments to write about the industry's economics rather than about oddball switching in Baltimore; the architecture of Grand Central Station, Chicago; or other matters dearer to my heart.

A widespread opinion exists that Congress set up the Interstate Commerce Commission in response to public outcry against excessive rates and the general abuses of monopoly. You'll find this thesis in most history texts, the majority of railroadmen accept it, and the I.C.C. may well believe it. It's just plain wrong, however. The I.C.C. was set up to stabilize cartels of railroads which the managements couldn't render stable on their own.

A cartel is a group of firms which band together to set prices collusively. The most conspicuous present example is gas stations. The various gas stations in a local area get together, decide jointly on the prices, and try to avoid price competition. They get into a variety of problems. Some stations shade the prices with stamp schemes or other forms of rebates, and others are attracted by what-

ever monopoly gain the collusion generates. Consequently, a given retailing area acquires an increasing number of gas stations, all partially idle much of the day. The more there are, the smaller the percentage of the area's gasoline each sells and the greater is the incentive to start cutting prices to expand one's share of the market. As a result, gas wars break out. One station cuts prices, the rest follow suit, and the prices are bid down to a very low level. The level is lower, in fact, than it would have been under competition because the collusion has attracted more stations into the industry than would have been there under competition and thus the supply is greater.

Essentially, the railroad problem of the 1880's was just this, with a couple of special flourishes because of the industry's unique characteristics. The incentives to collude were greater than in any other industry. The railroads typically had a good bit of monopoly power at individual stations which had no rival railroads. How much monopoly power depended on the availability of water transportation in the area. Railroad transportation was generally superior to water, but the margin of superiority varied from one commodity to another. The railroads responded by setting rates based on the value of service rather than on cost. That is, the more likely something was to move by water, the lower the rate was. The higher was the commodity's value in regard to its weight, the more likely was the shipper to prefer rail to water transportation—and the higher was the rate the railroad charged him. Now, in case the railroads competed with one another, this arrangement didn't work. Like any other competitive firms, the railroads would produce output if the price covered the additional cost of providing the service. They could engage in value-of-service ratemaking at points which had two or more railroads only if they set rates collusively and avoided competing with one another.

There was never any prospect that the number of railroads would become infinitely large, like the number of wheat farmers, for example. As of 1870, the number of railroads between any two points wasn't over three, and it never did go over seven. The difficulty of running a cartel increases more than proportionately to the number of members, but the investment necessary for building a railroad was so large that there could never be enough lines to make collusion obviously impossible.

Whatever may have been the attractions of collusion, by the mid-1880's the situation was much like what I described in the case of modern gas stations. The forces for instability were too great for the railroads to master. The experience of the roads between Chicago and Council Bluffs-Omaha was typical. Three lines, Chicago & North Western, Burlington, and Rock Island, were built from Chicago to Council Bluffs between 1867 and 1869 in anticipation of the completion of the Union Pacific. In 1870 they began to combine collusive ratemaking with pooling of traffic. They agreed to split traffic evenly among them. (Other roads let the traffic go where it might, but pooled the revenue arising from it by some formula.) The arrangement had the inevitable consequence of attracting other railroads: Wabash built up from its Kansas City line; Illinois Central reached down from its route to Sioux City; and the Milwaukee built a line almost within sight of the North Western. Chicago Great Western made it a total of seven. A new road would enter the field by cutting rates to demonstrate what a potent traffic-getter it was. The result was a rate war, followed by negotiation of a new pooling agreement. The quotas on the route eventually got as low as 13 per cent of the total, which wasn't enough to occupy a railroad fully. The ideal size of a railroad is fairly large, so the economic organization of the industry was generating a lot of railroads far below the optimal size. They were so underutilized that the incentive to increase traffic by rate-cutting was almost impossible to resist. The best way of doing this was clandestinely by shading rates for some large shippers, but just doing it outright was tempting. A further way of getting traffic was by building branch lines. Only traffic between termini was pooled; what a road originated, it could keep to itself. Thus, the roads that paralleled one another across Iowa proliferated with branches wandering off to serve small towns to get a light traffic out of grain elevators. The organization of the industry was wasting resources in generating not only "unnecessary railroads" parallel to one another but also nowhere-type branch lines. The Milwaukee Road became a catalog of the consequences of the system: miles of low-traffic branches, an Omaha line that served no important intermediate points, and a Pacific Coast extension that was the most unnecessary railroad of them all.

The railroads could do little to deal with the problem. American state governments, unlike those of Britain, allowed any responsible group to build a railroad without securing a special statute. The legal standing of collusive ratemaking and

of pooling was never settled by the courts until 1897, but in the mid-1880's at least it was clear that the members of a cartel couldn't sue a railroad that broke out of the collusion. The industry had concluded that it couldn't stabilize its collusions unaided. The most stable cartels were in New England and the South where state governments, notably those of Massachusetts and Georgia, had established commissions which looked upon themselves as stabilizing influences. These were different from the Midwestern "Granger" commissions, which had been set up in the 1870's to depress rates widely considered by farmers to be excessive. By the mid-1880's the inflow of resources into railroading had depressed American rates to the lowest of any major country; the instability of rates, not a high level of rates, was the problem in those days.

Just about everybody wanted to do something about the problem. The railroads found the loss of revenue in rate wars serious. Albert Fink, who had set up the cartel in the South, estimated that a rate war cost southern railroads 42 per cent of their earnings. Shippers found the uncertainty of rates intolerable. Small producers, especially those in the oil industry, intensely disliked favoritism to larger shippers.

Why didn't the Government try to prohibit collusion and make the railroads compete? That's what Congress did for American industries in general in 1890 when it passed the Sherman Act. Section 1 of the Sherman Act prohibited restraint of trade, which the courts interpreted to mean collusive pricing of all sorts. Basically, Congress didn't try to make the railroads compete because of the irrecoverability of investment in them. If they were forced to compete they'd have a chronically low level of profitability; and because the investment was irrecoverable, the outflow of resources in the industry would be slow and painful. Such a policy would have entailed widespread bankruptcies and decades of substandard earnings as trackage dwindled.

The problems Congress was trying to avoid in 1887 were inevitable in any case. The depressions of the 1890's and 1930's brought the bankruptcies, and the rise of rival forms of transportation after 1915 caused the chronically low rate of return and disinvestment in track and other facilities.

What Congress did in 1887 was to set up a regulatory body, the Interstate Commerce Commission, to stabilize the railroad cartels. Fink and the other railroadmen wanted a commission established. The Pennsylvania oil producers, who were the most vocal shippers group, wanted the railroad cartels stabilized through the right of citizens to bring lawsuits against railroads which deviated from published tariffs. They and their principal spokesman, Congressman John Reagan of Texas, were opposed to having a commission established on the ground that it would represent the railroads' interest. The group who desired the Commission established also uniformly sought legalized and enforced pooling. Reagan in particular was adamantly opposed to pooling. He secured a grossly inconsistent compromise whereby the Commission was established but pooling was prohibited. All of the rest of the statute was devoted to facilitating collusive rate-making. Rates were required to be just and reasonable, published and adhered to; shading of rates for the benefit of individuals was prohibited, and rates were required to be nonpreferential between areas. In the famous Section 4, Congress prohibited the practice of charging more for a shorter haul than for a longer haul but gave the I.C.C. the right to waive the prohibition at its discretion. This had been a particularly controversial provision, and its logic is important. Charging more for a short haul than for a long haul had two implications: first, it was a part of value-of-service ratemaking, a method of discrimination against areas without access to water transportation; second, it was a symptom of rate wars. When railroads got into rate wars they cut tariffs at places they served jointly—Chicago-Omaha, for example—but kept tariffs at their usual level to intermediate points which they served alone: Des Moines, Cedar Rapids, Davenport, Waterloo, and the like. The I.C.C. was expected to allow the practice when it was an aspect of value-of-service ratemaking but to prohibit it when it was a rate-cutting device.

Even apart from the glaring inconsistency of prohibiting the principal private device for enforcing collusive rate-making—pooling—in a statute otherwise devoted to providing public facilitation to collusion, the Interstate Commerce Act was a thoroughly inadequate piece of legislation. It provided no powers of rate-setting to the Commission, as the courts pointed out when the Commission tried to set rates for the future. It did not restrict entry into railroading, so that the building of "unnecessary railroads" continued well into the 20th century. Section 4 was so ineptly worded that when the matter reached judicial review the Supreme Court held that charging more for a short haul than a long was per-

missible only where railroads were competitive with one another—just the reverse of what Congress had in mind. Worst of all, although the statute was designed to facilitate collusive ratemaking, it didn't legalize the practice. After the Sherman Act prohibited restraint of trade in 1890, the first industry found guilty of collusive pricing was the railroads. In 1897 the Supreme Court found a cartel of southwestern railroads in violation of the Sherman Act and held that the Interstate Commerce Act of 1887 didn't legalize railroad collusion, nor did the Sherman Act contain an exemption of railroads. The I.C.C. was left in the unenviable position of having been established to facilitate something that became unambiguously illegal 10 years after the Commission's founding. Nevertheless, the I.C.C. went its way. It is a bit unsettling to realize that the I.C.C. devoted itself to facilitating an illegal practice continuously from 1897 to 1948, when Congress in the Reed-Bulwinkle Act finally got around to legalizing the railroad cartels—by then called rate bureaus—and placing them under I.C.C. control. That's what the Commission was set up to do, however.<sup>1</sup>

Given the witlessness of the drafting of the Interstate Commerce Act in 1887, the I.C.C. didn't work very well in its early years. Congress patched up its legislative framework between 1903 and 1910 so that by the eve of the first World War the I.C.C. was stabilizing the railroad cartels without pooling. In 1903 Congress passed the Elkins Act, which made departure from published rates a misdemeanor, and made both railroad companies and recipients of discriminatory favors liable for prosecution. The courts were empowered to enjoin deviation from published rates or personal discrimination. This act was drafted by a lawyer in the legal department of the Pennsylvania Railroad and was a product of railroad political pressure throughout.

The Hepburn Act of 1906 also was mainly devoted to enforcing adherence to collusively set rates. The I.C.C. was given power to set rates for the future. They were to be maximum rates, but the fact that they had legal standing made it easier for the railroad cartels to enforce them. The I.C.C. was given control over "accessorial services"—refrigeration, feeding of livestock, and similar matters—and free passes for shippers were prohibited; both of these could be used for shading of published rates. The act required a 30-day notice of changes in rates. A rate reduction was likely to be effective in only a short period until somebody equaled it; with 30 days' notice to all other railroads, a rate-cutter wasn't likely to get any appreciable advantage before rival lines met his rates. Recipients of rebates were made liable for triple damages. Congress tacked onto this act a provision which the railroads didn't want, and which became one of their most serious impediments. In an effort to deal with the Eastern railroads' monopoly of anthracite coal, Congress enacted the Commodities Clause of the Hepburn Act which prohibited the railroads' carriage of goods which they themselves produced, with the exception of lumber. One may have particular scorn for this clause. First, it was unnecessary, since in an antitrust suit of 1920 the courts required the anthracite railroads to give up their coal holdings. Second, the anthracite monopoly was self-limiting. The fact that anthracite was monopolized contributed to its decline in relation to other fuels, and by the 1940's it had become a minor source of domestic heating. Third, the Commodities Clause didn't state its purpose; since it applied to every commodity except one, it became a major handicap to diversification for the railroads once the industry began to decline.

The last of the enactments of the 1903-1910 period was the Mann-Elkins Act of 1910, which was mainly notable for undoing the damage the courts had done to Section 4 and inaugurating the I.C.C.'s power for investigation and suspension of proposed rates. A railroad wasn't likely to try any quick rate-cutting if the I.C.C. could postpone the reduction for four months to consider it.

So stood the framework of public policy when the railroads began to decline. The industry would have fallen off in any case, but the purging of such competitive aspects as it possessed served to accelerate the process. The decline of the railroads was the analogue of the decline of anthracite coal, or U.S. Steel and American Can in their industries, for that matter. In all these cases, the monopoly positions gave the economy an incentive to develop substitutes. In 1920 Congress intensified this problem considerably.

<sup>1</sup> This wasn't adequately recognized in the 1940's when the Reed-Bulwinkle Act was under consideration. Most of its opponents failed to see that the entire edifice of I.C.C. regulation was based on the presumption that carriers priced collusively. Section 4 alone essentially demanded collusive ratemaking; any railroad that engaged in individual rate-cutting was almost sure to involve itself or its rivals in charging more for a short haul than for a long haul.

By pure coincidence, World War I came along simultaneously with the beginning of the decline. The Federal government assumed control of the railroads during the war, presenting Congress with a problem of returning the industry to private hands after the war ended. The opportunity was a golden one to recognize the rise of competition in transportation and to try to generate some in railroading, but Congress did exactly the opposite. In the Transportation Act of 1920 it converted the I.C.C. from a body devoted to facilitating private collusion to an outright public cartel. The I.C.C. was vested with the power of minimum rate regulation; granted control of capital formation, entry and exit from the industry; and given a variety of devices for endeavoring to equalize the rate of return between strong and weak railroads. The act obligated the I.C.C. to provide a fair return on a fair value of investment, and set  $5\frac{1}{2}$  per cent as a target for the first two years. Thereafter 6 per cent was the target. A railroad earning over 6 per cent was required to retain half the excess in a contingency reserve and deposit the other half in a fund administered by the I.C.C. for lending at 6 per cent to weaker railroads. The I.C.C. was also directed to consider the relative financial strength of railroads in rate divisions. The anomalous prohibition of pooling in the Act of 1887 was modified to allow the I.C.C. to approve pooling agreements at its discretion. This never amounted to much, since the cartelization of the industry was already stable without pooling. The I.C.C. was required to draw up a set of plans for consolidation of railroads, again toward the end of equalizing financial strength among them. The redoubtable William Z. Ripley created a set of plans for this purpose, but since the strong roads had no enthusiasm for taking over the weak, and were left the right to refuse, nothing was ever done to implement Ripley's plans. The I.C.C. was given power over intrastate rates (codifying a notable I.C.C. victory in the courts in 1914) allowing the Commission to raise them when they were discriminatory against interstate commerce. Many of the state commissions were trying to hold intrastate rates down for stimulation of domestic industry, an activity which conflicted directly with the I.C.C.'s preoccupation for holding them up.

The Act of 1920, once again, was chiefly the product of railroad pressures. Most of its contents were proposals of the Railway Executives' Advisory Committee. The act represents a public cartelization beyond old Albert Fink's fondest hopes. The main observation to be made about the act is that trying to generate a 6 per cent rate of return in an industry in a secular decline was a pipe dream. The effort to do so involved the I.C.C. in setting rates at a level so high that they enormously stimulated the railroads' new rivals. Between 1924 and 1929 the I.C.C. stabilized freight rates at about 165 per cent of their 1913 level; prices were about 140 per cent those of 1913. Not surprisingly, intercity trucking arose as a problem to the industry in the same period. Truck registration doubled between 1920 and 1924, and kept right on growing.

The high level of rates in the 1920's had an incidental disadvantage. It produced irate farmers who felt that high transportation costs were restricting their markets. Congress responded to this in 1925 with a murky enactment called the Hoch-Smith Resolution which directed the I.C.C. to consider the conditions in various industries "to the end that commodities may freely move." Exactly how important this was is doubtful, if only because of its obscure wording; but the I.C.C. seems to have interpreted it as a directive to set rates so as to allow agricultural products from various sections of the country to compete in major markets. To use an example brought forth by TRAINS a few years ago, the I.C.C. sets rail rates on oranges so that Florida and California brands can compete in Great Lakes cities. The obvious consequence is that rail rates on Florida oranges are so high that most of the fruit moves by road.

The railroads reacted to the rise of rival forms of transportation as members of a cartel usually do: they wanted the cartel extended to the newcomers. The wording was usually euphemistic: "The truckers should be regulated as we are regulated." The railroads proposed I.C.C. control of truckers from the late 1920's, but it came about as a result of the depression experience. The railroads in the early 1930's encountered the worst example of the exaggerated response of their traffic to changes in the level of business activity. Mainly because of their distress, Congress passed the Emergency Transportation Act of 1933, which established Joseph B. Eastman, the most prominent member of the I.C.C., as

Emergency Co-ordinator of Transportation.<sup>1</sup> Eastman, who was the most literate and vocal enthusiast for the I.C.C.'s processes, recommended that regulation be extended to motor and water carriers. His efforts at co-ordination of railroad facilities and other economies were largely frustrated by the Brotherhoods, but Congress took his advice and extended the I.C.C.'s powers to truck and bus lines in the Motor Carrier Act of 1935 and to water carriers in the Transportation Act of 1940. Freight forwarders followed them with an act of 1942.

The regulation of common carriers by road and water was modeled after rail regulation, but the trappings of public utility regulation were not provided for contract carriers. For them the cartelization was bald-faced; only minimum rate regulation was specified. In two major respects, motor and water carrier regulation differed from what the railroads had. Congress directed the I.C.C. to "recognize and preserve the inherent advantages" of motor transport, and stated in yet another murky utterance that inequality in rates between water carriers and other carriers should not be considered discriminatory or unfair. The latter was interpreted as a protection of differentials of barge rates under rail and motor rates. Thus, motor and water carriers had unique protections which the railroads did not have. More important, motor and water transportation were subject to a large number of exemptions. On the highways, any private carriage (*i.e.*, goods transported in a truck operated by the owner of the goods) was exempt, and so was any haulage of agricultural products. Senators from the farm states, knowing full well that the regulation would increase truck rates on agricultural products, used their considerable political power to keep these products exempt. For barge lines, agricultural products, any liquid cargoes, any cargoes requiring special handling gear, and any bulk cargoes—provided not more than three commodities were moving in the same tow—were exempt, along with all private carriage. These exemptions managed to keep two-thirds of trucking and perhaps 90 per cent of barge traffic out of regulation.

A cartel consisting of 100 per cent of railroading, some 35 per cent of trucking, and 10 per cent of water carriage wouldn't be expected to work very well, and of course, it doesn't. Exempt carriers attract a great deal of traffic which under competition would move on common carriers. This involves a large number of empty backhauls which clutter up highways and rivers, and which represent pure economic waste. I.C.C. motor carrier regulation in particular involves so many certifications for movements in one direction only that common carriers suffer some of the same disadvantage. A good deal of long-distance trucking of exempt agricultural products takes place which in the absence of regulation would move by rail. In tonnage, if not in revenue, the situation on the rivers is even worse; if there is anything the railroads and barge lines agree upon it's the ability of the rails to reattract a large volume of bulk tonnage under competitive setting of rates.

The I.C.C. after 1940 was confronted with two problems: (1) the higher it made rates for common carriers, the greater was diversion of traffic to exempt carriers—especially private trucking; (2) some way had to be found of allocating traffic among the various regulated carriers. This, of course, had to be done through the I.C.C.'s rate policy.

In instructing the I.C.C. in setting rates for rival classes of carriers competing for the same traffic, Congress hadn't been overly helpful. The Transportation Act of 1940 had modified the previous text of the I.C.C.'s rule of ratemaking [Section 15a(2)] in a fashion which the I.C.C. interpreted as an instruction not to hold up the rates of one class of carrier to protect the traffic of another. The Act of 1940 also added to the Interstate Commerce Act a preamble known as the National Transportation Policy. At first reading this preamble appears to be an innocuous directive to the Commission to regulate all carriers equitably; to provide for the needs of the economy, the Post Office, and the Defense establishment; and to maintain "sound economic conditions" among carriers. The Commission, reasonably enough, interpreted maintaining "sound economic conditions" as keeping everybody prosperous. This was absolutely impossible; the railroads and various other carriers, notably the coastal steamship lines, were declining and couldn't conceivably be kept prosperous. Any effort to keep everybody prosperous would interfere with the allocation of resources, which in transportation, as elsewhere, is accomplished by the determination of relative

<sup>1</sup> The Act of 1933 also repealed the recapture provision of the Act of 1920 and ended any effort at a target rate of return for the industry. Instead, the I.C.C. was directed to consider the effect of rates on the movement of traffic. The Act of 1940 got rid of the Ripley plan for consolidations.

prices. And trying to keep everybody prosperous would conflict with Congress' directive that the I.C.C. shouldn't hold up the rates of one class of carriers to protect the traffic of another.

These problems are, of course, precisely what the I.C.C. got into after 1940. After an exhaustive study of cases involving intercarrier competition, Prof. Ernest W. Williams of Columbia University concluded that the I.C.C. dealt with this situation habitually by setting rates at levels at which two or more carriers all could compete for the traffic. That is, if truckers and railroads were competing for traffic, the I.C.C. would set the motor rates just enough higher than rail rates so that the differential would compensate for the higher quality of truck service. Similarly, if a railroad and a barge line were competing for traffic, the I.C.C. would set the rail rate above the barge rate to reflect the higher quality of rail service. This is a crude criterion, and the obvious consequence in the generation of a lot of excess capacity among carriers of all sorts. Also a great deal of traffic is channeled to carriers which aren't well suited to what they wind up carrying.

Controversy on these matters was inevitable if one class of carrier became interested in massive rate-cutting. That obviously is what the railroads did in the 1950's. As mentioned previously, the decline of the railroads accelerated around the the mid-1950's, and railroad managements, quite correctly, sought to regain some of their lost traffic by cutting rates. Since about 1951 they had encountered an unwillingness on the part of the I.C.C. to grant rate reductions which would attract traffic from other carriers, even though the proposed rates were "reasonably compensatory"—one of the Commission's favorite terms. Jervis Langdon Jr., who successively became president of the B&O and the Rock Island, gave this practice the picturesque but descriptive title of "umbrella ratemaking." He and other railroadmen argued that the I.C.C. behaved as if it accepted diversion of traffic from the rails to other carriers as the normal procedure, and treated the efforts of the railroads to reattract traffic as essentially violations of the rules of the game.

The Commission denied that it put a rate umbrella over the traffic of rival carriers, and as justifications of its behavior cited the National Transportation Policy, the protection of barge differentials, and the injunction to further motor transport. Langdon and others argued that the problem was the conflict between the National Transportation Policy and the 1940 revision of the rule of ratemaking, which could be reconciled only by some additional legislation. The railroads were in such straits in the recession of 1957-1958 that Congress turned its attention to them for the first time in almost a decade. The result was the Transportation Act of 1958, which represented a direct effort to ameliorate the railroads' depressed situation. The act had four major provisions: it revised the rule of rate-making; it inaugurated a temporary program of loans to distressed railroads; it gave the I.C.C. control of discontinuance of passenger trains; and it extended motor carrier regulation to frozen food movements (which had been deregulated by a court decision of 1956) and movements of foreign agricultural products. The act also had some minor provisions.

The most important provision of the Act of 1958 was the revision in the rule of ratemaking. Again Congress didn't do a very good job. The original draft of the bill told the I.C.C. that when it dealt with a proposed rail rate reduction it should consider only the effect on the movement of traffic by rail and not the effect on the traffic of other carriers. The I.C.C. didn't care for a directive which applied only to the railroads, even though there was a precedent for it in the protection of barge differentials. The Commission suggested that if an enactment was made (which it didn't think was necessary) the text should be a directive not to hold up the rates of a carrier to protect the traffic of a less economic carrier. Congress had to deal with the railroads, who were eager for freedom from umbrella ratemaking; a commission which denied doing this; truckers who were mildly in favor of the practice, and barge lines which were passionately, devotedly, wildly in favor of umbrella ratemaking. In an effort to develop a text acceptable to everybody, Senator Potter brought forth what became Section 15a (3) of the Interstate Commerce Act—a directive to the Commission that "rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the National Transportation Policy." That the final reference to the National Transportation Policy perpetuated the ambiguity with which the enactment was designed to deal hardly need be added.

At the outset the I.C.C. behaved as if the new Section 15a(3) were an unambiguous directive to refrain from umbrella ratemaking, and allowed major rail rate reductions on sugar, paint, and various other commodities. The inevitable

day came when a carrier, Sea-Land Service—a fishy-back operator which carries loaded semitrailer bodies on coastal steamers—came forth to claim that its very existence was dependent on a differential under rail rates which the railroads wanted to eliminate. The I.C.C. responded by restricting the railroads to a smaller set of reductions than they had proposed. The railroads considered this a return to unalloyed umbrella ratemaking and took the case to the courts. In a Federal court in Connecticut in 1961 they won. In several other cases involving the I.C.C.'s relapse into umbrella ratemaking, the railroads managed to win in the courts. The most notable victory was that of the Southern Railway in 1965 in reducing rates by about 60 per cent on grain into the South in its new Big John hopper cars. There is little doubt that the modest increase in freedom of ratemaking which the railroads got in the Act of 1958 has been a major force in their ability to hold their own in tonnage in recent years.

Unfortunately, simply telling the I.C.C. to refrain from umbrella ratemaking, even if it were to be stated less ambiguously than in 1958, wouldn't be a very effective move for Congress. Something in the nature of umbrella ratemaking is inherent in the operation of cartels. No cartel can allow its members to engage in promiscuous price-cutting; it has to hold up the prices of some members for the benefit of others. Thus, if Congress wants to do anything about the cartelization of transportation, it will have to strike more deeply than it did in the Act of 1958.

The late President Kennedy recommended a more fundamental approach in his transportation message of 1962. (All praise to him for even raising the subject; he was the first president since 1933 to send a message on transportation to Congress.) He proposed dropping minimum rate regulation for movements by any carrier of commodities which are currently exempted by either road or barge. This proposal would have ended minimum rate control for 70 per cent of rail tonnage and much of truck traffic, thus allowing market forces to have wide play in allocating bulk traffic and agricultural products among all carriers of freight.

Unfortunately, President Kennedy suggested as a second and inferior choice that Congress extend regulation to exempt carriers if this did not widen the exemptions. He pointed out that the present situation was intolerable; the existence of a large volume of exempt haulage causes a decline of common carriers generally. On the impossibility of the present arrangement in the long run there is essentially universal agreement. Nobody except possibly truckers of exempt commodities is happy with a cartel as incomplete as I.C.C. regulation of common carriers. The railroads mainly are in favor of extension of the exemptions to themselves and considerably greater freedom in rate reduction. The I.C.C., the truckers, and the barge lines, having most to fear from rail rate reductions, are most eager for preservation and extension of minimum rate regulation.

The precise cost of I.C.C. regulation to the economy is something nobody knows at present. (I've been trying to find a graduate student to write a dissertation to quantify it.) The cost is apparently plenty, though. The best indicators are the extent to which rates fell when movements of poultry and frozen foods were exempted from motor carrier regulation by court decisions in the 1950's. Within five years after poultry movements were deregulated in 1952, rates on fresh-dressed poultry fell by 33 per cent and on frozen poultry by 36 per cent. Between the deregulation of frozen foods in 1956 and restoration of regulation in 1958, rates fell an average of 19 per cent. A good guess is that I.C.C. regulation causes common-carrier freight rates to be about 20 per cent higher than they would be under competition.

Happily, both the Kennedy and Johnson administrations have preferred the alternative of reduction of minimum rate coverage to extension of regulation. Between 1962 and 1964 Congress considered a series of bills intended to implement to all carriers the Kennedy recommendations for extension of the agricultural and bulk exemptions. These were subjected to opposition from the Commission and representatives of truck and barge lines, but they perished partly because of a conflict between the railroads and the Department of Justice. Collusive ratemaking had been legalized in 1948, to the intense displeasure of the Department of Justice, and nothing had changed the Department's views in the interim. Accordingly, the Department proposed that any rates freed of minimum rate regulation also be freed of the Reed-Bulwinkle Act's exemption from anti-trust prosecution for collusive pricing. With the exception of the Southern Railway, the railroads reacted to this by losing enthusiasm for deregulation. In this it seems to me they demonstrated that the industry's newly found affection for competition was superficial. Railroadmen ought to make the strongest possible pitch for a thoroughly competitive organization of the entire transportation industry.

American transportation policy has created a situation in which the railroads may price collusively but are deprived of the normal freedoms American businessmen have: reducing prices to regain lost business, entering into new forms of technology in their industries, expanding into activities unrelated to their main businesses, and getting out of hopeless branches of their lines of endeavor. There is nothing more menacing in the Illinois Central and Southern Pacific going into the barge business than in Ginn & Company bringing out a line of materials for teaching machines. For a railroad to take up manufacturing is no more undesirable than for General Mills to produce flatirons. The Western Pacific's knocking off the *California Zephyr* is foursquare with Allis-Chalmers' dropping production of steam-generating equipment. The Southern's grain rate reductions are no more predatory acts than are Peabody Coal's efforts to hold its utility market against oil, natural gas, and nuclear power. On the other hand, pricing collusively, as the railroads have done for a century, will leave management in any of these situations open to a stiff fine and possibly a short vacation in the nearest Federal penitentiary.

The restrictions which railroad managements suffer are *quid pro quo* for their having erected an edifice of public policy within which they could price collusively. The I.C.C. may be an incubus, but it's their own incubus. With a few major exceptions—among them the prohibition of pooling in Section 5, the Commodities Clause of the Hepburn Act, and the Hoch-Smith Resolution—the framework of I.C.C. regulation is a product of railroad desires and political pressures from 1887 to 1958. The organization of the I.C.C. and its original statutory authority (again with the exception of the pooling prohibition) were in great measure the result of the thinking of Charles Francis Adams Jr., president of the Union Pacific. The legislation patching up the Commission in the 1902-1910 era, the Act of 1920, the extension of the Commission's powers to nonrail carriers, the National Transportation Policy, the Reed-Bulwinkle Act, and the Act of 1958 were all railroad sponsored and largely railroad conceived.

What would the industry have been if this course of policy hadn't been followed? The railroads were subjected to the Sherman Act in 1897, and no I.C.C. would have been around to shield them from its application. They would have had to give up collusive ratemaking. The economy would have got its transportation more cheaply, and the rate of return would have become depressed earlier than 1916. The Puget Sound extension of the Milwaukee and some of the later "unnecessary railroads" would not have been built, for the industry would have quit attracting resources earlier. The reduction in debt of the 1930's and the postwar period would also have come about earlier. The merger provisions of the Act of 1920 were an almost total inhibitor to consolidation; if they had not existed, the industry much earlier in its history would have had a movement toward consolidation similar to that which is going on at present. This would have involved a great deal of disinvestment in redundant facilities. Freedom of entry into trucking would have accelerated the abandonment of hopeless branch lines with which the industry is so liberally cursed. Most important, the competition of railroads with one another and with both truck and barge lines would have swept away value-of-service rate structures so that the industry would have cost-based rates. This would have drastically reduced the attractions of private carriage, either by truck or barge.

If we had used the competitive processes in transportation, we probably would have a dozen or so large integrated transportation companies based on a greatly atrophied network of railroads but offering transportation in any way they saw fit, whether by rail, truck, pipeline, barge, or air. They'd be free to set prices as they wished, to go into any line of endeavor they pleased, but not to price collusively (except, of course, for shipments that moved between companies in interchange, which the companies directly involved would have to price jointly) or to engage in exclusionary or predatory practices. In addition, we'd have an enormous number—thousands in fact—of independent truck and barge operators with freedom of entry and exit, freedom of ratemaking, and prohibition of collusive pricing. The small size at which trucking firms can operate economically is essentially a perfect protection against monopoly. The industry would be one that was easier than the average to keep competitive with the normal framework of antitrust policy.<sup>1</sup>

<sup>1</sup> An incidental advantage of having integrated transportation companies is the prospect of greater rationality in evaluation of public investment projects. At present, carriers line up predictably according to their interests, whether the project is the interstate freeway system, the Ohio-Lake Erie canal, or the East Coast high-speed railway. An integrated transportation company presumably would be more objective.

This organization of the industry is what railroadmen should strive for politically. The way to deal with the decline of the railroads is to let railroad managements decide whether to use railroad technology or the alternatives available for transportation. As the trilevel automobile cars demonstrate, rail is still the most economic way of moving a great many commodities, especially for long distances. On the other hand, it seems unlikely that railroading *per se* will ever come back to even ordinary prosperity. The pattern of decline of railroads is essentially universal; only countries such as South Africa which virtually prohibit nonrail transportation are free of declining state railways. Worse, the more highly developed a country is, the more depressed its state railway usually is. British Rail is worse off than the typical African railway. The fact that streetcars, interurbans, and lumber railroads—the most closely related technologies—have all but passed out of existence is a further source of pessimism. Rapid transit survives because it's carried on by municipalities which don't expect to operate it profitably.

If you examine economic history for an industry which reversed a secular decline such as that of the railroads, you come up with the gas business—which came back strong when natural gas was introduced—and some fairly minor industries; phonograph records and razor blades, for example. With present technology it seems unlikely that the railroads will be killed off. Unfortunately, assuming no change in technology is a singularly unhistorical way of looking at things. In particular, slurry pipelines are likely to become more economic in relation to existing carriers as wages increase. Whether the railroads will make it in the long run really isn't the point; what matters is that the industry is likely to be around in varying stages of depression for our lifetime, and we ought to make our policy judgments in that expectation.

The usual railroadman's prescriptions for the decline are not too promising. The low level of profitability of the industry limits what it can do by rate-cutting. Prof. Merton J. Peck estimates that freedom of rate reduction would allow the railroads to attract traffic amounting to 10 per cent of truck and 10 per cent of barge revenues. This would be equal to only the typical secular growth of trucking in two years, and of barge traffic in three years. The forces responsible for the railroads' decline would remain.

Similarly, establishing user charges for barge lines and raising these charges for truckers are likely to be of much less benefit than railroadmen argue. Unquestionably the barge lines get a considerable subsidy out of their free use of the waterways and ought to be subjected to user charges. The barges have attracted mainly tonnage rather than revenue, however; and what revenue the rails could retract through making life a bit more expensive for barge operators (for example, by the 2-cent-per-gallon tax on towboat fuel that President Kennedy proposed in 1962) is doubtful. The truckers have attracted mainly revenue rather than tonnage. Nobody has ever allocated costs between truckers and other highway users accurately enough to know whether truckers as a whole receive a subsidy or not. The situation probably varies by state; Western truckers look upon Wyoming as the railroads do New Jersey. A popular, if casual, academic view is that gasoline trucks pay their way, but user charges on diesel fuel are so low that diesel trucks get a modest subsidy. Both the Kennedy and Johnson administrations have proposed increases in diesel fuel taxes to deal with this. Unfortunately for the railroads, the trucks have attracted traffic by doing the job better, not cheaper; thus an increase in their costs would be of only marginal significance in the long-run diversion of traffic from rail to road.

The way to deal with the decline of the railroads is to organize the transportation industry competitively. The railroads haven't much to lose. Collusive pricing among them is no longer much of a benefit. Too much competition exists, notably from private trucking, for the value-of-service ratemaking that collusion allows to amount to much. The benefits of freedom in ratemaking and in diversification that the railroads would get seem well worth the sacrifice.

Happily, some railroadmen are of similar opinion. David O. Mathews, president of the C&EI, stated in 1965 that he thought railroads ought to make a go of it in the ordinary framework of public policy which any other industry faces. D. W. Brosnan of the Southern and John W. Barriger of the Katy are notable advocates of competitive transportation. Let us hope that such views become widespread in the industry. The railroads are responsible for the erection of present policy. Their surrender of it, totally, completely, and irrevocably, by advocating the abolition of the I.C.C. and subjecting the industry to the Sherman Act would be the most promising possible step in the direction of competitive organization of transportation.

Senator LAUSCHE. Mr. Anthony Haswell, executive director of the National Association of Railroad Passengers. Your full paper will be transcribed into the record, so you may proceed to discuss the highlights of what you wanted to say.

**STATEMENT OF ANTHONY HASWELL, EXECUTIVE DIRECTOR,  
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS**

Mr. HASWELL. I will try and be as brief as possible, Senator. Thank you.

My name is Anthony Haswell. I am executive director of the National Association of Railroad Passengers. I appear here in support of S. 3861 with certain revisions and qualifications which I will set forth.

Since I understand that today the committee is primarily concerned with the specific proposals in S. 3861 for additional controls over the last trains on a given route and for the overall study of passenger service, I will concentrate my remarks on those provisions. The rest of the bill is substantially similar to S. 1175 on which this committee has had hearings. We support those provisions as we did support S. 1175, and I respectfully direct the committee's attention to my previous testimony last May, May of 1967.

With regard to the "last trains" provision we believe that it is a step in the right direction.

I should say that we strongly disagree with the Federal Railroad Administrator that this provision in some way constitutes a moratorium on further discontinuance of passenger trains. As we read the bill, discontinuance would still be permitted where it was shown that the train was not required by public convenience and necessity, and would be permitted regardless if continued operation would have a severe enough impact upon the overall operations of the railroad. In our view that does not amount to a moratorium.

Senator LAUSCHE. Let me ask a question. Is it your interpretation of the bill that the ICC could continue its hearings on pending applications and if it determined under the existing law that the authority to discontinue should be granted that the Commission would have that right?

Mr. HASWELL. Are we talking about last trains under this new provision now?

Senator LAUSCHE. All right, apply it to the last train. No; apply it first to all trains.

Mr. HASWELL. On all trains? Certainly the new bill would give the Commission discretion to allow this discontinuance.

Senator LAUSCHE. Now apply it only to the last train. Would the moratorium apply to that?

Mr. HASWELL. Well, as I have said, Senator, it is my opinion that this is not a moratorium because even if the Commission was considering last trains, if those trains weren't needed, even though they were the last trains—in other words, if there were enough other forms of transportation around to take care of the people and the railroad was in bad financial condition and the losses on these particular trains had an impact on the financial condition they could still let them take those trains off.

Senator LAUSCHE. All right, proceed.

Mr. HASWELL. We would like to point out that in our opinion the language in this proposal on last trains should not be considered as making new law, but merely as a clarification of existing law on standards which are now applicable to all trains proposed to be discontinued. The present statute talks in terms of "undue burden on interstate commerce." No mention is made of the financial condition of the railroad. We maintain that an undue burden on interstate commerce is not shown unless continuance of the trains proposed to be discontinued would impair the railroad's ability to fulfill its other common carrier responsibilities considering its overall financial condition. This point is just what the pending bill would spell out in black and white.

Now on the subject of adequate service standards, we believe that section 1(4) of the Interstate Commerce Act and also the car service provisions include ample power for the Interstate Commerce Commission to order adequate standards of service. As the committee may know, this is a matter which is now being litigated before the Commission, and an Interstate Commerce Commission hearing examiner has issued a report holding that the Interstate Commerce Commission does have this broad supervisory jurisdiction over railroad passenger service, in a case involving the Southern Pacific's Sunset Limited between New Orleans and Los Angeles. If our views are sustained by the Commission or the courts, the Commission will have ample power to require adequate standards of passenger service, regardless of whether the trains are the last trains or whether the railroad has proposed to discontinue them.

Now I would like to discuss, in the balance of my testimony, the proposed study. We support the Commission's call for a study of the existing and future potential of railroad passenger service. However, we believe that the Department of Transportation should not direct such a study. Testimony of the Federal Railroad Administrator before the House Committee on Interstate and Foreign Commerce and before this committee, and numerous other public statements, indicates that the Department has already written off railroad passenger service, outside of the Northeast Corridor and the possibility of future revival in other areas through application of yet unproven high-speed technology. The Department seems extremely unenthusiastic about undertaking this project. If it is true that the Department is convinced that such a study would be futile, perhaps it should be conducted by a more impartial body.

The Administrator asserts in his testimony before the House committee that "on the basis of market preferences—virtually all intercity railroad passenger service of the kind we have known to date is not needed." This is a misleading and fallacious statement. Any discussion of market preference must take into account the comparative position of the competitors in the marketplace. On the one hand, the cost of railroad service has been inflated by obsolete labor work rules which provide for unreasonably short working hours and for excess personnel requirements. On the other hand, air and highway transport benefits from huge Government expenditures for roads, airports, and airway control systems, only a part of which are recovered by user charges. Furthermore, none of these properties are on local tax rolls. Under such conditions, it is fatuous to talk of decisions made by the public in the transportation market, because the marketplace has been completely rigged.

The Administrator's market theory is faulty on other grounds as well. With commendable exceptions, rail passenger service in recent years has fallen short of even the most minimal standards of speed, dependability, comfort, and cleanliness. It is understandable that shoppers in the marketplace will not buy shabby goods. But that is no basis for concluding that the product is inherently outmoded. As the manager of passenger services of the Canadian National has so aptly put it:

Rail passenger transportation is subject to the same laws of supply and demand as any other business. If the product is unattractive, poorly presented and overpriced, people will be reluctant to buy it, and there will be no apparent demand for railway service.

There is abundant evidence that when high standards of service are enforced, there are many buyers of rail passenger transportation. The Seaboard Coast Line showed a 9-percent increase in its winter season New York-Florida business, 1968 over 1967. The Canadian National had a 26-percent increase in passenger business in 1967 over 1966, and a 67-percent increase in 1967 over 1961.

While we agree with the Interstate Commerce Commission that rail passenger service needs to be improved and modernized, we emphatically reject the position of the Administrator that the present product is so outmoded that the only solution is that it be completely scrapped and replaced with an entirely new technology.

The Administrator views with alarm the present financial condition of the railroads. Close analysis of the figures indicates that 1967 was an off year which followed 5 consecutive years of steady improvement, culminating in a net income in 1966 of \$904 million, second highest in the history of the industry other than during World War II. In my statement I show the figures from 1961 through 1967.

Furthermore, these figures do not take into account the rapidly increasing income of many railroads from nontransportation assets. For instance, Penn-Central's share of the \$555 million net for 1967 was only \$13 million, while in fact its consolidated net income from all sources was \$71 million.

At the same time the railroads are pleading that passenger service losses are forcing them to go broke, they are investing literally hundreds of millions in nonrailroad businesses. In our view, the total income and assets of the railroads—not just railroad income and assets—must be taken into account in evaluating proposals to discontinue services.

Finally, we note that freight business so far in 1968 is breaking all records; that the railroads will have the benefit for the whole year of 1968 of the 3-percent rate increase granted in 1967; that another 3 percent was granted very recently; and that the railroads are before the Commission asking for still more.

The Administrator has told both the House committee and this committee that the railroads' share of the intercity freight market has been steadily declining. He further told the House committee that the industry has "demonstrated little or no growth." However, the record shows that after falling to 43 percent in 1961, the railroads' share of intercity freight ton-miles has remained almost steady ever since. Beginning in 1961, 563, there was a steady increase all the way up to 738 billion in 1966, which was an alltime record. There was a drop

of 19 billion in 1967 to 719. But so far this year the ton-miles are running ahead of 1966 which was the alltime record.

In view of this performance, it is interesting to note that the Administrator recently told an audience of railroad people that rail freight service is a lousy product which must be improved. Accepting as true the Administrator's charge, several pertinent questions and conclusions seem to follow.

First, contrary to management claims, railroads apparently have a natural monopoly on a substantial portion of the freight business they are now handling. Because of the inherently low cost of rail transportation, truckers cannot get the business even though rail service is indifferent.

Second, having discovered that there are deficiencies in freight service which can and should be corrected by management, we respectfully suggest to the Administrator that he could make the same discovery as to passenger service.

Third, is it not possible that the same defeatist attitudes of management which have helped bring passenger service to its present low estate have also adversely affected the freight side of the business? In any event, we submit that it would be most inappropriate to reward the railroads for providing poor freight service by allowing them to get out of the passenger business.

The Administrator is silent on the extent to which passenger service operations are adversely affecting the financial condition of the industry. However, the railroads themselves are not so reticent. The Association of American Railroads would have the public and the Congress believe, as reflected in its testimony before the House Commerce Committee on July 9, that if the railroads had not operated any passenger trains in 1967, they would have saved \$485 million which could have been used to purchase new freight equipment or to offset to higher freight rates. The AAR further stated that such savable losses for 1968 will approach \$600 million; that since 1946 they have totaled \$11.5 billion; and that for the last 9 years such losses have totaled \$3.9 billion.

In our considered opinion, these are, at the very least, highly questionable statements made with the deliberate intent to deceive the public and the Congress into acquiescing in the railroads' program of discontinuing passenger service. The large loss figures are derived from an ICC accounting formula which is designed to allocate the overhead expenses common to both freight and passenger service between the two services for purposes of ratemaking. The Commission has repeatedly made clear that the formula is not intended to measure the amount of money that would be saved were passenger service discontinued, and it has further stated that the large deficits produced by the formula, in fact, overstate the savable expense. While the Commission has never required the railroads to supply avoidable cost figures for passenger service on a regular basis, available information from a few individual companies and from train discontinuance proceedings indicate that the amount that would actually be saved were passenger service discontinued, and thus be available for other purposes, is no more than half the formula deficit, and probably a great deal less than that.

Senator LAUSCHE. What would that be in dollars?

Mr. HASWELL. Well, in the very next paragraph, Senator it is my personal opinion on the basis of all the information I have that it is between \$50 and \$200 million.

Senator LAUSCHE. What is the formula deficit which you contend is not a proper mode of ascertaining the losses?

Mr. HASWELL. For 1967?

Senator LAUSCHE. Yes.

Mr. HASWELL. \$485 million.

Senator LAUSCHE. Now in this statement you say that from train discontinuance proceedings it is indicated that the amount that would actually be saved were passenger service discontinued and thus be available for other purposes is no more than half the formula deficit. Half the formula deficit for 1967 would be \$240 million; is that right?

Mr. HASWELL. That's right.

Senator LAUSCHE. All right, proceed.

Mr. HASWELL. We do not mean to imply that the real losses of rail passenger service—between \$50 and \$200 million a year—are not a serious economic problem. What we do believe is that the problem can be solved—that is, the losses reduced to a level which the railroads can reasonably be expected to absorb—without total elimination of passenger service. But as long as the railroads are allowed to grossly exaggerate their financial burden of passenger service, the public will be discouraged from seeking constructive solutions to save the service, while freight shippers will be frightened into believing that the huge formula deficits are being made up by higher freight rates, and thus be encouraged to support discontinuance.

And if I may, I would like to interject that a witness this morning, Mr. Ashley Gray of the Railway Progress Institute, in his statement said that last year if the railroads had not operated passenger service they would have had \$485 million available to buy new freight cars and equipment. This is an example as to how these figures proliferate.

The Administrator told the House committee that rail passenger service will ultimately lose out to competition in other countries around the world, and that this is beginning to happen already. If so, the rest of the world somehow hasn't gotten the message.

The success of the high-speed Japanese Tokaido train between Tokyo and Osaka is now almost legendary. During the year ended March 31, 1968, the line carried over 55 million passengers, an increase of 26 percent over the previous year. Plans are now underway to add 13 more trains each day, and to extend the line the entire length of Honshu Island. And of great interest to long-suffering U.S. rail passengers is the fact that since 1964, no train has been more than a minute off schedule.

England reports gains of between 6 and 20 percent last year on runs where improved and faster service was initiated. British Railways is now speeding up many other routes, and has launched a major publicity campaign to sell the services to the public.

France and Germany are continuing to improve their already fine services. Both countries are looking toward 125-mile-an-hour operation on their mainlines in the not too distant future.

In Italy, a consortium of private firms has offered to finance a brandnew, high-speed line between Rome and Florence which would cut the present travel time of 4 hours down to 1½ hours.

We have already noted that the improved Canadian National services have resulted in a 26-percent increase in business in 1967 compared to 1966, and a 67-percent increase, 1967 over 1961.

Surely all these countries would be mighty foolish to expend scarce talent and resources on expanding and improving a mode of transportation that is bound to lose out to its competitors. We just can't believe that everyone is out of step but Uncle Sam. The Administrator is apparently attempting to cover up for our failures by taking a gratuitous slap at the achievements of others in improving their rail transportation—achievements which are envied by many Americans.

In conclusion, we urge the Congress to reject the philosophy of defeatism propounded by the Administrator and the railroads, and enact meaningful legislation to stem the deterioration of our rail passenger service. The crisis with which we are now confronted in air transport underlines the urgency of the situation. As an alternative to conduct of the study by the Department of Transportation, we call the committee's attention to the constructive proposal of Stuart Saunders, chairman of Penn-Central, for a national railroad passenger council, to be composed of representatives of the industry, the Government, and the public. Representing the Government could be the Interstate Commerce Commission, whose concern and awareness are demonstrated by the excellent report which accompanied the legislation you are now considering.

I thank you for the opportunity to appear before you today.

Senator LAUSCHE. You have just mentioned the Penn-Central. You are familiar with the fact that the Pennsylvania Railroad as far back as 5 or 6 or maybe 8 years ago has been urging a subsidy for its commuter service?

Mr. HASWELL. Yes, Senator; I am familiar with this subject, and I was very interested in the discussion you had with Professor Hilton and others. I would like to comment briefly.

Senator LAUSCHE. Will you please?

Mr. HASWELL. I think the essential fact that must be faced by the Congress and the public in this area is that we long ago crossed the water as far as Government aid and subsidies to transportation is concerned, and when I say long ago I mean long ago—I mean at least 50 years ago or more in terms of highways and waterways and airports.

I think that a very good argument can be made both academically and in terms of public policy that this was wrongful and misguided policy to begin with, and that all of the transportation agencies should have been kept away from the public till and that all of the properties, and so forth, used therein should have been privately financed. But that decision wasn't made, and as a result in recent years we have spent billions of dollars on airports and highways and air control systems.

In the meantime due to partly technology, partly history, the railroads have remained privately owned in every sense of the word, specifically in terms of their tracks and their rights-of-way which are analogous to a highway and an airport. So the railroads have had to compete with competitors whose funding for capital improvements has been guaranteed by the Government, and at the same time these properties of the railroads have been subjected to local property taxes.

Now we are at the point, I believe—I agree with Chairman Saunders of the Penn-Central Railroad, we are at the point where we must make a decision quickly in view of what is happening in our

transportation system, that either we somehow in a practical, feasible way put all these other forms of transportation on their own or else we give the railroads what we have been giving the others.

I think this decision has to be made one way or the other, because if we don't, if we keep developing this lopsided—I think Mr. Saunders called it a lopsided, haphazard transportation system—it is just going to perpetuate this misallocation of resources, and I mean misallocation of public resources and private resources.

Senator LAUSCHE. All right, now are you of the opinion that the facts, let's say, in Italy are so identical with the facts in the United States that the solution which Italy is seeking is the same solution that the United States ought to seek? What I have in mind—how many automobiles do we have in the United States with our 200 million people? I think the statistics will show one automobile for every two persons. That means that we have 100 million automobiles in the United States. Italy probably has a population of—what is it—40 million, 50? How many automobiles does it have? Does it have one for every two people?

You mention the Japanese railroad. Do they have the same proportion of automobiles in Japan?

Now my question, do you believe that the solution that is applicable to Italy under its population density, under its economic affluence of the people, is comparable to ours and therefore that their solution is also applicable to us?

Mr. HASWELL. No, I do not, Senator. Of course, the conditions are much different and it is well known, I believe, that the United States has the highest proportion of automobile ownership in the world per capita, and substantially higher than in Italy.

Senator LAUSCHE. Doesn't that mean that our people use their automobiles much more in preference to train service than would be used in Italy?

Mr. HASWELL. There is certainly not the degree of demand for basic railroad transportation. However, perhaps the best answer to this is to point out that it is simply because of this enormous proliferation of automobiles and the problems that are stemming from this proliferation of automobiles, which is exactly why we do need improved alternatives of transportation in heavily populated areas.

I should point out that while in these Western European countries there is not the degree of automobile ownership as there is in the United States, it is increasing rapidly, and the automobile production is soaring in every one of these countries every year.

Senator LAUSCHE. All right, I have no further questions of you.

Do you have any questions?

Senator PEARSON. No. Thank you.

Senator LAUSCHE. How would you set up the agency that ought to make the study? You don't think that the present setup is correct.

Mr. HASWELL. Well, it is not that I don't think the present setup is correct. I would like to clarify that. I think that the public and everybody had great hopes that the Department of Transportation would be a constructive step forward, and it certainly is. It is the logical agency to be doing this. But I simply have to look at reality. And looking at Mr. Lang's testimony—he certainly is entitled to his opinion. Everybody is entitled to their opinion. There are conflicting views on this subject, which is quite obvious. But the total lack of enthusiasm

of that gentleman for undertaking this project—it is suffocating, Senator, in all due respect. And that is really all I am trying to point out.

Senator LAUSCHE. Wouldn't your reasoning lead to the conclusion that whenever a public official speaks his truthful mind he would then become dispossessed of the right to participate, let's say, as an official in a study of this type? Is he to remain silent, is he to speak differently than he thinks, and when he speaks truthfully in his own mind does that disqualify him from participation?

Mr. HASWELL. Of course not. And nothing in my testimony should be taken in that regard in the slightest respect. Certainly I am not attempting to disqualify him participation or to obviate consideration of their views in any way whatsoever. It is vitally important that they express their views. I am talking in terms of the direction, control, and supervision of the study, and I confine my remarks to that.

Senator LAUSCHE. I construe your position to be then that if Mr. Lang were wholeheartedly on your side of this argument you would still oppose him as making the study?

Mr. HASWELL. Well, that is an interesting question. I think I have directed my remarks at least to a considerable degree to his lack of enthusiasm for a study regardless of what his views are as to what our transportation policy should be with regard to railroads and the other modes.

Senator LAUSCHE. That's all I have.

Any further questions?

Senator PEARSON. No.

Senator LAUSCHE. All right, thanks very much.

Mr. HASWELL. Thank you.

(Prepared statement of Mr. Haswell follows:)

STATEMENT OF ANTHONY HASWELL, EXECUTIVE DIRECTOR, NATIONAL  
ASSOCIATION OF RAILROAD PASSENGERS

My name is Anthony Haswell. I am Executive Director of the National Association of Railroad Passengers. I appear here in support of S. 3861 with certain revisions and qualifications which I will set forth.

The National Association of Railroad Passengers is an Illinois not-for-profit corporation. Membership is open to users of all kinds of railroad service—commuter, high speed intercity, and long distance—and to anyone else who believes that rail passenger service is a valuable national asset which should be preserved and improved. Since our beginning in July, 1967, we have enrolled over 2600 members from all parts of the country. Our specific objectives are to obtain:

1. Stronger legal controls over discontinuance of passenger trains, and greater consideration of the over-all public interest in continued passenger service in individual cases.

2. Positive government action to aid, encourage, and promote rail passenger service, including equal treatment for railroads by government in relation to other forms of transportation.

Our activities in furtherance of these objectives include working for the passage of constructive legislation; opposing selected proposals for train discontinuances before regulatory authorities and the courts when, in our judgment, the over-all public interest justifies such opposition; and conducting a continuing educational program to acquaint the public with the advantages and benefits of good passenger service, and the underlying economic and political issues of the problem.

It is my understanding that the committee is primarily concerned with the proposals in S. 3861 for additional controls over the last pair of trains operated over a given route, and for a study of passenger service by the Department of Transportation. The remainder of the bill is basically similar to S. 1175, upon which this committee held hearings on May 24 and 25, 1967. I respectfully direct the committee's attention to the testimony I gave at that time, and now urge

the prompt enactment of the similar provisions of S. 3861 for the same reasons.

The "last trains" provision of S. 3861 is a step in the right direction. Where service is shown to be required by public convenience and necessity, the last trains over a particular route could not be discontinued unless the ability of the railroad to meet its common carrier responsibilities to other users would be impaired, considering the company's over-all financial condition. The railroad would further be required to provide adequate standards of service on the trains required to be kept on.

We strongly disagree with the Federal Railroad Administrator that this provision constitutes an implied moratorium on the further discontinuance of passenger trains. Discontinuance would still be permitted where the train was not required by public convenience and necessity, and would be permitted regardless if continued operation would have a severe enough impact upon the over-all operations of the railroad.

We further emphasize that the language in this proposal should not be considered as making new law, but merely as clarification of existing law, now applicable to *all* trains proposed to be discontinued. The present statute talks in terms of "undue burden on interstate commerce". No mention is made of the financial condition of the railroad. We maintain that an "undue burden on interstate commerce" is not shown unless continuance of the trains proposed to be discontinued would impair the railroad's ability to fulfill its other common carrier responsibilities considering its over-all financial condition. This point is just what the pending bill would spell out.

With regard to adequate service standards, § 1(4) of the Interstate Commerce Act provides that railroads shall provide transportation upon reasonable request. We believe that this language and other provisions of the Act embrace the requirement of *adequate* service. Our position has been upheld by the ICC Hearing Examiner in the pending case concerning the adequacy of service on the Southern Pacific's *Sunset Limited* between New Orleans and Los Angeles. If our views are sustained by the Commission or the courts, the Commission will have ample power to require adequate standards of passenger service, regardless of whether the trains are the "last" trains or whether the railroad has proposed to discontinue them.

We support the Commission's call for a study of the existing and future potential of railroad passenger service. However, we believe that the Department of Transportation should not direct such a study. Testimony of the Federal Railroad Administrator before the House Committee on Interstate and Foreign Commerce and before this committee, and numerous other public statements, indicates that the Department has already written off railroad passenger service, outside of the "Northeast Corridor" and the possibility of future revival in other areas thru application of yet unproven high speed technology. The Department seems extremely unenthusiastic about undertaking this project. If it is true that the Department is convinced that such a study would be futile, perhaps it should be conducted by a more impartial body.

The Administrator asserts in his testimony before the House Committee that "on the basis of market preferences—virtually all intercity railroad passenger service of the kind we have known to date is *not* needed". This is a misleading and fallacious statement. Any discussion of "market preference" must take into account the comparative position of the competitors in the market place. On the one hand, the cost of railroad service has been inflated by obsolete labor work rules which provide for unreasonably short working hours and for excess personnel requirements. On the other hand, air and highway transport benefits from huge government expenditures for roads, airports, and airway control systems,—only a part of which are recovered by "user charges". Furthermore, none of these properties are on local tax rolls. Under such conditions, it is fatuous to talk of decisions made by the public in the transportation market, because the market place has been completely rigged.

The Administrator's "market" theory is faulty on other grounds as well. With commendable exceptions, rail passenger service in recent years has fallen short of even the most minimal standards of speed, dependability, comfort and cleanliness. It is understandable that shoppers in the market place will not buy shabby goods. But that is no basis for concluding that the product is inherently outmoded. As the manager of passenger services of the Canadian National has so aptly put it:

"Rail passenger transportation is subject to the same laws of supply and demand as any other business. If the product is unattractive, poorly presented

and overpriced, people will be reluctant to buy it, and there will be no apparent demand for railway service."

There is abundant evidence that when high standards of service are enforced, there are many buyers of rail passenger transportation. The Seaboard Coast Line showed a 9% increase in its winter season New York-Florida business, 1968 over 1967. The Canadian National had a 26% increase in passenger business in 1967 over 1966, and a 67% increase in 1967 over 1961.

While we agree with the Interstate Commerce Commission that rail passenger service needs to be improved and modernized, we emphatically reject the position of the Administrator that the present product is so outmoded that the *only* solution is that it be completely scrapped and replaced with an entirely new technology.

The Administrator views with alarm the present financial condition of the railroads. Close analysis of the figures indicates that 1967 was an off year which followed five consecutive years of steady improvement, culminating in a net income of 1966 of \$904 million, second highest in the history of the industry other than during World War II.

Furthermore, these figures do not take into account the rapidly increasing income of many railroads from non-transportation assets. For instance, Penn-Central's share of the \$555 million net for 1967 was only \$13 million, while in fact its consolidated net income from all sources was \$71 million.

At the same time the railroads are pleading that passenger service losses are forcing them to go broke, they are investing literally hundreds of millions in non-railroad businesses. In our view, the *total* income and assets of the railroads—not just railroad income and assets—must be taken into account in evaluating proposals to discontinue services.

Finally, we note that freight business so far in 1968 is breaking all records; that the railroads will have the benefit for the whole year of 1968 of the 3% rate increase granted in 1967; that another 3% was granted very recently; and that the railroads are before the Commission asking for still more.

The Administrator has told both the House Committee and this committee that the railroads' share of the intercity freight market has been declining steadily. He further told the House Committee that the industry has "demonstrated little or no growth". However, the record shows that after falling to 43% in 1961, the railroads' share of intercity freight ton-miles has remained almost steady ever since. What this has meant in total railroad ton-miles (Class I roads) is shown below:

	[Billions of ton-miles]	
1961	-----	563
1962	-----	593
1963	-----	622
1964	-----	659
1965	-----	698
1966	-----	738
1967	-----	719

I submit that the railroad industry has enjoyed substantial growth since 1961. And as mentioned earlier, ton-miles so far in 1968 are running ahead of the all time record (even including World War II) set in 1966.

In view of this performance, it is interesting to note that the Administrator recently told an audience of railroad people that rail freight service is a "lousy" product which must be improved. Accepting as true the Administrator's charge, several pertinent questions and conclusions seem to follow.

First, contrary to management claims, railroads apparently have a natural monopoly on a substantial portion of the freight business they are now handling. Because of the inherently low cost of rail transportation, truckers cannot get the business even though rail service is indifferent.

Second, having discovered that there are deficiencies in freight service which can and should be corrected by management, we respectfully suggest to the Administrator that he could make the same discovery as to passenger service.

Third, is it not possible that the same defeatist attitudes of management which have helped bring passenger service to its present low estate, have also adversely affected the freight side of the business? In any event, we submit that it would be most inappropriate to reward the railroads for providing poor freight service by allowing them to get out of the passenger business.

The Administrator is silent on the extent to which passenger service operations are adversely affecting the financial condition of the industry. However, the railroads themselves are not so reticent. The Association of American Rail-

roads would have the public and the Congress believe, as reflected in its testimony before the House Commerce Committee on July 9 that if the railroads had not operated any passenger trains in 1967, they would have saved \$485 million which could have been used to purchase new freight equipment or to offset to higher freight rates. The AAR further stated that such savable losses for 1968 will approach \$600 million; that since 1946 they have totalled \$11.5 billion; and that for the last nine years such losses have totalled \$3.9 billion.

In our considered opinion, these are, at the very least, highly questionable statements made with the deliberate intent to deceive the public and the Congress into acquiescing in the railroads' program of discontinuing passenger service. The large loss figures are derived from an ICC accounting formula which is designed to allocate the overhead expenses common to both freight and passenger service between the two services for purposes of ratemaking. The Commission has repeatedly made clear that the formula is not intended to measure the amount of money that would be saved were passenger service discontinued, and it has further stated that the large deficits produced by the formula in fact overstate the savable expense. While the Commission has never required the railroads to supply "avoidable" cost figures for passenger service on a regular basis, available information from a few individual companies and from train discontinuance proceedings indicate that the amount that would actually be saved were passenger service discontinued, and thus be available for other purposes, is no more than half the "formula" deficit, and probably a great deal less than that.

We do not mean to imply that the real losses of rail passenger service—between \$50 and \$200 million a year—are not a serious economic problem. What we do believe is that the problem can be solved—that is, the losses reduced to a level which the railroads can reasonably be expected to absorb—without total elimination of passenger service. But as long as the railroads are allowed to grossly exaggerate their financial burden of passenger service, the public will be discouraged from seeking constructive solutions to save the service, while freight shippers will be frightened into believing that the huge "formula" deficits are being made up by higher freight rates, and thus be encouraged to support discontinuance.

The Administrator told the House Committee that rail passenger service will ultimately "lose out" to competition in other countries around the world, and that this is beginning to happen already. If so, the rest of the world somehow hasn't gotten the message.

The success of the high speed Japanese Tokaido train between Tokyo and Osaka is now almost legendary. During the year ended March 31, 1968, the line carried over 55,000,000 passengers, an increase of 26% over the previous year. Plans are now underway to add 13 more trains each day, and to extend the line the entire length of Honshu Island. And of great interest to long suffering U.S. rail passengers is the fact that since 1964, no train has been more than a minute off schedule.

England reports gains of between 6 and 20% last year on runs where improved and faster service was initiated. British Railways is now speeding up many other routes, and has launched a major publicity campaign to sell the services to the public.

France and Germany are continuing to improve their already fine services. Both countries are looking toward 125 miles an hour operation on their main lines in the not too distant future.

In Italy, a consortium of private firms has offered to finance a brand new high speed line between Rome and Florence, which would cut the present travel time of four hours down to one and one-half hours.

We have already noted that the improved Canadian National services have resulted in a 20% increase in business in 1967 compared to 1966, and a 67% increase, 1967 over 1961.

Surely all these countries would be might foolish to expend scarce talent and resources on expanding and improving a mode of transportation that is bound to lose out to its competitors. We just don't believe that everyone is out of step but Uncle Sam. The Administrator is apparently attempting to cover up for our failures by taking a gratuitous slap at the achievements of others in improving their rail transportation—achievements which are envied by many Americans.

In conclusion, we urge the Congress to reject the philosophy of defeatism propounded by the Administrator and the railroads, and enact meaningful legislation to stem the deterioration of our rail passenger service. The crisis with

which we are now confronted in air transport underlines the urgency of the situation. As an alternative to conduct of the study by the Department of Transportation, we call the committee's attention to the constructive proposal of Stuart Saunders, Chairman of Penn-Central, for a National Railroad Passenger Council, to be composed of representatives of the industry, the government, and the public. Representing the government could be the Interstate Commerce Commission, whose concern and awareness are demonstrated by the excellent report which accompanied the legislation you are now considering.

I thank you for the opportunity to appear before you today.

Senator LAUSCHE. Thomas M. Goodfellow, president of the Association of American Railroads. Mr. Goodfellow.

Mr. GOODFELLOW. Good morning.

Senator LAUSCHE. Good morning. You may proceed, Mr. Goodfellow.

**STATEMENT OF THOMAS M. GOODFELLOW, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.**

Mr. GOODFELLOW. My name is Thomas M. Goodfellow. I am president of the Association of American Railroads here in Washington. Before that I was president of the Long Island Rail Road. And prior to that I worked in various capacities for the Pennsylvania Railroad from the time of my graduation from Cornell in 1929 until I joined the Long Island in 1954.

I appreciate the opportunity you gentlemen have given me to tell you why the industry I represent is so strongly opposed to the changes you are considering in section 13(a) of the Interstate Commerce Act. To conserve your time—and to avoid duplicating testimony of the witness who will follow me—my remarks will be brief and general. His will be more detailed and specific.

The proposed legislation would help preserve a status quo in inter-city passenger operations that will cost the railroads approximately \$600 million in deficits this year—and may cost still more next year. Frankly, we can see no purpose whatever in running trains the public isn't riding—particularly when the staggering costs of running those trains must inevitably be passed back to the public in the form of higher freight rates for just about everything people buy.

As railroad men, we've studied this passenger problem from every angle. We've tried every sensible approach to providing a public service which only a very small segment of the public wants, needs, or uses. It has been a discouraging, costly and wasteful experience.

In the 10 years immediately after World War II, our railroads and the Pullman Co. spent more than half a billion dollars in private capital to give the American public the world's finest passenger trains. Additional millions were spent advertising and promoting these truly great trains.

But the public wasn't buying. Despite all our efforts passenger business showed a sharp and steady decline, year after year, as more and more people turned to the speed of the airlines for long trips and to the flexibility and convenience of their automobiles for shorter trips.

The record is there for everyone to see. There can be no question of which came first—the chicken or the egg. The public clearly deserted the railroads—and for perfectly understandable reasons. Nor was this desertion the result of any lack of sincere and expensive promotion on the part of the railroads.

All this was confirmed by the Interstate Commerce Commission itself. Following a long and thorough investigation in 1959, the ICC reported that the railroads have (and this is a direct quote) "conscientiously endeavored to improve their standards of service."

Furthermore, the Commission report pointed out, the railroads—and I am quoting again—"generally have not discontinued trains without serious efforts—sometimes prolonged—to make them pay and only after sympathetic consideration of public convenience."

In August of 1958—the year that section 13(a) was added to the Interstate Commerce Act to provide some measure of sorely needed relief for passenger-carrying railroads, many of them on the verge of bankruptcy—America's railroads were operating 1,448 passenger trains. The 1958 passenger deficit was \$610 million.

Last year the deficit was \$485 million. This was an increase of \$85 million over 1966, despite the fact that fewer trains were being operated. This points up the powerful pincers the railroads find themselves trapped in as riders continue to decline and operating costs continue to soar.

The picture is growing steadily darker. In May of this year we were running 590 intercity passenger trains. Present indications are that those 590 trains will pile up a deficit of around \$600 million in 1968—almost as large a deficit as 1,448 trains cost the railroads 10 years ago.

Senator LAUSCHE. Why?

Mr. GOODFELLOW. Just because of the lack of patronage, loss of revenue and, more importantly probably, the increased cost of operating trains today, the increased cost of labor, materials, everything we use.

Senator PEARSON. Pardon me, but can you recall what those increased costs were? How many rate increases have been effective in the last decade?

Mr. GOODFELLOW. You mean——

Senator PEARSON. Passenger.

Mr. GOODFELLOW. Passenger rate increases?

Senator PEARSON. Yes.

Mr. GOODFELLOW. There have been very few general passenger rate increases in the last several years, or last 10 years. Most of the things that have been done in this case have been reductions in rates and special fares and things of that sort. So fares have been increased very little in the last 10 years.

Senator PEARSON. We will put this in the record later so we will have an accurate statement. But, actually, fares have gone up very little; is that right?

Mr. GOODFELLOW. That is right.

Senator PEARSON. Now, how about your labor costs?

Mr. GOODFELLOW. Well, labor costs have increased considerably. The last figure I saw—in the last 10 years they have increased at least 60 percent. So we are paying \$1.60 for every \$1 we spent in labor costs. And material costs have gone up the same.

Of course, our taxes, all of the things that inflation has caused to increase, are going up in the same proportion for us as they are for everybody else in the country.

Senator PEARSON. But in addition to the inflationary increases, you have had a 60-percent increase in labor and material costs?

Mr. GOODFELLOW. At least.

Senator PEARSON. Generally?

Mr. GOODFELLOW. At least.

Senator PEARSON. And in your tax obligations—well, it varies from State to State so much.

Mr. GOODFELLOW. Yes.

Senator PEARSON. Thank you. Go ahead with your statement.

Mr. GOODFELLOW. I am not particularly good at figures myself. But our statisticians tell me that, if railroads today were still running as many trains as they ran in 1957—the year before section 13(a) was enacted—the passenger deficit last year would have been approximately \$1.5 billion. That is substantially more than the entire industry's net operating income of \$1,161 million from freight operations.

As hardheaded businessmen, we railroaders have made studies of our own to determine whether, in today's jet and automobile age, there is any future or any need for intercity passenger trains. Reluctantly, we have had to conclude that there simply is no future or need for the passenger train except perhaps in heavily populated corridors—like the New York-Washington corridor in which the Penn-Central is investing millions of its own dollars to develop a new high-speed service.

Even so, we are willing to cooperate wholeheartedly in the study Chairman Tierney has proposed. But we feel—and feel very strongly—that it would be grossly unfair to the railroads, to their freight shippers and to the consuming public to saddle all of us with the intolerable burden of a growing passenger deficit that could pour hundreds of millions more down the drain during the time the study is in progress.

But suppose that the study should prove that the railroads have been misreading the tea leaves? Suppose it shows that there will be a need for passenger trains between certain cities 5, 10, or 25 years from now, even though there obviously is no such need today? And suppose, in the meantime, passenger service between those cities has been discontinued?

That would be the simplest of problems to solve. The tracks will still be there, for freight trains will still be running on them. Brand-new passenger equipment—designed and developed to meet the needs of those future years—can run on them, too. Meanwhile, there is nothing to gain and much to lose—and much to lose—by continuing those runs with present equipment.

Transportation Secretary Alan Boyd has said it much better than I can, and I quote:

We would prefer to see the traveler profit from innovation and development in railroad transportation, rather than simply from the preservation of present concepts.

The proposed study may or may not show some future need for railroad passenger service. But, with our mushrooming population and our soaring standard of living, neither a study nor a crystal ball is needed to realize that, as the prime mover of the Nation's freight, railroads are going to be called on to play an increasingly important role in the years ahead. They have been pouring every available dollar into a thorough modernization program to get ready for this big job.

But the mounting passenger deficit has slowed their efforts on two fronts. Not only has it made fewer dollars available for new equipment and new facilities, but, by holding the railroads' rate of

return to a meager 2.46 percent last year, this deficit has made it increasingly difficult for railroads to attract the kind of dollar support they need from the financial community.

Some may try to justify what amounts to a moratorium on train discontinuances in the name of "public service." But is a service really a public service when less than 2 percent of the public wants it, needs it, or uses it? Instead doesn't it become a private service, and a very expensive private service, the other 98 percent must support in the prices they pay for the goods they buy?

Under present circumstances, it is a service the railroads, the shippers, and the public itself can ill afford. I thank you for your attention and consideration.

Senator LAUSCHE. Senator Pearson?

Senator PEARSON. Mr. Goodfellow, you say in your judgment there is a need for passenger services in the Northeast corridor. But, actually, these trains are the ones that got into trouble first and to the most severe extent, did they not?

Mr. GOODFELLOW. What do you mean? I don't know what you mean.

Senator PEARSON. I am talking about the New Haven. That is what comes to my mind.

Mr. GOODFELLOW. Well, the New Haven; yes.

Senator PEARSON. Is that a very complicated thing?

Mr. GOODFELLOW. The New Haven got into this trouble. But, after all, I believe that the New Haven was a bit like my own railroad; the Long Island, where the root of its evil was the commuter service which they were trying to put into—were trying to provide.

Senator PEARSON. So when you talk about the Northeast corridor, I am not sure you used that term.

Mr. GOODFELLOW. When I talk about the Northeast corridor, I do mean to Boston from here.

Senator PEARSON. You are talking about Boston, New York, and here.

Mr. GOODFELLOW. Maybe as far south as Richmond, I don't know. But, this is what we know generally as the Northeast corridor. Of course, the real emphasis is on this corridor traffic.

Senator PEARSON. And you are not talking about commuter trains?

Mr. GOODFELLOW. I am not talking about commuter service. I am talking about a service that will compete with the airlines between here and New York and with the buslines between here and New York or between here and Boston. Of course, the New York-Washington is the most pressing need, and that is the reason that the Penn-Central, plus the Department of Transportation, have been working so hard to get the high-speed service into use in this particular area.

The New York to Boston will follow a little later, and probably the Washington to Boston one will be a combination of the two services.

Senator PEARSON. Is there a single railroad in the black on passenger service, intercity?

Mr. GOODFELLOW. I don't think under the ICC formula there is anything—any railroad in the black in passenger services.

Senator PEARSON. Thank you very much, Mr. Goodfellow.

Senator LAUSCHE. I would like to explore with you the subject of what efforts were made by the railroads following World War II to

modernize their passenger service, and what the results were. You state:

In the ten years immediately after World War II, our railroads and The Pullman Company spent more than half a billion dollars in private capital to give America's public the world's finest passenger trains.

Will you elaborate on that statement?

Mr. GOODFELLOW. Following World War II there was hardly a railroad, any in the East or the West, that did not immediately commence to replace its fleet of passenger equipment.

Following the World War, we were able to get rid of our steam locomotives. This meant that we could improve our passenger service because we didn't have to worry about the sparks and the dust coming back over the train from the steam engine.

So one of the first things that was done was to completely dieselize the service.

In addition to that, we bought practically all new equipment, and I can mention any number of trains on any number of railroads, such as the Santa Fe, the Great Northern, and the Southern Pacific, the Pennsylvania, and New York Central, Seaboard, old Coast Line, Southern—any railroad that you want to name that was in the passenger business replaced its equipment.

The coaches, of course, provided reclining seats. Most of the coaches handled only 40 to 60 people, so that you had plenty of room, plenty of leg room in your seat. Each one of them had its own private wash-room for ladies and for gentlemen.

In the trains, the pullman equipment was—of course, we called it lightweight. We called it streamlined because it was made from lightweight materials. The trains were streamlined. And all of this pullman equipment was designed to make the trip much more pleasant.

Many of the trains had things like telephone service, valet service, barbers, anything like that that would make your trip a little more pleasant. Many of the railroads did the same thing to their dining cars. We did little things, perhaps, that might not mean much, but it meant a lot to have the crew stay on the Broadway the whole way through.

Well, this meant we had to build double diners and put dormitory cars on. And I remember things of that sort, where the crew could start out in New York or out of Chicago and start serving, the same crew would serve your dinner and breakfast. They had kitchen cars, a double diner which gave you a very pleasant dining room and gave you a place for the crew to work and up ahead, next to the engine, a place for the crew to sleep during the night.

Tavern cars, things of that sort, were designed for both the coach passengers and the pullman passengers. Of course, the dining car was open to pullman passengers and coach passengers.

I mentioned the Broadway, because at that time I worked on the Pennsylvania. We had many other trains. We had solid coach trains made up of these 46-seat coaches with the double diners, and with the tavern cars and the lounge cars and all of that kind of thing.

In the West, where clearances were a little bit better, the railroads went into dome cars. In the East, we weren't able to do some of that because of the tunnel clearances that kept it from happening.

The little things—you mentioned Robert Young. Robert Young insisted that the C. & O. put on fine service, and some of the trains that they ran between Chicago and Detroit, through Grand Rapids, on the the old Pere Marquette, were very fine coaches, and for the night travel they had very fine pullman service.

I remember he was the first one that did something that many people thought was a good idea. Instead of having to turn the spigots on in the washstand, he put a little foot pedal on, so that all you had to do up here was change whether you wanted hot or cold and put the foot pedal on it and you had your hands free.

I mention these. They may not seem like much, but added together they did mean that they really revamped the passenger service.

Now, beyond that, we did a lot of crew training. We put stewardesses on some of the trains. We put representatives of all kinds on the train to make sure that your comfort was looked after.

The brotherhoods cooperated very well on this. And not a thing could be said—

Senator LAUSCHE. What prompted you to put the stewardesses on the train?

Mr. GOODFELLOW. Pardon?

Senator LAUSCHE. Why did you substitute the women for the men?

Mr. GOODFELLOW. Well, I guess we took this from the airlines, and when we were hauling people long distances, I can remember several trains where the stewardesses were at one time trained nurses. I don't know whether they still are or not, but they could help the mothers with their kids.

Senator LAUSCHE. Well, you have answered the question. That is, the airlines were supposed to have provided something that was attractive.

Mr. GOODFELLOW. That is right.

Senator LAUSCHE. And therefore the railroads tried to imitate the airlines, and they put these stewardesses on.

Mr. GOODFELLOW. They tried to do that. At the present time, several of our railroads are imitating the airlines by serving your meals at your seat. Pennsylvania has some meals being served at your seat. We have tried to do this.

I haven't mentioned the great amount of advertising that many of our railroads have carried on, and some of them are still carrying it on. I think I mentioned the Santa Fe is still advertising their passenger service, in spite of the fact that they tell me that their service is steadily decreasing; that is, the use of their service is steadily decreasing.

It was less this past year than it was in 1966. They think it will be less in 1968 than it was in 1967. But they have not relaxed on their advertising.

So all of these things added up to where, between the railroads and the Pullman Co., we think the half-billion dollars was a very conservative estimate of what we spent to try to get people back on the trains. They rode for a while, but as the jet planes came along and the automobiles could drive 80 miles an hour without any traffic lights on a throughway, or something of that sort, they deserted us.

Senator PEARSON. So the traffic picked up and then it fell off again?

Mr. GOODFELLOW. I think the traffic picked up after the war; yes. People got back. They wanted to travel. As soon as the throughways

got built, and the turnpikes got built and the jet planes came along, we began to feel the effect of it right away. And we were deserted.

And I can't blame people. You don't want to take 16 or 18 hours to go someplace when you can fly there in an hour and a half or 2 hours.

Senator LAUSCHE. When did you realize that in spite of this expenditure, that the effort was not a success, that you could not achieve your objective?

Mr. GOODFELLOW. I would say somewhere following the war—oh, perhaps 6 or 8 years after the war was over, and this was when we really realized that we were furnishing a service that was costing us so much money and efforts were made to get 13(a) put into the Interstate Commerce Act.

And that was culminated in 1958, when we were able to get it in.

Senator PEARSON. What kind of people ride the passenger trains today? Do you have any analysis of who they are and what they are?

Mr. GOODFELLOW. Oh, no. We have made many analyses. Actually, the people that ride the trains are maybe people who are afraid to fly. And there are some people who are afraid to fly.

Senator PEARSON. Yes.

Mr. GOODFELLOW. And I don't say that they won't fly. They just don't like to fly.

Senator PEARSON. That is right.

Mr. GOODFELLOW. I know lots of ladies who don't particularly like to fly. I may even say, I am myself sometimes white-knuckled. But we find those people. We find elderly people—and here I have to be a little careful about what I say about elderly people—but elderly people who don't know much about flying, don't know that you can fly, they cling to the train.

When they are gone, I don't believe we will have anybody take their place, because the generation, even, that I belong to, has now become used to planes, and probably the generation even older than I am has become used to planes.

So there are still a few of those.

Senator PEARSON. How about income levels?

Mr. GOODFELLOW. I think there are certain crippled people who find a train a little more convenient than a plane. But no businessmen ride the train any more.

Senator PEARSON. Do you have any information as to income levels?

Mr. GOODFELLOW. I don't know. It would have to be an estimate. I do know that some of our lower income people do ride the trains. People with low incomes do tend to ride the train if they are going a long distance. If they are not going such a long distance, they will ride the bus, which is a little cheaper than the train.

Senator LAUSCHE. That is, if they ride the bus in preference to the train because the cost is less, it would follow that they would fly in the plane if they had the money and their time was sufficiently expensive. Does that follow?

Mr. GOODFELLOW. That is right. I think that is true.

Senator LAUSCHE. You don't get the very low income people because the buses are able to outcompete you.

Mr. GOODFELLOW. That is right. So we get a sort of intermediate class of people who are not high income, but high enough income that

they don't take the time to ride the bus or don't bother to ride the bus, they ride the train.

But as I go back to this, we get no businessmen. This used to be the backbone of, say, the Lark between San Francisco and Los Angeles, or between Pittsburgh and New York. It used to be the backbone of those trains. And we built those trains up. But today the companies themselves say to the executive, "Don't ride the train, fly. We don't want you wasting your time. Come on home and be with the family at night, rather than spending the night on the sleeper."

Senator PEARSON. Thank you very much, Mr. Goodfellow.

Senator LAUSCHE. I think that is all that I have, Mr. Goodfellow. Thank you very much.

Mr. GOODFELLOW. Thank you.

Senator LAUSCHE. It's now 12 minutes to 12. I have a lunch engagement. The next witness is William M. Moloney, general counsel, Association of American Railroads. How lengthy will your presentation be, Mr. Moloney?

Mr. MOLONEY. I would say 30 or 45 minutes. I can be available at a later date, Mr. Chairman.

Senator LAUSCHE. I didn't hear you.

Mr. MOLONEY. I say, I can be available at a later date. As you know, my office is here in Washington.

Senator LAUSCHE. We will meet with you Monday morning at 10.

Mr. MOLONEY. Monday morning at 10—fine.

Senator LAUSCHE. Adjourned at 11:50 a.m.

(Whereupon, at 11:50 a.m., the hearing was adjourned, to reconvene the following Monday, July 29, 1968, at 10 a.m.)



## STUDY OF ESSENTIAL RAILROAD PASSENGER SERVICE

MONDAY, JULY 29, 1968

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

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

Present: Senators Lausche and Pearson.

Senator LAUSCHE. The meeting will come to order. This is a continued hearing on the Interstate Commerce Commission proposals contained in S. 3861 for a proposed special test applicable to "last trains," and for a proposed study of railroad passenger service potential.

The witness this morning will be Mr. William M. Moloney, general counsel of the Association of American Railroads.

Mr. Moloney, you may proceed.

### STATEMENT OF WILLIAM M. MOLONEY, GENERAL COUNSEL OF THE ASSOCIATION OF AMERICAN RAILROADS

Mr. MOLONEY. Thank you, Senator. If I may, I would ask that my statement be incorporated in the record as though I read it and then I will try to summarize it.

Senator LAUSCHE. That will be done.

Mr. MOLONEY. Thank you.

(Whereupon, the prepared statement of Mr. Moloney was entered into the record as follows:)

#### STATEMENT OF WILLIAM M. MOLONEY, GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

My name is William M. Moloney. I am General Counsel of the Association of American Railroads and I appear here on behalf of that Association in opposition to S. 3861.

In May, July and August of 1967 the Subcommittee on Surface Transportation of this Committee held hearings on a number of bills to amend Section 13a of the Interstate Commerce Act. I appeared at those hearings and expressed our industry's opposition to those bills and I ask that the members of this Committee, in their consideration of S. 3861, take note of the testimony I then presented.

S. 3861 would substantially amend Section 13a of the Interstate Commerce Act. Its provisions would delay, prolong and make more difficult the elimination of unneeded and losing passenger train service. I think it appropriate to call to this Committee's attention the circumstances under which Section 13a of the Interstate Commerce Act was enacted as a part of the Transportation Act of 1958. At that time this Committee and the Congress found the economic position of the railroad industry to have reached an alarmingly low level.

When, in light of today's situation, one reviews the economic condition of the railroad industry, a matter with which Congress was so vitally concerned in its passage of the Transportation Act of 1958, the question immediately arises as to why any serious consideration should be given to proposed legislation to amend that Act and that would delay and make more difficult the elimination of unneeded and losing passenger train service.

May I compare the economic situation of the railroad industry in 1958, with respect to which this Committee and the Congress was so deeply concerned, to the industry's present economic situation.

In 1958 the net railway operating income of Class I railroads was \$762,296,000. In 1967 net railway operating income dropped to \$677,405,000, a decrease of 11 percent.

In 1958 net income of the Class I railroads was \$601,737,000 and in 1967 dropped to \$554,741,000, a decrease of 8 percent.

In 1958 the railroad industry's rate of return on average net property investment was 2.76 percent and in 1967 it fell to 2.45 percent.

In 1958 the net working capital of Class I railroads was \$806,537,000 and in 1967 it had fallen to \$276,143,000, which represents only enough money to meet cash requirements for operating expenses and taxes for approximately 11 days.

In its approval of an interim freight rate increase last year the Interstate Commerce Commission stated that:

"In our judgment, the recent rapid rise in labor costs, accompanied by recent increases in prices of railroad materials and supplies, has created a situation which, in any practical meaning of the word, constitutes an 'emergency.'" (Report of the Interstate Commerce Commission, Ex Parte No. 256—Increased Freight Rates, 1967, decided July 31, 1967.)

Thus, the economic situation of the railroad industry today is even more acute than the situation with which Congress was so greatly concerned in 1958, at which time it enacted the Transportation Act of 1958, including Section 13a.

A large contributing factor in 1958 was the annual passenger train service deficit incurred by the railroad industry. In 1957, the year before passage of the Transportation Act of 1958, the passenger train service deficit was \$723.7 million and consumed 44 percent of the net railway operating income from freight service. The passenger train service deficit for the year 1967 was \$485 million and consumed 42 percent of the net railway operating income from freight service. Certainly, when two-fifths of the net railway operating income from freight service is today being consumed by the passenger train service deficit, there is no room for complacency, nor for any attitude that the passenger train deficit problem has been largely solved and that it now should be made more difficult and costly to discontinue unneeded and losing passenger train service.

Since 1946 the passenger train service deficit has totaled the staggering sum of eleven and one-half billion dollars. This serious and persistent drain on railroad earnings has been and is a major reason for the railroads' inability to acquire adequate capital funds for improving and modernizing freight-carrying facilities which the public needs.

During the last nine years, while Section 13a has been on the statute books and its remedies available, the passenger train service deficit totaled \$3.9 billion and consumed 36 percent of the total net railway operating income from freight service during those years.

The passenger service deficit in 1958 was \$610,424,000 and in 1967 was, as I have pointed out, \$485,000,000. However, since 1962 the passenger service deficit has increased sharply and we estimate that on the present level of passenger train service such deficit for 1968 will again approach \$600,000,000.

I do not wish to appear an alarmist but I am compelled to point out to this Committee that there is nothing in the financial picture of the railroad industry today, as compared to 1958, that would justify substantial amendment of the law that Congress put on the books in that year. On the contrary, there is increasing need for the protection of that law. To the extent that any particular passenger train service may be required by public convenience and necessity and will not constitute an undue burden on interstate commerce, the Interstate Commerce Commission today has full power and authority to require the continued operation of such service.

Recent action by the Interstate Commerce Commission makes it abundantly clear that the Commission today has ample power and authority to deal with passenger train discontinuances, including the situation of a last train. On Wednesday of last week the Commission, for the second time, ordered the Western Pacific to continue to operate the California Zephyr, the last passenger

train on that railroad. At the same time, the Commission ordered the Southern Pacific Company to continue operation of the City of San Francisco, also a last train over that route. The Commission, however, stated that the two railroads were free to jointly submit a plan which would permit economies while at the same time preserving adequate daily rail passenger service between Chicago and San Francisco. Certainly, in the Commission's handling last week of these cases, involving transcontinental service and last train operations, there is no indication of a lack of authority or of any need to change the existing law.

There is another recent development that makes inadvisable and undesirable any change in existing law. Some time ago the Commission instituted an investigation under Docket No. 34733 and entitled *Adequacies—Passenger Service—Southern Pacific Company between California and Louisiana*. The particular train involved is the Sunset Limited. On April 22, 1968, Examiner Messer served his report and recommended order, about which I am sure most of you have read in the newspapers. Thereafter, pleadings were filed by the Southern Pacific Company, the Association of American Railroads, the California Public Utilities Commission, the State Corporation Commission of New Mexico, the Railway Labor Executives' Association, and the National Association of Railroad Passengers. On Monday (July 22, 1968) an order was served, assigning the matter for oral argument before the entire Commission on September 18, 1968. I would like to read from that order:

*It is ordered*, That the proceeding be, and it is hereby, assigned for oral argument before this Commission on September 18, 1968, at 10:00 a.m. Eastern Daylight Saving Time, on (1) the extent of this Commission's jurisdiction over railroad passenger service, (2) whether minimum operating and service standards for interstate passenger trains should be promulgated in the event jurisdiction thereover is found to be vested in the Commission and the type of such standards to be promulgated, and (3) the merits of the instant proceeding;

*It is further ordered*, That all passenger carriers by railroad be, and they are hereby, permitted to intervene and present oral argument on (1) and (2) above by filing, not later than August 21, 1968, verified statements for the record of their position on the aforesaid questions (1) and (2); and that parties now of record may, but are not required to, file verified statements for the record setting forth, or amplifying, their positions with respect to (1) and (2) not later than the foregoing date;

*It is further ordered*, That other interested parties may file, not later than August 5, 1968, petitions for leave to intervene for the purpose of filing, not later than August 21, 1968, verified statements for the record and participating in oral argument on (1) and (2) upon compliance with section 1.72 of this Commission's General Rules of Practice; and

*It is further ordered*, That a copy of this order be (1) served on all State regulatory commissions and on all common carriers by railroad subject to regulation under part I of the Interstate Commerce Act and on each party to this proceeding, (2) deposited in the Office of the Secretary of this Commission for public inspection, and (3) filed with the Director, Office of the Federal Register.

This is a tremendously important proceeding and, as you can see, the matters that will be argued before and decided by the Commission go to the very heart of many of the proposals contained in S. 3861 and other bills pending before this Committee. The matters before the Commission should be disposed of on the basis of existing law.

I will now address my remarks to the more substantive changes in existing law that will be brought about by S. 3861. The present law requires a 30-day notice period of the proposed discontinuance of an interstate passenger train, while S. 3861 would increase it to 60 days. This doubling of the notice period will simply mean further delay in the disposition of a discontinuance case and is entirely unwarranted. In the previous hearing before this Committee no sound reasons were submitted for the then proposed 40 days and certainly no sound reasons have now been presented for a 60-day notice period.

Another provision of S. 3861, which is identical with that of S. 1175, would authorize the Commission, pending investigation, to require continued operation of the train for a period of seven months, rather than the present four months, and would provide that the Commission may further require the train's continued operation for an additional two months. The end result of this would be simply more delay in the disposition of a train discontinuance case.

In earlier testimony before the subcommittee the then Chairman of the Interstate Commerce Commission admitted that present time requirements

are entirely adequate for the normal case handled by the Commission. However, he referred to some possible situation with which the Commission might be confronted at some future time as the justification for these particular amendments. No real justification was offered for a general extension of time, as would be provided by S. 3861. The then Chairman did say that the Commission, of course, would not necessarily take the entire extended period of time to dispose of the normal case but the general experience of the railroads has been that the time available is the time that will be used. In any event, if more time is to be granted the Commission such grant should be confined entirely to the unusual case envisioned by the Commission and the additional time should be available only upon an express finding by the Commission of necessity and a statement of its reasons therefor.

Another amendment that would be made by S. 3861 is that there would be imposed upon the carrier the burden of proof and the findings required to be made by the Commission would be changed accordingly. Here, it seems to me, we are back on the old merry-go-round. A similar provision with respect to the burden of proof was contained in S. 1175 and was the subject matter of considerable testimony. Former Commissioner Tucker, then Chairman of the Interstate Commerce Commission, testified that the matter of burden of proof had presented no real problem in the Commission's administration of Section 13a and that the carriers had offered and made available any and all factual material which the Commission deemed necessary and which lay within the possession or control of the carriers. Statements to similar effect are contained in formal reports of the Interstate Commerce Commission in train discontinuance cases. Indeed, subsequent to his testimony before the House Subcommittee on H.R. 7004, then Chairman Tucker addressed a letter to the Chairman of that Subcommittee advising that the Commission would have no objection to the deletion of the burden-of-proof and Commission-finding language in that bill. Nothing has transpired since that time that in any way presents a case for the renewal of this proposal by the Interstate Commerce Commission.

Imposition of such a burden upon the carrier would represent a radical departure from the regulatory scheme adopted by the Congress in the present provisions of Section 13a(1) of the Interstate Commerce Act. By the terms of that section, Congress confirmed the right of management to make initial decision that a particular passenger train should be discontinued. The equivalent of a veto power, however, was placed in the hands of the Commission, so that after investigation and upon proper finding, the Commission can direct management to continue to operate the train for a period of one year. After the expiration of that year the jurisdiction of the State commissions again attaches to any discontinuance of the train, subject only to preemption by again following the provisions of Section 13a(1). The present regulatory scheme enacted by the Congress has worked well and no justification exists for the radical departure from that scheme that would be made by S. 3861.

S. 3861 contains a special provision that, for two years following its enactment, would apply to the discontinuance of the last passenger train operated in either direction between certain points.

First, the jurisdiction of State regulatory commissions would be preempted for two years and the Interstate Commerce Commission would be vested with exclusive jurisdiction over the discontinuance of such trains.

Second, the Commission would be required to order the continued operation of the train for one year from the date of its order unless it found that public convenience and necessity did not require its continuance or that continuance of the train would impair the ability of the carrier to meet its common carrier responsibilities, considering the over-all financial condition of the carrier or carriers in question.

Third, the Commission could attach to its order requiring continued operation such conditions as it may presume to be just and reasonable to assure the preservation of a reasonable level of service for the train required to be continued.

The end result of these provisions with respect to last train operations would be to make it more difficult to remove such unneeded and losing train, to authorize the Commission to impose upon the carrier what might prove to be burdensome conditions and to require the Commission to order the train continued in operation for one year rather than leaving the duration of operation to the discretion of the Commission based upon the facts and circumstances of the case. We do not think that the fact that the train in question is the last train in any way justifies the imposition of these burdens of law. On the contrary, where the passenger service cannot be made to pay its own way because of lack of patron-

age at reasonable rates, discontinuance seems called for and we think that such should be the case whether or not the train that cannot be made to pay its own way because of lack of patronage at reasonable rates is or is not the last train. If the train cannot be made to pay its own way because of lack of patronage at reasonable rates there should be no sanctity in the last train situation.

S. 3861, by its amendment of Section 13a(2), would extend the present four-months provision to seven months. In other words, the State authority would be granted an additional three months before the carrier could file notice with the Interstate Commerce Commission. No case has been presented to you for this provision and it simply represents further delay in the elimination of unneeded and losing passenger train operations.

Moreover, S. 3861 would provide that, upon the filing with the Interstate Commerce Commission of a petition under Section 13a(2), the discontinuance of such passenger train would be subject to all of the provisions of Section 13a(1). We have extreme difficulty in interpreting this provision of S. 3861, since a petition filed under Section 13a(2) does not in any way lend itself to handling under the provisions of Section 13a(1). Nor is there any necessity for the provisions of Paragraph (1) to apply to such proceeding for the reason that the carrier cannot, under Section 13a(2), discontinue the involved train until the Commission has disposed of the case. However, if the purpose of this provision of S. 3861 is to place a time limitation under which the Commission must act on petitions filed under Section 13a(2), we would have no fundamental objection. I should point out that if the Interstate Commerce Commission's jurisdiction over the last train is to be exclusive, as I have stated, there would be no proceedings before that Commission with respect to such train under Section 13a(2).

S. 3861 will add a new Section 13a(3), providing that any person adversely affected or aggrieved by an order of the Commission entered after hearing pursuant to subparagraphs (1) or (2) of that Section might bring suit to obtain judicial review. Under such a provision it can be safely assumed that in every instance where a train would be discontinued under this section of the Interstate Commerce Act, and notwithstanding the unneeded and losing nature of the particular service being performed, the matter will be taken to court and it is most likely that the train will continue to operate indefinitely while the judicial processes are exhausted. Such an amendment is not designed, as is the present statute, to exert pressures upon public authorities to find solutions for the problem posed by a service allegedly needed by the public but which cannot be made to pay its way. Indeed, I have the feeling that public authorities, knowing they could through judicial processes keep the train in operation for an indefinite period of time, would be much less likely to exert themselves in an effort to find the needed solution.

S. 3861 would also provide that the notice of a proposed discontinuance by a particular carrier must be posted in every station, depot or other facility served by the train, including stations, depots or facilities on the property of other carriers which share in the operation of said train. While we appreciate the purpose of this provision in attempting to give more widespread notice of the proposed discontinuance, it does raise serious problems and difficulties. The noticing carrier has no control over the property of another carrier even though the latter carrier does share in the operation of the train. If such posting requirement is to be seriously considered it should not be an absolute requirement insofar as the noticing carrier is concerned and terms qualifying this posting requirement should be included.

S. 3861 would make two further amendments to Section 13a. The first would amend the section so as to cover a train operating to or from a point in a foreign country. Assuming that the jurisdiction of the Interstate Commerce Commission would apply only to that portion of the operation of the train conducted within this country, there would appear no particular objection to applying present provisions of law to such a situation.

The other and last mentioned amendment would provide that if a carrier, during the notice period, discontinued the train the Commission would retain jurisdiction to enter upon an investigation and to require the immediate restoration or the continuance of operation until expiration of the notice period. We believe the Commission has today, under the existing law, the authority that would be provided by this amendment and we deem the amendment wholly unnecessary. The present law provides that, upon the filing of a notice and during the notice period, the Commission shall have jurisdiction to enter upon an investigation and, having done so, to require the continued operation of the train for a period of four months. It is the duration of the notice period that

governs the jurisdiction of the Commission and not the existence of the train operation.

Summarizing with respect to S. 3861, we submit that no substantial case has been made to your committee justifying the amendments such bill would make to the present law. The end result of the bill would be to make it more difficult and costly to eliminate unneeded and losing passenger train service and to certainly prolong for an indefinite period of time the continuation of such service. In the meantime, the financial burden upon the railroads would continue and, in all likelihood, will mount. The railroad industry is strongly opposed to section (1) of S. 3861 and, for the reasons I have stated, we urge this committee to take no action on those proposals.

Section (2) of S. 3861 would authorize and direct the Secretary of Transportation, acting in cooperation with the Interstate Commerce Commission and other interested Federal agencies and departments, to undertake and submit, within 1 year after the date of enactment of the bill, a study of the existing and future potential for intercity railroad passenger service in the United States to the Committee on Commerce of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives. The bill enumerates six particular matters that the Secretary shall consider, among other things, in making such study. We have no particular objection to such a study and note that it would include all passenger transportation needs by all modes of passenger transportation. We think that those conducting the study should not be limited to Federal agencies and departments but should include all modes engaging in the intercity transportation of passengers. If such study should be undertaken it would be our intent and purpose to fully cooperate. However, I must emphasize, as did Mr. Goodfellow, that the proposal of such a study or even the conducting of such a study should not be made the occasion or the vehicle for restrictive or burdensome statutory provisions that would make it more difficult or costly to eliminate unneeded and losing passenger train services.

Mr. MOLONEY. As you recall, Senator, I appeared before your subcommittee in May and July and August of last year when your committee was holding hearings on a number of bills to amend section 13a of the Interstate Commerce Act. At that time I expressed our industry's opposition to those bills and stated the reasons for our opposition. I sincerely ask that the members of this committee keep that testimony in mind in considering the bill that you have before you today, S. 3861.

I also think it is very important that the committee not lose sight of the situation as it existed in 1958 when section 13a was placed on the statute books by the Congress.

Now, at that time, that is in 1958, this very committee and the Congress were both greatly disturbed over the economic position of the railroad industry. When you look at that economic position in 1958 and then look at the economic position of the railroad industry today, there appears to be no reason on earth to change or drastically modify the statute that Congress passed in 1958.

In 1958 the net railway operating income of class I railroads was \$762 million. In 1967 that net railway operating income had dropped to \$677 million or a decrease of 11 percent, 1967 as against 1958.

In 1958 the net income of the class I railroads was \$601 million and in 1967 it had dropped to \$554 million, or a decrease of 8 percent.

In 1958 the railroad industry's rate of return on average net property investment was 2.76 percent and in 1967 that rate of return fell to 2.45.

In 1958 the net working capital of class I railroads was \$806 million. In 1967 it had fallen to \$276 million, which latter amount represents only enough money to meet cash requirements for operating expenses and taxes for 11 days.

Senator LAUSCHE. Will you pause at that point?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. What do you ascribe as the cause of this situation where class I railroads in 1958 had net working capital of \$806,537,000, and now in 1967 that figure had fallen to \$276,143,000?

Mr. MOLONEY. To a large extent that decrease is represented by the pressures of capital needs. So far as the industry is concerned and to the extent that the industry has found it necessary to do so they have in effect reduced the working capital in order to add to the amount of capital investments that they were making.

Senator LAUSCHE. What do the new capital investments consist of mainly?

Mr. MOLONEY. Oh, practically everything that covers the whole scope of railroading, yards, signaling, communication, computer operations, rolling stock, locomotives—in other words, this capital demand exists and the carriers tried to fill it and it covers the entire spectrum of the railroad.

I think in my previous testimony you will find that I explained the capital expenditures year by year that the railroads have made and revealed the source of the moneys which the railroads had spent on those capital programs. I did not include that in the testimony here. I didn't want to be too repetitious.

We have appeared rather frequently on this subject and for that reason I urge the committee to review the testimony that I gave at the previous hearings.

Senator PEARSON. May I interrupt, also, Mr. Chairman?

Senator LAUSCHE. Yes.

Senator PEARSON. I was shocked the other day coming from the Midwest and hearing constantly about boxcar shortages, to see the great decrease in the amount of orders in a relatively short period of time, when the condition itself is becoming more aggravated, none of that capital investment apparently went into boxcar orders. Did it, or do you know?

Mr. MOLONEY. Yes, some of it did, Senator. As to the exact amount I cannot tell you at the present time. The boxcar situation is a somewhat unusual one in this respect. That our railroad freight car fleet has been, for the last few years and as we see it in the future will continue to be, going through a transition period; that is, where new types of equipment have come along that are replacing the old standard 40-foot, narrow-door boxcar.

Senator PEARSON. I am aware of that. On the Santa Fe they have made tremendous new orders in the last 2 years. I remember a notice of a great order from Santa Fe just at the time we were meeting with the ICC one day, but the problem is still the eastern roads and the

western roads and the per diem rates. But we won't get into that. I just once again want to express some concern and do so publicly about that chart that was presented the other day which came as quite a surprise to me and great disappointment to me, I might say.

Mr. MOLONEY. I think the dropoff in the backlog of freight car orders is a disappointment to everyone, the car builders and the railroad industry itself, but the fact remains that when you have the rate of return and earnings that an industry like ours has you just can stretch it so far and that's about all.

Senator PEARSON. That is right.

Mr. MOLONEY. I think it is significant, for instance, that on this economic condition of the railroad industry—and I was reviewing just before you came in—the 1958 situation, which disturbed Congress and the committee and which led to section 13a, and comparing that with the situation we have today. If anything, the situation today is worse than it was in 1958 and there is really no room for serious consideration of any legislation that would make it more difficult, more costly, if indeed not impossible to eliminate the unneeded and losing passenger train service.

In my statement, I set out the passenger service deficit and pointed again to the fact that in 1957, the year before Congress passed the Transportation Act of 1958, that passenger service deficit was \$723 million and consumed 44 percent of the net railway operating income from freight service.

In 1967, last year, the passenger deficit was \$485 million and consumed 42 percent of the net railway operating income from freight service. I also point out that the passenger train service deficit since 1946, post-World War II period, has totaled the staggering sum of \$11.5 billion.

During the last 9 years; that is, since section 13a was placed on the books, the passenger train service deficit has totaled \$3.9 billion and has consumed 36 percent of the net railway operating income from freight service.

Since 1962 the passenger service deficit has increased sharply. It is continuing on the rise and we estimate that on the present level, today's present level of passenger train service, that the deficit for 1968 will again approach or exceed \$600 million.

Not being an alarmist—not wanting to be, I did feel that it was essential that this committee keep in mind the economic situation, past and present, because as I said we feel that the present economic situation and the deficit that we are incurring is such that would lead the committee to conclude that as much reason exists today for the preservation of section 13a as existed in 1958 for the enactment of section 13a.

I think, Mr. Chairman, you asked Mr. Goodfellow when he was on the stand, what the railroads had done since World War II to improve and try to make a go of passenger service. In my previous testimony before this committee, I pointed out that through the years 1946 to and including 1965, while the passenger business was rapidly declining and the passenger train service deficit totaled in excess of \$10 billion, the class I railroads and the Pullman Co. made capital expenditures for additions and betterments to the passenger train car fleet totaling \$1,800 million for the period of time 1946 through 1965. And I stated that we considered that a rather large expenditure for the

betterment and improvement of equipment operating in a losing service.

I also called attention to the fact that from 1958, the date of enactment of section 13a, through 1965 the class I railroads and the Pullman Co. had during that period of time spent over \$200 million to improve and modernize passenger train equipment.

I also pointed to the report of the New York Public Service Commission in January 1959, where that commission in an investigation and in its report on that investigation described the actions of the New York Central Railroad and its efforts to keep passenger service going and to improve it. I would like to quote from that again, and quoting:

In our state the practices of the New York Central are illustrated. Immediately following World War II the Central concluded exhaustive studies of the desires of the traveling public in the way of service and equipment. Prompted thereby, it invested \$168 million in new passenger service equipment, revised its schedules and added more passenger trains. Nevertheless, passenger traffic fell off heavily and costs mounted. New equipment purchases and services were then curtailed to minimize losses. In 1955, the Central changed tactics and launched itself upon an extensive promotional advertising endeavor and simultaneously effected service improvements seeking to solicit greater patronage thereby. The resulting retardation of the decline of passenger service revenue in 1956, the first since 1952, was accomplished at the expense of a further increase in operating cost of some \$9 million and the deficit continued to mount. The Central then reverted to its former policy of reducing service as in its conception the only effective means of minimizing losses.

Senator LAUSCHE. What agency published that statement?

Mr. MALONEY. The New York Public Service Commission, the regulatory authority of the State of New York, and it was an investigation into the financial condition of the railroads operating in the State of New York.

Senator LAUSCHE. When was that published?

Mr. MALONEY. It was in 1959, January 26, 1959. I wanted to call it to your attention again because here a regulatory authority points to the New York Central and everything it did in expenditures in that period of time of \$168 million and putting on new service, more trains, and so on, and the end result was a constant decline and a constant increase in the deficit.

Senator LAUSCHE. Was Robert Young connected with the New York Central at that time?

Mr. MALONEY. Now, that I cannot recall. I want to place Young's connection and his activities at an earlier date than that, but I could be wrong.

There are two rather significant recent developments in this area that we think the committee should also keep in mind in considering the bill that you have before you and any other train off legislation. These two recent developments, in our opinion, make it inadvisable and undesirable that there be any change in existing law—additional reasons, I should say, why it is inadvisable and undesirable to change the law.

Some time ago the Commission instituted an investigation under docket No. 34733, entitled "Adequacies—Passenger Service—Southern Pacific Company between California and Louisiana." The particular train was the Sunset Limited. Now, this was an investigation by the Commission.

On April 22, 1968, Examiner Messer served his report and recommended order, and I am reasonably sure that each of you read in the newspaper about that report and the recommended order. It created quite a stir.

After the service of the report and recommended order, pleadings were filed in that case by the Southern Pacific Co., the Association of American Railroads, the California Public Utilities Commission, the State Corporation Commission of New Mexico; the Railway Labor Executives' Association, and the National Association of Railroad Passengers. On Monday, July 22, 1968, last Monday, an order was served assigning the matter for oral argument before the entire Commission on September 18, 1968. I would like to quote from that order because I think it is very significant that you take a look at the matters that the Commission is going to have oral argument on and is going to make a decision on.

The matters are these: (1) the extent of this Commission's jurisdiction over railroad passenger service; (2) whether minimum operating and service standards for interstate passenger trains should be promulgated in the event jurisdiction thereover is found to be vested in the Commission and the type of such standards to be promulgated; and (3) the merits of the instant proceeding.

I have quoted these from the order.

The order further goes on and provides that all passenger carriers by railroad be, and they are permitted by the order to intervene and present oral argument to the Commission on the first two matters mentioned.

The order further provides that other interested parties may file verified statements and appear and argue orally before the Commission, and a copy of the order was served on all State regulatory commissions and on all common carriers by railroad and on each party to the proceeding and full public notice has been given.

Now, this, as you can see, is a tremendously important proceeding and the matters that will be argued before and decided by the Commission go to the very heart of many of the proposals that are contained in S. 3861 and in other train off bills pending before this Commission. We feel that the matters pending before the Commission in that proceeding; the question of the jurisdiction of the Commission, whether if the Commission has jurisdiction it should promulgate minimum standards—things of that nature, we feel that proceeding should be allowed to take its normal course under existing law and without the intervention of new legislation.

The second thing that we think rather important and that should be considered is that on Wednesday of week before last the Interstate Commerce Commission for the second time ordered the Western Pacific to continue to operate the California Zephyr, and, at the same time in a joint proceeding, the Commission ordered the Southern Pacific Co. to continue to operate the City of San Francisco over the overland route.

Now, we think the action of the Commission in those cases is quite significant for this reason. You have a bill before you and you have heard witnesses make much about the fact that a train is a "last train," as though the fact that it is the "last train" creates a horrible problem. But I would call your attention to the fact that both of the trains that I have named are not only transcontinental trains but they are "last trains."

The California Zephyr is the last passenger train on the Western Pacific Railroad and the City of San Francisco is the last transcontinental train operated by the Southern Pacific over the overland route. The Commission had no difficulty, whatsoever, in handling not only the transcontinental trains but these "last trains." The Commission ordered the continued operation of the trains and stated that the railroads could come to the Commission jointly and propose a method of operation that would permit the railroads to effect economies and at the same time would preserve adequate daily rail passenger service from Chicago to San Francisco.

So here, if you please, you have the very thing that all this big to-do is being made about, a "last train." You have two famous name trains, transcontinental trains, handled under proceedings with no difficulty whatsoever.

Senator LAUSCHE. Are there situations where, when the last train is eliminated, the railroad bed and the facilities along the line are abandoned and not further used.

Mr. MOLONEY. Not because of the removal of a passenger train; no, sir. The only time a line may be abandoned is when the entire operation of that railroad, freight and passenger and so on are being abandoned. But to answer your question, I know of no instance where the removal or discontinuance of passenger service has resulted in the taking up of the track, for instance.

On the contrary, removal of passenger train service on branch lines has in many instances been a lifesaver for the branch line because it enabled the branch line of the railroad to effect savings and to make the operation of that branch line either profitable or to cut the losses on it substantially.

Senator LAUSCHE. The argument is being made that if you allow the elimination of the "last train" you will eliminate the ability of the line on which that "last train" is traveling to later take advantage of new equipment that might attract passenger service.

Mr. MOLONEY. I think Mr. Goodfellow answered that when he said that, assuming passenger service were discontinued and that at a future date a need for some yet uninvented type of passenger service and passenger equipment should be established or should come about, it would be the simplest problem on earth to solve because the railroad roadbed and track structure and so on will be there as long as there is a railroad. You can, in your own mind, ask the question whether the elimination of passenger service, for instance, complete elimination between here and New York, would mean there would be no railroad between here and New York. Well, the answer is, certainly it does not. There would be a railroad. There would have to be a railroad. Freight is going to continue to move. The track structure will be there and if we ever reach the point where a great need for intercity railroad passenger service is established, I think we can all safely assume that it will not be with the kind of equipment that we are operating today.

This equipment question, for instance, gets very important. The California Zephyr that I just mentioned, the equipment is good but it's old. It is expensive to maintain. They feel that it is going to have to be replaced if they are going to be made to stay in the passenger service business. It will take about five trains, but I would say \$16 or \$20

million of new equipment to operate the California Zephyr, and that figure is probably conservative.

The minute they make that capital investment and start depreciating that and charging that depreciation, which it will have to, to the operations of that train, you are going to see the deficit on that train rise and rise considerably, because right now the equipment is largely depreciated for writeoff purposes.

Senator LAUSCHE. What are the differences in the law permitting the discontinuance of a passenger train from the law that is applicable in completely shutting down a branch line, shutting it down on both passenger and freight service? Is there any service?

Mr. MOLONEY. Yes, sir; a line abandonment proceeding. That is, where you are getting completely out of the railroad business in that area, is handled under section I, paragraphs 18 to 21 of the Interstate Commerce Act. You file a petition with the Interstate Commerce Commission for authority to abandon your entire operation, to withdraw completely from the public service and the Commission, if it finds the public convenience and necessity permits you to do that, issues a certificate or order permitting that to be done, to which it can attach conditions, principally for the protection of labor, that is, job protection.

Senator LAUSCHE. Does the grant of authority to discontinue passenger service ipso facto give authority to discontinue the line?

Mr. MOLONEY. No, sir.

Senator LAUSCHE. If there is a discontinuance of passenger service granted, would the railroad, if it wanted to abandon the line, have to file a separate application and pursue a separate proceeding?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. Is there any question about that?

Mr. MOLONEY. No, sir; at least not in my opinion. In other words, if you want to abandon your railroad you have to go under section I, paragraphs 18 to 21.

Senator LAUSCHE. Proceed.

Mr. MOLONEY. I had given the economic situation of the railroad industry and I had carried it through 1967, which was the last year that we have complete figures for, but I thought it quite significant that on July 22, 1968, in the Journal of Commerce, the Interstate Commerce Commission released some figures for the year 1968, that is, for the first quarter. They pointed out that net railroad operating income for the first quarter of 1968 rose to \$147 million-odd from \$145 million-odd. However, they say at the same time net income dropped to \$109 million from \$121 million, and the Interstate Commerce Commission said that the 1968 ratio of income to fixed charges for the class I railroads was 1.98 as against 2.15 for the year earlier.

I simply point to that as indicating or showing that the same picture that I painted for 1967 is certainly not going to be any better and indeed probably worse in 1968.

I also found quite interesting, while I think it is probably an intra-state train rather than an interstate train, that in answer to some of the criticism about what railroads have done and how they have not tried to encourage passengers—I think I have answered that by showing you that we spent \$1,800 million since World War II to try to keep it going.

Here in the Times Democrat, Davenport, Iowa, "Plush Travel on the

Mini-Golden," an article in the paper of Sunday, July 7, 1968, this reporter refers to the train.

As we boarded this unique train at Rock Island at 6:30 a.m. we would arrive in Chicago, LaSalle Street station at 10 a.m. After a leisurely day in the windy city, we would hop aboard again at 5:35 p.m., arriving back at the Rock Island depot at 9 p.m. Our special round trip fare covered the cost of tickets and reservations in a very deluxe lounge car plus a reserved table in the Fiesta Car, the diner created by the late Mexican artist-craftsman, Jesus Torres. The Fiesta Car is bright and cheerful with red and gold striped canopy running the length of the car. The floors carry out the same motif. The padded chairs are the same color. The windows are large and they afford a great view of the passing countryside. The white jacketed service is quick and excellent.

It goes on:

The same tickets also provide for breakfast on the outbound trip. They will also serve some snacks in the lounge car and added service. There is a fully equipped bar, too, in the dining car.

I finally reach the point of this. The same reporter says, as an example, "Though the train has a capacity of 144 passengers, the average daily load is only 45." I simply point to this as again an illustration of the fact that there is no substance, whatsoever, to the idea that if you soup up railroad passenger train service you are going to have passengers running out of your ears. That just is not so. In my previous testimony I pointed to the Broadway Limited and the advertising program that it had put on. They had gotten the finest equipment they could get. They improved the service. They had done everything to make the Broadway pay and tried to keep it going.

Since that testimony, as I am sure you know, the Broadway has pretty well gone down the drain and as a matter of fact is not even operating today as a separate train. It operates in combination with I think what is left of the General

During the airline strike, however, when five, I believe, of the major airlines were down, the Broadway carried quite a few passengers, but the minute the strike was settled the same old picture again.

Senator LAUSCHE. When did the reduction of service begin on the Broadway Limited?

Mr. MOLONEY. When did the reduction of service begin?

Senator LAUSCHE. Yes. When you last testified you described what was done to try and attract passengers.

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. You testified when?

Mr. MOLONEY. This was in May, July, and August of 1967. I cannot remember the exact time—my exact appearance at which I told the story of the Broadway. I probably told it at every opportunity.

Senator LAUSCHE. Has the service since that time been reduced?

Mr. MOLONEY. Yes, sir. In other words, all of the effort that they made, Senator, did nothing to improve the situation of the Broadway. The load factor continued to decline and expenses continued to mount.

Senator LAUSCHE. What about the Sunset Limited, which you mentioned?

Mr. MOLONEY. I am not familiar with the Sunset Limited operation.

There is one other thing that I wanted to call to the committee's attention. Some mention was made, I think last week at the hearings, of the Santa Fe and the fine service that the Santa Fe offers and the fact that they do advertise and they do try to get passengers. I am

advised by the management of the Santa Fe that over the past several years their advertising budget directed exclusively to the passenger market has held steady at approximately \$1 million a year advertising, exclusively addressed to the passenger market. Those ads featured the service, fine food, scenery, the cities that the train passed through. They emphasize the use of deferred payment, credit cards, family plans, off-season fares; and yet with all of that, in the year 1967, their passenger traffic on all trains declined 17.3 percent and in the first quarter of 1968 showed an overall decline of an additional 25 percent and losses on the trains have increased tremendously. They operate excellent service between Chicago and Los Angeles, the El Capitan and Super Chief, and they find, however, that their transcontinental trains are running at about 50 percent capacity.

Senator LAUSCHE. Is there any yardstick by which you determine what the percentage of capacity ought to be if you were to break even?

Mr. MOLONEY. No, sir. It would be hard to do that. It would depend on the individual train.

Senator LAUSCHE. I see.

Mr. MOLONEY. Each train would have its own cost characteristics and I don't think you could use a general yardstick.

I think it's probably in order now that I address my remarks to the bill and some of the provisions of the bill.

S. 3861 would make very substantive changes in the existing law and, while some people referred to them as procedural matters, when we get into the length of time that would be created by the bill in a train-off case and the losses that that train may be incurring, we, for one, do not refer to them as simply procedural or technical amendments.

On the contrary, we consider them to be very significant and very substantive amendments.

The first one that would be made would be to change the present 30-day notice period.

Senator LAUSCHE. Where is that in the bill; what page?

Mr. MOLONEY. Page 2, line 10, "Notice at least 60 days in advance of any such proposed discontinuance or change."

The present law is a 30-day notice period, and we think it has been satisfactory both from the public standpoint and from the railroad standpoint. The addition of 30 days is simply more delay in the disposition of a train off case.

In the previous hearings before this committee, we did not feel that the Commission presented, or even attempted to document, a case for the longer notice period.

Senator PEARSON. Let me ask you this, if you know. May I, Mr. Chairman?

Senator LAUSCHE. Surely.

Senator PEARSON. At the time section 13a became law, how many train discontinuance cases did we have then as compared with now?

Mr. MOLONEY. Well, before 13a was placed on the books, you had no train discontinuance cases before the Interstate Commerce Commission. The Interstate Commerce Commission did not have any jurisdiction.

Senator PEARSON. I see.

Mr. MOLONEY. It was handled entirely by the State authorities, and section 13a(2) is the section that today provides that where a rail-

road has filed with a State commission and the State commission has either denied the application or has failed to act on it in 4 months, 120 days, then that railroad can file a petition with the Interstate Commerce Commission and in substance get a combination of an appellate review and a trial de novo.

There is no time limit, Senator, on how long it takes the Commission to dispose of that, and in my previous testimony I pointed out that in some instances it has taken 2 years to dispose of a petition under section 13a(2).

Senator PEARSON. My point is obvious. It is just that I had the notion that at the time the prior time periods were instituted that they did not have the volume of business that they have now.

Mr. MOLONEY. I am not sure I understand.

Senator PEARSON. That they did not have the number of train discontinuance cases to handle that they have to handle now.

Mr. MOLONEY. I think, of course, before the statute was put on the books they did not have any, as I pointed out. Then after section 13a was put on the books, of course, the Interstate Commerce Commission, if it had one case had more than it had prior to the statute.

Senator PEARSON. Do you know when section 13a was put on the books?

Mr. MOLONEY. 1958.

Senator PEARSON. I wonder if staff has or whether you have information as to the number of cases filed annually?

Mr. MOLONEY. I do not have that readily available.

Senator PEARSON. I am just trying to develop the volume of business that has come in and see whether or not they are reasonable in wanting a longer period of time because of a greater volume of business.

Mr. MOLONEY. We would have this reaction to that, that if that is the case, one way to solve it would be to give the Interstate Commerce Commission a budget that would permit them to handle their workload, but I for one take a rather dim view of in substance saying that "because you don't have enough people to handle your cases the railroad must continue to operate losing service for a long period of time."

Senator PEARSON. It is in the record.

Senator LAUSCHE. The staff will procure statistics showing what the volume of work has been down through the 10 years that 13a has been in force.

(The information supplied by the Interstate Commerce Commission is as follows:)

DISCONTINUANCE PROCEEDINGS SECTION 13a FISCAL YEAR 1959-JUNE 30, 1968

TABLE 1.—SECTION 13a(1) (INTERSTATE)

	Fiscal year—										Total
	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	
Notices filed.....	28	21	14	16	13	21	24	31	33	73	274
Trains discontinued.....	24	89	20	50	14	89	47	96	53	117	599
Trains required to continue in service.....	14	11	6	26	9	13	11	250	18	39	397
Dismissed or withdrawn.....	5	2	8	0	8	8	10	107	86	12	246

TABLE 2.—SECTION 13a(2) (INTRASTATE)

	Fiscal year—										Total
	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	
Notices filed.....	12	8	4	3	1	6	7	3	2	6	52
Trains discontinued.....	0	4	29	11	2	2	233	39	6	2	328
Trains required to continue in service.....	0	8	2	21	2	1	2	2	0	0	38
Dismissed or withdrawn.....	0	16	10	37	3	0	2	6	7	2	83

Mr. MOLONEY. Another provision of S. 3861, which provision is identical with S. 1175, is that pending investigation the Commission could require the continued operation of the trains for 7 months rather than the present 4 months and then in addition could add another 2 months for procedural purposes such as petitions for the reconsideration and so on. So the bill actually proposes that the notice period be extended for 30 days more and that the 4 months period be made 7 months and then that there be an additional 2 months.

True, I think the chairman of the Commission has said "it would not be our intention to take that entire period of time in the normal case," but our experience with regulatory agencies generally, and I think it is no different than the experience that everyone else has had, is that the time that is available the time will be taken.

You heard the chairman of the Commission say that the railroads have been very cooperative with the Commission, and if the Commission found that they were not going to complete their investigation within 4 months that they on occasions, if they thought it necessary, would ask the railroad to continue to operate the train and that the railroads generally had agreed to do so.

Now, we think the same thing will happen here. They will say, "We haven't finished our investigation and would you please operate the train a little bit longer?" But it will happen after 9 months instead of 4 months. So at the end of 9 months we will probably be asked to continue to operate the trains for another couple of months. Then when you couple that with the provision of the bill that would provide for court review in every instance, we can envision that we would be made to operate losing passenger train service for an almost indefinite period of time.

Consequently, we are opposed to the provisions of the bill that would grant this additional time.

In fact, if you recall my previous testimony before this committee on other train off legislation, the then chairman of the Interstate Commerce Commission very frankly admitted that the present time requirements are entirely adequate for the normal case. We think that it is the normal case that should really govern the legislation and not the unusual case.

While he did say they would not take the time, necessarily all of the time they do have, the very distinct feeling is that the time will be taken. And I point to section 13a(2) as illustrative of that because there is no time limit on the Commission and as I have told you they have taken as long as 2 years to dispose of a case.

Another amendment that would be made by S. 3861 is one that I think, Senator Lausche, you and I had quite a discussion about on more than one occasion in hearings before your subcommittee. This

is the provision that would place upon the carrier the burden of proof. It seems to me we are now back on the same old merry-go-round again, because here is the proposal again that the burden of proof be placed on the carrier.

Now, in his testimony before your subcommittee on previous occasions, while they were proposing that the burden of proof be placed on the carrier, the former chairman of the Interstate Commerce Commission, Commissioner Tucker, stated that the burden of proof presented no real problem in the Commission's administration of section 13a and that the carriers had offered and made available any and all factual material which the Commission deemed necessary and which lay within the possession and control of the carriers. Indeed subsequent to then Chairman Tucker's testimony before the House subcommittee on H.R. 7004, which was identical with S. 1175 as introduced in the Senate, Chairman Tucker addressed a letter to the chairman of the House subcommittee advising that the Commission would have no objection to the deletion of the burden of proof provision of H.R. 7004 and deletion of the Commission finding language that accompanied the burden of proof provision. We don't know of anything that has transpired since Chairman Tucker's testimony before the House committee on H.R. 7004 and his letter to the chairman of that committee—we know of nothing that has transpired that would lead to any different conclusion or show any greater need for this burden of proof provision.

I think I pointed out to you how it drastically changed the regulatory concept of the present law.

Senator LAUSCHE. Repeat that for the record, please.

Mr. MOLONEY. Yes, sir; under section 13a(1), Congress told the railroads that they could make the initial decision as to whether a particular passenger train should or should not be discontinued. That they could make that decision and they could discontinue the train provided they followed certain procedure; that is, the filing of a notice, a 30-day notice, with the Interstate Commerce Commission, and if they file that notice that then they could discontinue the train. That is the Congress gave the railroads that authority. But at the same time, Congress turned to the Commission and said, "Now, having given the railroads that authority, we are now going to give you the veto power over that decision of management; and consequently if you find that public convenience and necessity require the continued operation of that train and that its continued operation will not be an undue burden on the interstate commerce, then you, Mr. Commissioner, can veto the action of the railroad and direct the continued operation of the train." That's the way the statute works today.

Now, if you switch the burden of proof over to the railroads, then in substance the railroads will be petitioning the Interstate Commerce Commission for authority to discontinue the train; whereas, Congress has told them in the present statute, "You may discontinue," and told the Commission, "You may veto it." We would turn it around by the burden of proof provision and we would have to go to the Commission then and ask for authority and get a certificate and that opens up automatically then the question of conditions and that leads then to the question of job protection and any other condi-

tions that might be attached. This is one of the reasons we oppose this amendment.

This bill, for instance, does permit the attaching of conditions in a "last train" situation. This is one of the reasons that we have strenuously opposed the burden of proof route, fully recognizing, however, that we in effect have that burden and that we have to put our best foot forward and we have to show and we do show the Interstate Commerce Commission anything and everything that we know about that train.

But technically, the burden of proof would create difficulties, would create problems, and would change the regulatory concept that now exists. When the Commission says that the burden of proof has created no real problem in their administration of the act, then we certainly think there has been no case presented for a change with respect to the burden of proof.

Senator LAUSCHE. Are you able to put your finger on the principles which underlay the law as it now reads, allowing a discontinuance upon the filing of the notice unless there was a veto by the Commission? Was it that in writing the law as it now reads consideration was given to the fact that the stockholders and the railroads were the owners of this operation and being the owners they ought to be permitted to discontinue if they so desired except when there was a veto exercised by the Commission? If that is not the theory underlying it, what was the theory?

Mr. MOLONEY. Senator, I don't think you find the theory underlying it spelled out in the legislative history. I think you find the theory in the scheme of things in what Congress enacted, just as I have described. The economic condition of the railroad industry at that time, which as I have pointed out is worse today, the fact that unneeded and losing passenger train service was being operated, and that it in substance is much more difficult for me to prove that you don't need something than it is for you to prove that you do need it; on those theories I think the statute is based.

Senator PEARSON. Didn't I understand the ICC to testify that in their notion the railroads now had the burden of proof in these cases?

Mr. MOLONEY. For all practical purposes that is absolutely true.

Senator PEARSON. And did you not just state that?

Mr. MOLONEY. This is why it has presented no problem in the administration of the statute. The fact that the statute does not say that the carrier has the burden of proof has created no administrative problem at all because in the cases dealt with the carrier does, in effect, have the burden of proof. That is the practical effect of it.

But what I am arguing is the legal effect, which is quite different, of changing the statutory scheme of things.

Senator PEARSON. Let me start again. I understand ICC testified that as a practical matter the burden of proof was upon the railroad, and I thought I understood you to say in the use of the words of "always putting the best foot forward" that you more or less accepted the burden of proof as a practical matter. Is that accurate?

Mr. MOLONEY. We say this, that legally and under the statute, there is no burden of proof on the railroads, but having said that—in a train-off case. Having said that, then from the practical standpoint, the railroad must go ahead and carry that burden anyway.

Senator PEARSON. Well, the point I make again is obvious. If the ICC, as a practical matter, says the burden of proof is on the railroad and you in a manner concur—I do not want to put words in your mouth—as to the realities of the situation, I am constrained to wonder why after as a practical matter this is accepted, there would be any great objection to putting it in the law. You say there are great problems that could arise?

Mr. MOLONEY. Yes, sir, because you are changing the entire concept of things.

Senator PEARSON. It has already been changed as a matter of practicality.

Mr. MOLONEY. No, sir. If you are going to put the burden of proof on someone by statute then someone in substance has to say, "Well, you have met it and here is your authority."

As I pointed out to you, a train today does not come off under authority of the Interstate Commerce. A train today comes off under authority of the Congress. And we think that is the way it ought to be. This is what you are going to change.

Senator PEARSON. I don't treat burden of proof lightly. I have tried a lot of lawsuits and been hung on that a lot of times.

Mr. MOLONEY. You appreciate the difference between going forward with the evidence and having the burden of proof. We go forward with the evidence and as the Chairman of the Commission told you members of the committee, we give them everything and they have no difficulty in that respect, but you will be changing completely the regulatory scheme of things if you adopt this amendment, because as I told you, today it comes off under authority of the Congress subject to the veto of the Commission.

Senator PEARSON. That may be particularly true if you couple it up with the judicial review.

Mr. MOLONEY. Yes, sir, and we are opposed to the judicial review.

Senator PEARSON. I understand that.

Mr. MOLONEY. We in substance point out if you put judicial review on the present statute you in effect are telling the court to review the action of Congress, and this is not the constitutionality of the statute which you in effect are telling the court that they can review, but the takeoff of a train where that train came off under the authority of Congress.

Senator PEARSON. And in doing so they can treat as one issue whether or not a railroad or the ICC under your concept has sustained their burden of proof, is that right?

Mr. MOLONEY. Yes, sir. I would say that they would in that instance attempt to review the docket before the Commission and determine, for instance, whether there was substantial evidence to support the action or inaction of the Commission.

S. 3861 contains a special provision that for 2 years following its enactment the jurisdiction of State regulatory commissions would be preempted insofar as a "last train" was concerned and that the Interstate Commerce Commission would have jurisdiction over the discontinuance of a "last train."

Further, that the Commission would be required to order the continued operation of the "last train" for 1 year from the date of its order unless it found that public convenience and necessity did not require its continued operation, or that the continued operation of the

train would impair the ability of the carrier to meet its common carrier responsibilities, considering the overall financial condition of the carrier or carriers in question.

And then third, the Commission could attach to its order requiring the continued operation of the "last train" such conditions as the Commissioner deemed necessary or desirable to assure the preservation of a reasonable level of service that the train would be required to continue.

Now, all of this is a big to-do about the "last train" situation. And I would like to repeat what I said earlier that we have just, within the last week, had not only two famous transcontinental trains but two famous "last transcontinental trains" handled by the Commission, and in no way—that created any problem that we are aware of as far as the Commission is concerned. In substance the end result of what the Commission did is that those trains are under order to operate for a year and the Commission has said, however, "if you can figure out a way to set up some kind of a joint operation or alternate day operation or something of this kind, that will permit you to effect economies and at the same time preserve adequate daily passenger train service from Chicago to San Francisco, then you are free to come to us with such a proposal." I think it is a very clear illustration of the fact that there is no sanctity in a "last train" situation and there really is no need for any special legislation to deal with a "last train."

If it is a last losing train, a last unpatronized train, it shouldn't be any different than the first losing and first unpatronized train.

Senator LAUSCHE. May we just pause here?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. You thus far have said that the extension of the 30-day notice to a 60-day notice, and the extension of the 4-month period granted to the Commission to a 7-month period in making a determination, and the additional requirement of the Commission to exercise another 2 months before it acts, is not sound and just. You also state that technically and legally the burden of proof should not be put on the railroads. Now, then, you come down to the provision that although the Commission finds that a discontinuance should be allowed, if the train involved is the last one it shall order a continuance of the train for a period of 1 year, is that correct?

Mr. MOLONEY. No, sir. You have said that if the Commission finds that the discontinuance should be allowed. If the Commission finds that the last train will come off.

Senator LAUSCHE. Yes; all right.

Mr. MOLONEY. But if the Commission finds that it must continue to operate, then they must order it to operate for a year. The present law says that where the Commission finds the public convenience and necessity require the continued operation of the train and they exercise their veto power over management's decision, in that instance, under the present law, the Commission can require the continued operation of the train for a period not to exceed 1 year, and generally they have required it for a year, but they have authority to require it for 6 months.

This would make mandatory 1 year operation on a "last train" where the Commission has not found that public convenience and necessity permitted its discontinuance.

Senator LAUSCHE. Well, provided, however, that for 2 years following the enactment of this proviso for any trains or ferry proposed to be discontinued which represents the last remaining passenger train or ferry operated in either direction by the carrier or carriers proposing such discontinuance between a point in one State and to a point in another State, the District of Columbia, or a foreign country, or from a point in the District of Columbia to a point in any State or foreign country, the Commission shall require the continuance of the operation or service in question for 1 year from the date of its order; unless it finds: (1) that the public convenience and necessity do not require its continuance, or (2) that it finds that continuance of the service or operation in question will impair the ability of carrier or carriers proposing such changes or discontinuance to meet its common carrier responsibilities. If it finds that the public convenience and necessity does not require the continuance of the last train, or if it finds that a continuance of the service will generally impair the ability of the railroad to meet its general responsibilities, does the Commission have the authority to allow the discontinuance of the last train?

Mr. MOLONEY. Yes, sir. They have got the authority just as I have pointed out. Actually, what I am really trying to argue here is that throughout the history of the administration of section 13a there has been nothing peculiar about a last train that requires any special provisions of law and that as recently as last week the Commission handled—and I must say, not entirely to the satisfaction of the railroads, because they told us to continue to operate the trains and they are going to have to operate them—but they handled the “last train” situation involving two name transcontinental trains.

Senator LAUSCHE. The argument is being made, and it has been so testified, that the “last train” should be put into a different category because the damaging impact of discontinuing the “last train” is different than the damage to the public and otherwise through the discontinuance of trains other than the last train.

Mr. MOLONEY. Well, I appreciate that that argument has been made, Senator, but when people are not riding the last train, I don't see any difference. If people are not supporting the last train, why should the last train be any different than the first train that the people did not support?

Senator LAUSCHE. Well, I put again to you the question, What about keeping the railbed open and the general facilities that could be used later for passenger service that might be profitable through new discoveries?

Mr. MOLONEY. The railroad will still be there. There is no railroad abandonment under section 13a.

Senator LAUSCHE. Well, all right now. You have got down to the three points now; the 2-year period, proviso 1, proviso 2, and then the further argument about the Commission having the authority to impose conditions when we interrupted.

Proceed from that point on.

Mr. MOLONEY. Yes, sir. And also on that last point about the conditions and so on, I call attention to the fact that the present statute refers or uses the language “operation or service” and the Commission has really never attempted to explore the possibilities that might exist. I don't say they do, I simply say the possibility's there.

If I go back in active practice of the law, again I would be probably in arguing one side or the other of an issue of that kind, but just as they have on the Zephyr and the City of San Francisco, while they ordered the trains to continue to operate for a year they did say when they released their order: "Now, look, if you can work out a scheme of things that will permit you to effect economies and preserve adequate daily service between Chicago and San Francisco, then come to us with this kind of a proposal and we will take a look at it." That, in substance, is the equivalent of a condition. "I am ordering you to continue to operate this train for a year, but if you can come in and show me how you can effect economies and preserve adequate daily service between the two cities, then come in and show it to me and maybe the trains can come off." That is, one of them can come off.

I don't know that these economies could be achieved. I can see where it might be a more expensive operation. But let's say this, let's say, for instance, on the day that the Zephyr left Chicago for San Francisco the City would not, and on the day the City ran the Zephyr would not. I don't know whether that would effect economies or not, but it certainly would preserve adequate daily service between Chicago and San Francisco. Or let's say they pooled equipment. I have no idea as to whether it is feasible to come up with anything.

I simply say that the Commission left the door open and, in substance, here you have an order to continue operation but—so they have all authority they need today to handle the "last train" situation. They do not need any of the provisions of this S. 3861.

The bill also has a rather peculiar provision about section 13a(2), and I must admit that I have read it carefully and I have studied it, with the end result that I have become completely confused.

The bill would provide that upon the filing with the Interstate Commerce Commission of a petition under section 13a(2), the discontinuance of the train involved would be subject to all of the provisions of the section 13a(1).

Now, I would point out to you that under section 13a(2), it is an intrastate train that you are dealing with and that you have—or it is a train that you have gone to a State commission for—and they have either turned you down or they have failed to act within 120 days, so you file a petition under section 13a(2). There is no time limitation on the Commission. They can take as long as they want to decide the case.

They schedule a hearing, but if you are going to have that petition subject to all of the provisions of section 13a(1), then what happens about 60 days notice, 7 months, an additional 2 months, and so on? I just can't think it through because there is no similarity between a proceeding under section 13a(2) and a proceeding under section 13a(1). I don't know what it means.

I could say this, that if it is the intent of the author of the bill that there be a time limitation placed on the Commission in section 13a(2), that might be a step in the right direction because as I pointed out to you they can take an awful long time to decide a case under section 13a(2). I don't think that is what they intended, but I don't know how it would work. And I have been unable to think it through.

I suppose I should conclude on that point by saying that we are, therefore, opposed to that provision. Certainly, I am opposed to anything I do not understand.

Senator LAUSCHE. You are now discussing the bill as written beginning on line 11 on page 6 and going down to line 15 on page 7; that is, the discontinuance of intrastate trains, is that right?

Mr. MOLONEY. Yes, or the discontinuance of a train that the railroad started out before the State commission and then came in under the Interstate Commerce Commission under 13a(2).

If I am operating today a passenger train in two States, I can go to those State commissions for authority to take that train off because the present law says the carrier may come to the Interstate Commerce Commission but shall not be compelled to.

In other words—in putting section 13a on the books, Congress very carefully preserved the jurisdiction of the State commissions.

Senator LAUSCHE. Is the present law different in its application to intrastate trains as distinguished from the interstate?

Mr. MOLONEY. Yes, sir; because the intrastate train, the only way I can get before the Interstate Commerce Commission is under section 13a(2), which is an entirely different procedural setup.

Section 13a(1) covers interstate trains but the intrastate trains you would have to come to the—

Senator LAUSCHE. What is the jurisdiction for having a different law applicable to the intra as distinguished from the interstate?

Mr. MOLONEY. Well, one justification is that where you are dealing with the intrastate train—let me check just a minute—I think the justification, Senator, would be this; that in the one instance you are in substance giving the Commission the power to act, as I said, in an appellant capacity and even to the extent of a trial de novo, over a matter that originated under the authority and jurisdiction of the State regulatory commission.

Senator LAUSCHE. All right. You may proceed.

Mr. MOLONEY. Now, as I pointed out, the bill would, as other bills that have been before the—well, certainly the subcommittee—this bill would provide for court review in behalf of anyone complaining of the action or inaction of the Commission; and as I have pointed out in previous testimony we are opposed to that provision. We feel that it would take the heat off of local authorities that try to exert themselves to solve a difficult problem. After you get through with some 9 months or 11 months before the Interstate Commerce Commission, and then you go to the Supreme Court, and in each instance we feel that a restraining order would probably issue, the train would continue to operate during the entire time and the losses would be staggering.

Where you have a train that is losing thousands of dollars a day, a million or two million dollars a year, time becomes very important and we feel that if the Commission has not been able to find that public convenience and necessity require the continued operation of the train that that ought to be the end to it.

If there is any way they can find that public convenience and necessity does require the continued operation of the train I feel quite confident the Commission would so decide.

Another amendment that would be made is the amendment that would do, in substance, what S. 2711—I think it is that this committee reported out and that passed the Senate and which was aimed at the particular situation that occurred, namely, where a railroad dis-

continued the train prior to the expiration of the 30-day notice period and after the Commission had announced that it would not investigate or suspend the notice. That provision would fix it so that the railroad could not discontinue the train until the expiration of the notice period.

Senator LAUSCHE. Was the situation that prompted the adoption of S. 2711 that the discontinuances were made after the Commission announced that it would not investigate?

Mr. MOLONEY. Yes; and before the expiration of the 30 days. But the funny part about that situation, Senator, is this. That at the time the railroad discontinued that train there still remained some 15 or 20 days before the expiration of the notice period.

In other words, under the present law, the minute the railroad did that, in my opinion, the Interstate Commerce Commission could have said, "We are instituting an investigation as of now and you put the train on and run it."

Senator LAUSCHE. Well, I never knew that the Commission had announced that it would not investigate.

Mr. MOLONEY. Yes; it had announced.

Senator LAUSCHE. They had announced?

Mr. MOLONEY. Yes, sir.

Senator LAUSCHE. The impression that I had was that the discontinuance was made before the 30 days expired without the Commission having taken any action in that 30-day period on the notice.

Mr. MOLONEY. No, the Commission had announced that they were not going to investigate or suspend. In other words, on the—

Senator LAUSCHE. All right. That has been answered now. Now, why shouldn't the carrier be prohibited from changing within the notice period?

Mr. MOLONEY. If I may explain it this way, I think the carrier can be prohibited by present law because the law says that it may discontinue upon the expiration of the 30-day notice period. They may discontinue the train if the Commission does not exercise its veto power before the expiration of the 30-day notice period.

I am going to speak very frankly now. I do not believe that the Commission understood the proceeding that it had before it or the law that it was operating under because I think if the Commission had thought it through and they wanted to slap the wrist of that railroad and put that train—direct that train to run for 4 months, they had full authority, in my opinion, to do so.

Senator LAUSCHE. That is, within the 30 days?

Mr. MOLONEY. Under the present law.

Senator LAUSCHE. Within the 30-day period, even though the discontinuance was made, the Commission could have announced its purpose to investigate and upon that announcement all of the time limitations would again become effective?

Mr. MOLONEY. They could have announced their intention to investigate and have ordered the train to operate for 4 months pending the investigation. They could do that, Senator, because under the present law the Commission has the last 10 days of the notice period in which to do that very thing.

And as I have pointed out to you, there was still more than 10 days left in the notice period. So this amendment, I am trying to say, is an amendment that really is not necessary and frankly it just clobbers up the statute books and I think that, as I said, if the Com-

mission had really thought it through that they could—they had all the machinery and power that was necessary to deal with that proceeding.

Now, one other thing, Senator. The statement is made time and time again and I find myself falling into that trap on occasion—they talk about the Commission having only 4 months to finish an investigation. Now, that is not so. Under the present law the Commission having instituted an investigation has no time limit in which to complete that investigation. The railroad—if they haven't completed it at the end of 4 months—the railroad is then free to discontinue that train but if it does that it does it fully recognizing that on the completion of the investigation the Commission may find that public convenience and necessity do require that train to continue and the Commission has full authority to order the railroad to put the train back on.

Senator PEARSON. Yes, but it isn't any more reasonable for the I.C.C. to set that limitation of 4 months upon itself rather than let the train go off and then at a later date with an undetermined period of investigation come in and order the train to come back on. Isn't it to the railroad's benefit that they adopt that policy or interpretation?

Mr. MOLONEY. Yes. Yes, from a practical standpoint you are 100 per cent correct, Senator, that it is a more clean way to handle the matter. This is one reason that the railroads have, as you heard the chairman say, when they are not able to complete an investigation in 4 months they have asked the railroad to continue to operate the train for another 30 or 60 days or so until they can complete it, and the railroads, recognizing the practical situation that you have described have said, "Yes, we will continue to operate the train."

I was simply pointing out that from the legal standpoint, here again, it may be like that going forward with the evidence and the burden of proof; technically, the statute gives the Commission an unlimited time in which to handle the investigation.

Senator LAUSCHE. All right. You may proceed to your next subject.

Mr. MOLONEY. Section 2 of S. 3861 would authorize and direct the Secretary of Transportation, acting in cooperation with the Interstate Commerce Commission and other interested Federal agencies and departments, to undertake and submit within 1 year after the date of enactment of the bill a study of the existing and future potential for intercity railroad passenger service in the United States to the Committee on Commerce of the Senate and to the Committee on Interstate and Foreign Commerce of the House, and the bill enumerates six particular matters that the Secretary is to consider, among other things, in making the study.

As Mr. Goodfellow pointed out, we have no particular objection to the study. We feel, however, of course, that it was a matter that was gone into at considerable lengths by the Doyle report. We are not sure just what would be accomplished by it, but we would intend if such a study were undertaken to cooperate to the fullest extent.

We feel that it is a mistake to limit the active participants to the Secretary of Transportation, the Interstate Commerce Commission, and other interested Federal agencies and departments because we feel that we, that is the railroads, would certainly be interested in being a participant in any such study.

We also feel that it would have to embrace airlines, air transportation, highway transportation, both bus and private automobile, and the entire gamut of means of transporting people from one city to another. So we have no objection to the study and would fully cooperate if such a study were undertaken.

I think, Senator, that completes my statement.

Senator LAUSCHE. Does section 2 now cover all modes of transportation, surface, air, and highway?

Mr. MOLONEY. The way it is worded I think it does. I think it could be more clear, but I think a reasonable interpretation would call for an affirmative answer to your question.

It says, "Existing resources of all types for meeting the Nation's present passenger transportation needs." It refers to anticipated expansion of those resources and particularly it refers to the interstate highway program, the auto production, and so on. So, I think the answer is "Yes."

Senator LAUSCHE. Do you recall whether the Doyle report made specific findings on some of the questions which we are discussing here today; that is, passenger train discontinuance?

Mr. MOLONEY. I think it concluded or stated, shall I say, that the long haul intercity passenger train operation was going down the drain and that there really wasn't any way to stop it.

Senator LAUSCHE. Yes, I have it here. I think there ought to be printed in the record the conclusions reached by the Doyle committee on June 26, 1961, and I would so order.

(The extract referred to follows:)

#### H. CONCLUSIONS

##### *Kind and amount of railroad passenger service needed*

1. Railroad intercity passenger service meets no important needs that cannot be provided for by other carriers and possesses no uniquely necessary service advantages. It serves no locations which cannot be served by air or highways.

(a) The unique characteristics of rail passenger service do not command a market sufficient to support the service. It is one of the safest means of public transport and it is most reliable during severe weather. Passengers attracted by these qualities are those looking for an alternative service on random occasions.

2. The only rail passenger service which has a place in intercity passenger transportation today is a service offering a combination of price and convenience which will attract business in open competition at full-cost fares. There is no need for and no national dependence upon a high cost duplicating service which cannot continue without public operating subsidy.

3. The responsible Federal agencies have not at this time stated a specific national defense requirement for rail passenger service. These agencies should seriously review this matter in the near future as it is possible the service may disappear in a very few years. If there is a requirement for partial preservation, it should be known as early as possible.

4. We believe that there will eventually be an important demand for rail passenger service within the large urban regions developing in the United States. This requirement is 10 to 20 years in the future. It is not clear whether service could be reconstituted at that time unless preserved throughout the period, but it would appear doubtful.

##### *Essential nature of the rail passenger service problem*

5. Railroad passenger service has been self-supporting only 4 (1942-45) out of the past 30 years. In the remaining 26 years some part of the full cost of providing passenger service has been provided from freight earnings.

6. The core of the problem is that passenger service has been operated in a manner placing the most important emphasis on low cost production of a large volume, rather than a manner emphasizing the matching of supply with demand, and obtaining operating characteristics necessary to meet passenger demand.

The tendency has been to run fewer and longer trains each year with the result that schedules are decreased, but not necessarily seat-miles. This has reduced the convenience of the service to the passenger and reduced his opportunity to use it. The evidence before us indicates that a rail passenger service properly oriented and fitted to the market and operated only in the volume markets, could produce a far higher ratio of revenues to expenses.

7. The railroads have operated many services over routes of such low traffic density that the service could not possibly pay for itself. The burden of such service has adversely affected the whole. There are a combination of reasons for this, primarily obsolete laws and regulations and management apathy as long as enough freight revenues were flowing in. Another cause of an excessive and unprofitable volume of service is the failure of railroad managements to pool equipment and services and to reduce duplicating facilities.

8. As a result of these factors, railroad passenger service has next to the lowest production cost per seat-mile and the highest cost per passenger-mile actually carried among the public carriers. It appears inescapable that if the service was reduced and tailored to the traffic, the enlarged revenue per car-mile would more than offset any increased expense.

9. The traditional management organization in railroad companies has dispersed responsibility for earnings of the passenger service so broadly that there is no effective profit-responsible management of this service. Passenger service has not been demand oriented and has not been operated with a sound relationship between production and demand or with adequate production cost controls. In part, this is because the passenger business is a minor revenue producer in all but a handful of the companies and simply has not received top-level management attention. Only three or four companies in the industry have a vice president assigned to the passenger service.

10. If present trends continue, and there is no important evidence to the contrary, ICC Examiner Hosmer's now famous prophecy will be true:

"For more than a century the railroad passenger coach has occupied an interesting and useful place in American life, but at the present time the inescapable fact—and certainly to many people an unpleasant one—seems to be that in a decade or so this time-honored vehicle may take its place in the transportation museums along with the stagecoach and the steam locomotive."

The very age of the railroad coach is one of its worst handicaps. The coach and the people who operate it seem to have forgotten how to change their habits and to have forgotten that innovation and intelligent improvement have been a hallmark of American business since well before the coach's birth.

#### *Conduct of the Federal responsibility*

11. Federal and State regulatory agencies must realize that the 19th century concept of the common carrier responsibility of the railroads to provide a complete transportation service to every locality along every mile of the track became obsolete during the 1930's. This concept was based upon the monopolistic nature of the carrier rendering the service and upon the premise that protection from competition could be provided by the regulatory agencies. Such protection would allow a composite fare and freight rate structure producing enough revenues to support a complete service. The ability to protect any of the common carriers from competition has declined in some cases to the vanishing point, and regulation must recognize this in administration of ratemaking and service requirements. The Interstate Commerce Commission should recommend any statutory changes that are needed to provide complete flexibility of regulation of rail and highway carriers, a flexibility sufficient to permit these carriers to find their place in passenger transport through rate and service adjustments.

12. Federal regulators should be absolutely certain that property traffic moving in passenger service is paying full cost plus a return. If costing techniques need to be developed to assure this end, work should commence immediately.

13. The present train discontinuance authority of the Interstate Commerce Commission should be continued, at least for intercity trains.

14. The Interstate Commerce Commission should immediately undertake a program to remedy the deficiencies in market information and cost finding noted at many places in this report.

15. We find several evidences of a lack of coordination in Federal policies affecting passenger transportation. Either a central transportation agency in the executive branch or a congressional study group should be responsible for careful study of these matters and the preparation of necessary remedial legislation. Two conflicts are worth noting :

(a) Allegheny Airlines, a local service carrier currently receiving over \$3 million per year in Federal operating subsidy, recently initiated a no-reservation coach fare of \$11.82 between Philadelphia and Pittsburgh, Pa. The principal railroad serving these cities, the Pennsylvania Railroad, charges \$15.07 for the same trip by rail coach. The Pennsylvania Railroad reported a loss of \$38 million on its passenger business in 1959.

Allegheny's regular fare between these points is \$19.95. This promotional fare may be sound economics (an investigation is presently underway by the CAB), but here is a case of a federally subsidized carrier undercutting the fare of another federally regulated carrier who is, and has been, losing large sums providing this public service. Some one agency must be responsible for harmonizing Federal actions in intercity passenger transportation.

(b) The second lack is coordination between the Federal Aviation Agency's Federal-aid airport program and the Civil Aeronautics Board's local service certification programs. Cities have received airport grants from the Federal Government to provide airports meeting standards necessary for scheduled passenger service only to be refused such service. This refusal comes from the CAB, another Federal agency which also spends money to provide public air service. There are also cases where local airline service has been certificated to a city and for some reason or another the airport has never been improved sufficiently to permit transport operations.

(c) A third important Federal policy problem has been revealed during our study. Time has not permitted specific recommendations. The Federal Government has made possible many innovations in passenger transport through equipment or operational research and development, much of it under military auspices. We have had no basic approach to the introduction of innovations. As transportation becomes more complex and public and private investments larger, the impact of innovations will be so great that specific planning, coordinating, and forethought must be provided. We act to regulate and promote each mode or device in transportation as though it were an entity alone and would continue an indefinite and unchanged existence. Both public and private investments should be based on long-range plans for easing and guiding the introduction of new and radically different devices. The Federal Aviation Agency is now preparing plans which will request at least \$400 million over 10 years for development of a supersonic air passenger transport. Sound public policy would require that this investment first be weighed against the benefits that might flow from alternative investments in other phases of passenger transport. Secondly, when the decision is made, plans should early be laid to facilitate an orderly changeover of airline equipment. Hundreds of millions of dollars of private investment may be made obsolete well before present depreciation rates recover the cost, and radical changes in airways and airports may have to accompany these new vehicles. Many other passenger and freight innovations, each with a resounding impact on our complex and sensitive transport system, could be mentioned. The need for premeditated Federal policies aiding and controlling these introductions is clear.

#### *Conduct of the railroad management responsibility*

16. This chapter makes a further contribution to the already substantial literature on the railroad passenger service problem. Railroad management has now received much free consultation on this subject and we believe the next step is for the responsible railroad leaders to attempt an industrywide determination of the future of the passenger business. If that determination is to make no important changes, railroad managements will, and should, proceed with the presently scheduled train discontinuance programs moving toward the time of complete abolition of the service. We cannot avoid the conclusion that this reflects the views of the majority today.

If, however, the railroad industry can agree on a positive program, involving a willingness to make the important management and operating changes which will be necessary, it should be assured of the wholehearted cooperation of Government in providing those aids that are uniquely within the Federal province. The railroad passenger business is truly at the crossroads and management's minimum responsibility at this time is to give top-level industry attention to determining a course of action.

#### *Conclusion for all interested parties*

17. The railroad passenger business is not a mean national asset even at this time. Its present book investment is \$3 to \$5 billion of private capital. It still pro-

duces total annual revenues of over \$1,200 million. It can still move 300 people in comfort at a very high degree of safety at 80 miles an hour with only 3 or 4 men and only 1,500 horsepower. If this service goes to the museum with the stagecoach, it will not be for the same reasons. If a program to rationalize and revitalize rail passenger service cannot be carried out by existing managements because they cannot overcome the problems of equipment interchange, trackage rights, financial realignments, managerial realignments, and eliciting the reasonably unified co-operation of over 80 companies, a national railroad passenger service corporation should be considered.

Before we write this big business off, and it is big even by American standards, a very thorough economic and market analysis should be made with sufficient financing and a sufficient length of time to produce new empirical data from the car repair shop and the ticket counter on up. Operations analysis techniques should be employed in regard to scheduling, optimum consist, meshing with other railroad operations, etc. If the results of such a study indicate profitable operations based on conservative traffic and financial forecasts, a national passenger service corporation should be formed which would have complete control of marketing and producing the service. Such a corporation could move immediately to eliminate duplication, pool equipment and services, avoid circuitous routings planned to operate solely on owned tracks, centralize maintenance and install modern cost accounting and traffic reporting systems. Appendix A, immediately following, contains an outline suggesting the important elements in the founding and operation of such a corporation. It is presented to stimulate thought and action.

#### APPENDIX A

##### PROPOSAL FOR NATIONAL RAILROAD PASSENGER SERVICE CORPORATION

###### *1. Formation*

There are three possibilities for a suitable and financially competent corporate structure. The first would be to use an existing corporation, such as the Pullman Co. Additional capital could be supplied by the railroads who are already stockholders, or by other private investors. A Federal loan might also be used. The second possibility would be to form a new joint public-private corporation with controlling interest in private hands and Federal interest in the form of a loan or purchase of preferred stock, or other senior and marketable instrument. A third possibility would be to form a public (Federal) corporation in which the Federal Government would have control and full operating responsibility. It might be advantageous to have some private capital, possibly nonvoting stock. The Federal investment should be through purchase of equities or marketable issuances that would ease a future transition to private ownership. Until the recommended study is made the interest in the corporation on the part of railroads and private investors cannot be estimated. The possibility of either of the first two plans, therefore, cannot be judged. One of the advantages of a Federal corporation will be its strong position in relation to State and local taxation, State commission regulation of train service, and State full-crew laws. It is also possible that a strongly managed public corporation might have a greater initial success in working out new labor contracts.

###### *2. Acquisition of property*

Of course such a large-scale venture should not attempt to take over the rail passenger business in all parts of the United States at once. Preferably it should start with the eastern district and move successively to other areas. The corporation should acquire all cars and, perhaps, locomotives presently used in passenger train service, all station and terminal property used exclusively for passenger service and all repair shops and storage yards used for such service. (Commuter property would not be acquired. Commuter service should be operated by the railroad, or by a local public authority.) This would relieve the railroads of all solely related passenger property now on the books. The purchase price should be present book value or some other reasonable and clear standard which could be agreed upon. Payment should be in cash or cash and securities. If a Federal corporation is formed the securities should be nonvoting.

###### *3. Property program*

The corporation would in the early stages determine, aided by the preceding survey, the properties which would be used in the near future and dispose of the remainder. This would, of course, be the older rolling stock and surplus yards and buildings. A car rebuilding program using existing frames and trucks should

be immediately undertaken to provide modern utilitarian equipment at the lowest feasible cost. Such equipment should be depreciated on a 7 to 10 year basis. Duplicating and obsolete terminal properties should be consolidated and redesigned in a continuing and orderly program. The corporation should acquire all passenger properties in a district—not just the least profitable holdings the companies wish to unload. A joint manufacturer-carrier equipment development program should be initiated with adequate time and financing.

#### 4. *Operating program*

The corporation should have complete control over operations including passenger train service employees and the contracting or execution of maintenance. Trains should be scheduled and routed flexibly with the specific purpose of testing public desires and developing optimum combinations of route, schedule, and consist. Routes should maximize revenues in selecting cities and be as direct as possible. The corporation should have operating rights over any trackage in the United States, through eminent domain, if necessary. Its trains would be under the dispatch control of the track-owning railroad at all times. Owning railroad should be compensated through the usual types of railroad joint-operating agreement. The rates for track use should be fully compensatory including provision for additional maintenance costs due to passenger service if thorough cost accounting demonstrated such a differential. The corporation should have complete freedom to serve or not to serve routes, subject to 30-day public notices of suspension, and should have ratemaking freedom within maximum rate limitations set by the ICC. The entire design should be to produce a pattern of economically sound routes and services and to continually adjust fares, routes, and services according to demands and costs. Needless to say a complete modern marketing and merchandising program should be undertaken. Passenger transport is a highly competitive and rapidly changing business and the carriers must have freedom to maneuver. The entire program would be most heavily concentrated in the areas with the best potential for rail service, which have already been discussed.

#### 5. *Final disposition*

Since the original premise is not to initiate a national railroad passenger service corporation unless conservative forecasts indicate a very good possibility of profit it would be most likely that the corporation could become a profitable venture and, therefore, a good investment. If it were private there would be no disposition problem except repayment of Federal loans or repurchase of federally held securities. If the Federal corporation were used, acquisition by private investors should be a natural step at the completion of the major capital expansion and development programs and the establishment of stable profitable service. This would be some time after the most experimental portions of the marketing program.

The national passenger service corporation is not presented as a recommendation of this study. It cannot be, pending completion of the necessary study and analysis. The above outline does indicate the direction in which rail passenger service may well have to move if it is to avoid certain extinction. Information at hand indicates the direction should be profitable.

Senator LAUSCHE. If the Smathers subcommittee report in 1958 made any recommendations on passenger service that should be printed in the record.

(Excerpts from the report follow:)

[90th Cong., second sess., Rept. No. 1647]

TRANSPORTATION ACT OF 1958

JUNE 3, 1958.—Ordered to be printed

Mr. SMATHERS, from the Committee on Interstate and Foreign Commerce, submitted the following report together with individual views

[To accompany S. 3778]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3778) to amend the Interstate Commerce Act, as amended, so as to

strengthen and improve the national transportation system, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

#### I. INTRODUCTION

The purpose of this bill is to amend the Interstate Commerce Act, as amended, in order to provide necessary and desirable changes to enable strengthening of our Nation's transportation system, in the public interest.

This bill is the outgrowth of extensive hearings held by the Surface Transportation Subcommittee on the deteriorating position of American railroads. Those hearings were begun in January 1958 and held for 3½ months. For 2 days in May the full committee held additional hearings solely on the subcommittee's recommendation for amendment to the rule of ratemaking found in part I of the Interstate Commerce Act. Part I applies mainly to the regulation of railroads.

#### II. ADOPTION OF THE SUBCOMMITTEE REPORT, WITH AMENDMENTS, BY THE FULL COMMITTEE

The report of the subcommittee entitled "Problems of the Railroads," committee print dated April 30, 1958, with certain technical amendments, is printed at the end of this report. This subcommittee report is hereby adopted as the report of the full committee on S. 3778, subject to the changes agreed to by the full committee discussed before and reflected as amendments to S. 3778 as reported to the Senate.

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### REPORT OF THE SUBCOMMITTEE ON SURFACE TRANSPORTATION

APRIL 30, 1958

#### PROBLEMS OF THE RAILROADS

##### I. INTRODUCTION

The Surface Transportation Subcommittee is concerned generally with the welfare of the Nation's transportation system and particularly with those carriers performing surface transportation, motor carriers, freight forwarders, railroads, and domestic water carriers.

The subcommittee believes that all forms of transportation must be kept healthy and vigorous if the economy of the United States is to be adequately served and if the Nation's defense is to be properly maintained.

For generations the railroads have been the bedrock of our Nation's transportation system. It was the railroads that pioneered the development and growth of the East, the West, the North, and the South. Their history is closely linked with the economic progress of our Nation. It was only a few years ago that the railroads were the biggest business of the Nation. They ranked first as a purchaser of goods and services. Steel mills once counted them as their best single customers as did the fuel oil sellers, the lumbermen the coal-mine operators, and many others.

During times of crisis for our Nation the railroads have met the challenge. During World War II the railroads transported more than 90 percent of all military freight traffic and 97 percent of organized military passenger movements. Thus the railroads were, and are, a vital part of this Nation's security.

Because of the essential part the railroads play in our whole transportation system, it was a cause of great concern to your subcommittee when we observed the rapid deterioration of the railroad position in the fall of 1957.

For example, the carloadings of class I railroads for the week ending November 9, 1957, declined 12.6 percent from the same period of 1955. Figures for September 1957, showed net income to be \$65 million as compared to \$80 million for September 1955, a decrease in excess of 18 percent. Another discouraging sign was the decrease in railroad net working capital from approximately \$880 million in September 1955 to approximately \$526 million in September 1957; it is considered that \$600 million is the minimum safe net working capital necessary for railroads.

It was clear from these and other similar figures that not only were the railroads being adversely affected by the business recession which was then appearing but that, in fact, the sickness of the railroads was contributing greatly to the deepening recession of the Nation.

As a result of these observations, it was determined that the Subcommittee on Surface Transportation should hold hearings and look into the problems of the railroads in relation to our national transportation system and the recession. Consequently, on November 22, 1957, hearings were announced to begin on January 13, 1958.

In announcing the hearings, three main areas were suggested as topics for attention. First, matters on which the railroads could help themselves; second, desirable changes in ICC policy and practices, and, third, new legislation necessary to revitalize the railroad industry and maintain it as an efficient part of our national transportation system.

The hearings proceeded over an 11-week period during which 103 witnesses were heard. Witnesses appeared on behalf of railroads, motor carriers, air carriers, water carriers, representatives of the State and Federal regulatory commissions (including the Interstate Commerce Commission), the Defense Department and the Agriculture Department. There also appeared representatives of shippers, agricultural associations, and labor organizations, as well as experts on transportation matters, from leading educational institutions, economists, analysts, financial experts, and others. The hearings were concluded on April 3, 1958.

## II. GENERAL COMMENTS

The testimony substantiated the subcommittee's concern about the deteriorating railroad situation. As a matter of fact, the uncontrovertible testimony revealed that the decline in the railroad position was occurring at a greater rate than the decline in the Nation's economy.

It was obvious from the testimony that the railroads no longer are a monopoly in the transportation field. This was dramatically illustrated by the fact that the railroad's share of freight traffic had declined from 74.9 percent of the total intercity ton-miles in 1929 to 48.2 percent in 1956.

Likewise, the railroads' share of passenger miles declined from 70.7 percent of the total for commercial carriers in 1929 to 34.9 percent in 1956. The testimony revealed that railroad passenger miles in the first 2 months of 1958 declined at a faster rate than comparable months in 1957.

The decline in railroad employment indicates the general decline of the railroad position. In 1923 railroad employees numbered 1,857,674. This declined to 861,928, a loss of about 1 million, by February 1958. Unemployment in the industry is accelerating rapidly. There has been a decrease of 348,182 jobs from March 1953 to March 1958; an average decrease per month of 5,800 employees for the past 60 months.

The railroads as a whole are in a poor financial position. Net working capital as shown by the railroads has declined as follows:

Dec. 31, 1945	-----	\$1, 643, 100, 000
Dec. 31, 1955	-----	938, 100, 000
Dec. 31, 1956	-----	683, 600, 000
Dec. 31, 1957	-----	555, 300, 000
Jan. 31, 1958	-----	396, 500, 000

This is particularly significant when it is pointed out that the total cash expenses of the railroads (wages, fuel and materials, rents and taxes) are approximately \$750 million per month. The rate of return on net investment in the railroad industry has moved downward from 4.22 percent in 1955, to 3.95 percent in 1956, and down to 3.35 percent in 1957.

Freight carloadings for class I railroads declined from 3,446,330 cars in March 1957 to 2,702,066 cars in March 1958 a decline of 21.6 percent.

According to the statistics of the First National City Bank of New York, for the calendar year 1956, the rate of return on net assets of the 73 leading corporations in the industrial group revealed that the class I railroads were third from the bottom for that year. Many other class I railroads were below the average figure.

The largest rail carrier, the Pennsylvania Railroad, returned only 2.9 percent in 1956 and last year this small return was reduced by over 50 percent, giving the Pennsylvania Railroad a return of only 1.4 percent in 1957. During the first 2 months of 1958 this carrier lost more than \$11 million.

The aggregate net income shown by all class I railroads for the first 2 months of 1957 was \$91.4 million. Their net income for the corresponding 2 months of 1958 is down to \$6 million.

Comparing February of 1957 with February of 1958: In February, 1957, the class I railroads had a \$47.5 million profit, in February, 1958, the class I railroads of this country had a \$10.7 million loss.

The subcommittee realizes that the railroads' financial condition results, in a large measure, from the general passenger deficit of about \$700 million in 1956 and similar large amounts in recent years. The railroads are attempting to eliminate a great deal of this unprofitable passenger service. The subcommittee believes, however, that the railroads should retain a certain amount of passenger service, whether profitable or not, as part of the railroads' obligation to serve the public and to provide for the national defense. This subject of declining railroad passenger service is recommended for further study.

Because of their financial plight, the railroads find it extremely difficult to borrow money other than by the issuance of equipment obligations. The situation of the eastern railroads is particularly serious. Eastern railroads are in worse financial straits than the southern and western railroads because they operate in a densely populated area of high costs and severe competition from other modes of transportation. The presence of the large volume of commuter traffic, carried at a loss, also contributes to the poor financial condition of the eastern railroads. The southern and western railroads are not in as serious condition as those in the East because operating conditions are more favorable in the South and West. However, the problems of the southern and western railroads are mounting and following the pattern of the railroads in the East.

### III. REASONS FOR THE RAILROAD DECLINE

From the testimony, the subcommittee has concluded that the general decline is due to a number of reasons, some of which we will mention here. One reason is the development of newer methods of transportation that offer intense competition to the railroads. These newer methods include the tremendous number of private cars on the highways, the development of airplanes, and the building of modern highways on which move a large number of buses and trucks. All of these modes of transportation cut into the traffic that could be hauled by the railroads.

A second reason for the general decline of the railroads is the Government assistance offered to the railroads' competitors. This includes the building of highways and airport, the provision of toll-free waterways, and other facilities.

A third reason for the decline of the railroads is overregulation. The Federal Government, through the Interstate Commerce Commission, and the vast majority of the 48 States, through State regulatory agencies, supervise and dictate to the railroads, usually under laws and procedures that are ancient and outmoded.

A fourth reason is the attitude of some railroad managements. There has been a failure to recognize changing conditions, times and tastes. A failure to compete aggressively for business by use of modernized equipment, by adjustments in plant and financial structures, as well as failure to adjust rates to compete effectively for traffic.

### IV. HELP NEEDED BY THE RAILROADS

From the facts adduced at the hearings your subcommittee has concluded that the railroads are in need of help, some immediate and some long range, some by the industry itself, some by Government agencies, some by labor organizations, and some by the Congress.

#### COMMUTER SERVICE AND LOCAL AND STATE TAXES

The subcommittee would like to comment on problems in two areas in which the railroads' difficulties are attributable to factors principally under the control of State and local governments and their agencies. One is the burden imposed on the railroads by commuter service in large metropolitan areas.

The subcommittee heard much testimony with respect to the problem of continuing commuter service by railroads. It was clear from the testimony that the railroads were operating these services at enormous losses. This is the result of many factors which we will not go into here. It may be said that basically the commuter service problem is a local one having both social and economic implications. However, it is also a matter of deep concern to the Federal Government because of the impact that losing commuter service can have on the ability of an interstate rail carrier to render its interstate service. That this is so, is clearly evident from the fact that there are several carriers in the East which are faced with the imminent threat of bankruptcy primarily because of the heavy

losses from rendering commuter and other local passenger service. Because of the burden that these losing intrastate services are imposing on interstate commerce, the subcommittee feels that the Federal Government can no longer stand aside to the extent it has in the past. The Interstate Commerce Commission already has authority to require increases in intrastate rates where this is an unjust discrimination or burden on interstate commerce, but in many cases the answer to the losses from commuter services does not lie in merely increasing fares. It is evident that fares which would theoretically return a profit to the railroads would generally result in charges substantially greater than commuters are accustomed to paying and, in some instances, prohibitive charges. Accordingly, the solution is not readily apparent. Because the solutions which may be found for this problem are essentially local, the subcommittee deems it desirable to leave to the local government agencies involved the job of seeking specifically tailored solutions to their particular problem.

Solutions to this problem cannot be longer delayed and it is believed that the clarification of the Interstate Commerce Commission's authority over intrastate rates, together with the new authority conferred upon the Commission over service as subsequently explained in this report, will lead to the prompt finding of appropriate solutions by local authorities.

The second matter on which the subcommittee is constrained to comment is the amount of State and local taxes paid by the railroads. Representatives of the railroads testified that local and State taxes borne by the rail lines are disproportionately high and bear no relationship to the earnings of the properties and, therefore, constitute an unfair burden on their operations. The subcommittee suggests that State and local governments reexamine taxes now borne by the railroads for the purpose of determining and correcting inequitable tax situations that exist.

The subcommittee further suggests that if communities and States take action to allow reduced taxes for the railroads in order to maintain railroad commuter service, the Federal Government should likewise give a proportionate remittance of Federal income taxes to allow the amount of such local and State tax reductions to be retained by the railroads.

#### *A. Help by the industry*

The railroad industry has not, in the subcommittee's opinion, been sufficiently interested in self-help in such matters as consolidations and mergers of railroads; joint use of facilities in order to eliminate waste, such as multiple terminals and yards that require expensive interchange operations; reduction of duplications in freight and passenger services by pooling and joint operations; abandonment or consolidation of nonpaying branch and secondary lines; abolishing of unnecessarily circuitous routes for freight movements; improved handling of less-than-carload traffic; coordination of transportation services and facilities by establishment of through routes and joint rates with other forms of transportation; and modernization of the freight-rate structure, including revision of below-cost freight rates to levels that cover cost and yield some margin of profit as well as adjustment of rates excessively above cost to attract traffic and yield more revenue.

#### *B. Help by railroad labor*

The subcommittee wishes to commend railroad labor on the aggressive spirit that it shows in approaching its problems but points out that there should be reappraisal of the entire railroad labor situation in the light of the present plight of the railroads. This is necessary because the number and kind of jobs held by the membership of the railroad labor unions is inextricably intertwined with the economic welfare of the railroad industry. The problems of the two groups are mutual problems.

The brotherhoods should realize that if the railroads should go under, the Federal Government is not going to take over uneconomic railroads and continue to operate them in an uneconomic fashion. If bankruptcy results in Government operation, it is clear that there will be fewer jobs than at present in the railroad industry. The subcommittee urges that railroad labor cooperate in proceedings designed to strengthen the economic position of the railroads.

#### *C. Help by the Interstate Commerce Commission*

Help can be given by the Interstate Commerce Commission without additional legislation. The subcommittee has noted with approval that in recent years the ICC has improved the speed of its administration of the regulatory process. The subcommittee urges that there be continued effort for improvement in the

handling of regulatory proceedings. The subcommittee likewise urges that the ICC continue to take into account current competitive factors in the adjudication of rate cases.

The subcommittee, from its observation of the Commission, is not satisfied that the Commission is devoting its efforts to the most fruitful areas of regulation. The Commission should earnestly examine the Interstate Commerce Act, and related acts, and come forward with legislative recommendations which will reduce its sphere of action to matters which fundamentally affect transportation. There are some activities now required of the Commission which are of no great consequence but which take time and effort. This attention could be devoted to matters of greater significance. These matters of importance are now delayed because of preoccupation with relatively minor problems.

Over a period of many years regulatory commissions, like individuals dealing with controversial issues, tend to form habits of belaboring relatively unimportant details involving form rather than substance, while procrastinating on coming to grips with important policy matters that involve serious matters of public interest.

The subcommittee suggests the need for reexamination and revision of the objectives of the statutes under which the Commission operates. For instance, under the various parts of the Interstate Commerce Act, the Commission, in the exercise of its power to prescribe just and reasonable rates, is charged with giving due consideration among other factors, to the need of revenues sufficient to enable the carriers "under honest, economical and efficient management" to provide railroad transportation service. It is doubtful that the Commission itself would assert that it has used its powers under this provision of law to the full extent to protect the public interest.

Although it is not directly related to the problems of the railroads, another example of the Commission's performance that concerns the subcommittee arises because no definite plan was prescribed in advance concerning the nature of the territory to be served by motor carriers following their regulation in 1935. As an outgrowth of grandfather certificates granted pursuant to this legislation, there are many kinds, types and descriptions of certificates and operating rights, many of them restrictive and uneconomic. Where such operations prevent full loading and return loads, regulation promotes waste.

When public convenience and necessity is narrowly construed, as it was by the ICC in granting these grandfather rights, common carriers, both regular and irregular route, are permitted to transport only specific commodities. The commodity descriptions in carrier certificates have little uniformity, are confusing and instigate protracted proceedings on interpretation of the language. Sometimes they are limited to intended use, such as, "commodities to be used in a drugstore," or "grocery store," causing innocent as well as deliberate violations. Many motor carriers have accumulated certificates, as many as 200, piece by piece, some of which cover varying commodities and run into overlapping territories. In such instances local terminal managers themselves find difficulty in interpreting and complying with certificated authority. Loose compliance results. The Commission and its staff spends a disproportionate amount of time struggling with the details of this situation.

A final example of an area in which the Commission could help lies in the area of rate relationships. As has been confirmed by the statements made in the recent hearings, the Commission appears to be losing control over rate relationships. When carriers are permitted to meet competition by other carriers or by private carriage at limited points without reference to the rates at other points, it legalizes the disturbance of rate relationships to the detriment of shippers.

When a rate is suspended and made subject to investigation, a decision generally cannot be reached within the 7-month suspension period provided by law. This rate action may involve a single rate covering relatively unimportant movements or rates involving a movement of great economic impact. Each receives the same "due process" treatment and formal consideration. If the rate is found to be unlawful, it is ordered canceled. In the meantime, the rate may have gone into effect automatically because the 7-month suspension period has expired. If it is ordered canceled, a rate situation is disrupted which has been in effect for a considerable period of time and to which the parties and competitors have adjusted themselves in the meantime. Yet the Commission will often base its decision on a record which may be 2 or more years old and not representative of current conditions. In fact, the shipper may have resorted to private transportation or gone out of business since the rate was first proposed.

If rates are attacked by complaint, the rate is already in effect and the shipper may continue paying that rate and suffering the economic consequences for years before question of the lawfulness of the rate is actually decided.

The Commission might help the carriers, and shippers as well, by improving its performance in this area.

#### *D. Help by the Congress*

This assistance can be provided by a number of amendments to the Interstate Commerce Act:

(1) To establish a plan of guaranteed loans under the administration of the Interstate Commerce Commission, to aid temporarily in the financing of railroads, subject to the Interstate Commerce Act that are unable to obtain needed funds upon reasonable terms through ordinary commercial channels;

(2) To provide for the establishment by common carriers subject to the Interstate Commerce Act of "construction reserve" funds as a means of obtaining tax deferrals to stimulate investment in equipment and other necessary transportation facilities;

(3) To amend the Interstate Commerce Act, section 15 (a), by adding a new subparagraph 3 to read as follows:

"In a proceeding involving competition with another mode of transportation, the Commission, in determining whether a rail rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by railroad and not by such other mode."

(4) To make more effective those provisions of the Interstate Commerce Act enabling the Interstate Commerce Commission to remove discrimination against interstate or foreign commerce found to result from intrastate rates;

(5) To vest the Interstate Commerce Commission with authority to authorize, in proper cases, the discontinuance, curtailment or consolidation of unprofitable railroad services and facilities burdening interstate commerce;

(6) To limit the scope and application of the agricultural commodities clause under which motor vehicles engaged in the transportation of certain commodities are exempt from economic regulation under the Interstate Commerce Act and to redefine the exemption to bring under economic regulation frozen fruits and vegetables and imported agricultural commodities; and

(7) To make it clear that all commercial transportation of property by motor vehicle in interstate or foreign commerce, except private carriage and transportation otherwise specifically exempt, is subject to regulation.

(8) To provide for a transportation policy study group of three qualified transportation experts to study important matters of transportation policy and report thereon within 18 months.

#### V. RECOMMENDATIONS NOT WITHIN JURISDICTION OF THIS SUBCOMMITTEE

Because of the jurisdictional limitations of the various congressional committees, there are some proposals we submit to the appropriate committees with recommendations for action.

(1) The Senate Finance Committee should recommend repeal of the Federal excise taxes of 10 percent on passenger transportation charges and 3 percent on freight transportation charges.

(2) The subcommittee also urges that the Senate Finance Committee give favorable consideration to the railroads' proposal that legislation be enacted providing that, at the election of the taxpayer, the maximum useful life of depreciable railroad property may be considered 20 years for tax purposes.

(3) The Senate Post Office and Civil Service Committee should take action to modernize legislation applying to those forms of transportation necessary for carrying United States mail. The legislation should provide equitable treatment for all such modes of transportation, in regard both to opportunity to obtain the traffic and payment for service performed.

#### VI. DISCUSSION OF SUBCOMMITTEE'S LEGISLATIVE PROPOSALS

There follows explanation and discussion of the subcommittee's several recommendations for immediate legislative action noted above.

\* \* \* \* \*

#### 5. ICC AUTHORITY OVER UNPROFITABLE SERVICES AND FACILITIES

A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or

facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce.

Railroad management, it must be understood, is not always free without authorization to discontinue, curtail, consolidate or otherwise change services or facilities in an effort to deal realistically with unprofitable, deficit-producing operations. Generally speaking, such matters fall within the scope of State law; and in a great many instances a railroad may not discontinue or change the operation of a train or other service or facility without first obtaining permission to do so from the regulatory authority of the State in which the operation is conducted.

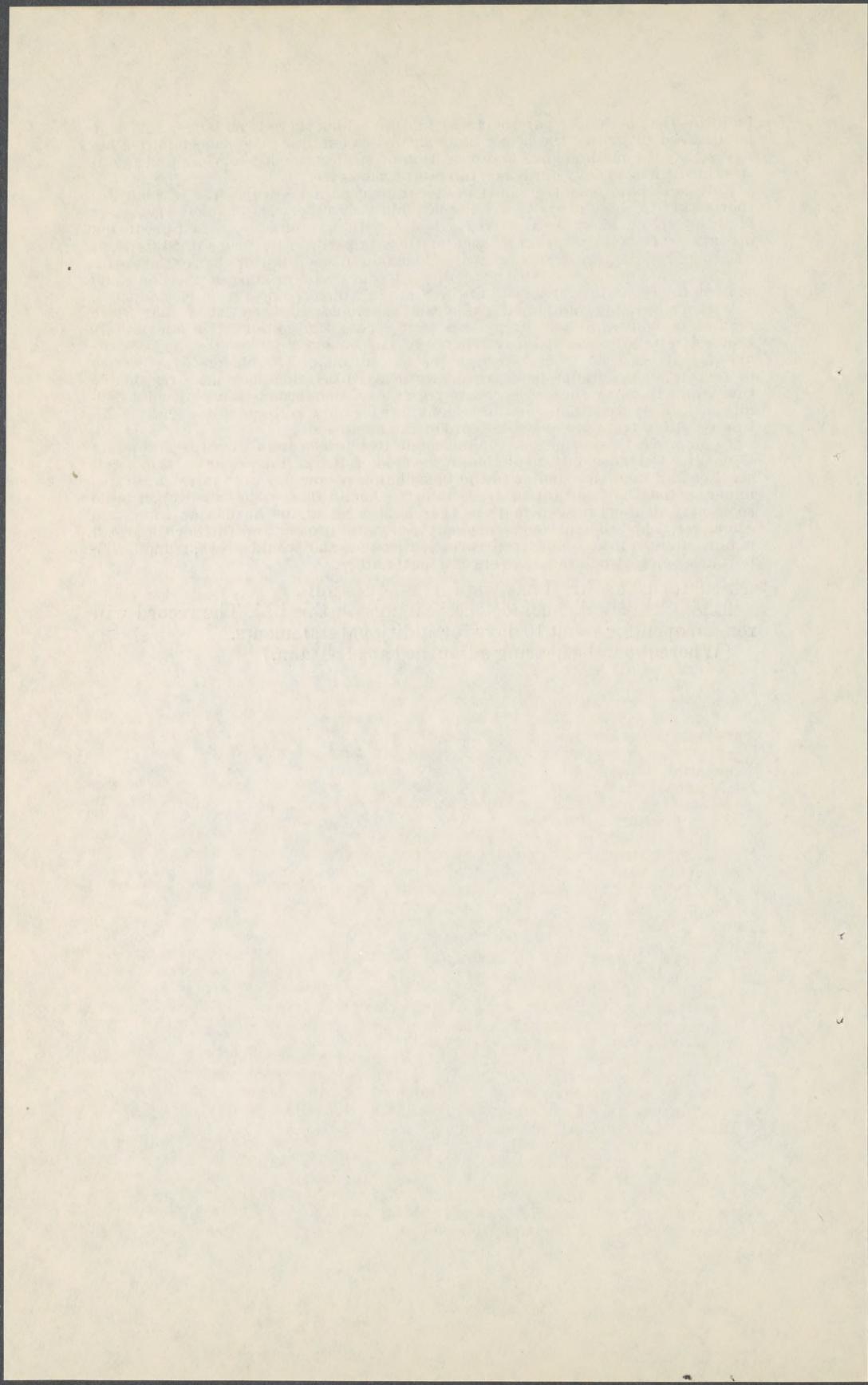
Without reciting individual cases the subcommittee is satisfied that State regulatory bodies all too often have been excessively conservative and unduly repressive in requiring the maintenance of uneconomic and unnecessary services and facilities. Even when allowing the discontinuance or change of a service or facility, these groups have frequently delayed decisions beyond a reasonable time limit. In many such cases, State regulatory commissions have shown a definite lack of appreciation for the serious impact on a railroad's financial condition resulting from prolonged loss-producing operations.

To improve this situation, the subcommittee proposes to give the Interstate Commerce Commission jurisdiction in the field of discontinuance or change of rail services and facilities similar to the jurisdiction it now has over intrastate rates under section 13 of the Interstate Commerce Act so that when called upon to do so it may deal with such matters that impose an undue burden on interstate commerce. This, the subcommittee believes, would protect and further the broad public interest in a sound transportation system and would prevent undue importance being attached to matters of a local nature.

Senator LAUSCHE. I have no further questions.

I think this will conclude the hearings on this bill. The record will remain open for about 10 days for additional statements.

(Whereupon, the hearing adjourned at 11 :40 a.m.)



## ADDITIONAL STATEMENTS AND LETTERS

TESTIMONY OF HON. ROBERT C. BYRD, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Mr. Chairman, I am grateful for the opportunity to testify at this hearing on S. 3861, a bill to amend section 13a of the Interstate Commerce Act, and to authorize a study of essential railroad passenger service by the U.S. Secretary of Transportation.

The fact that inter-city non-commuter railroad passenger service has been declining both in the quality and quantity of the service offered to the public is no longer a new finding.

It has been taking place for well over 15 years.

The reasons are not hard to document. They stem from the advent of the jet age and the superhighway as well as from the fact that freight traffic is the remaining profitable service for the railroads to operate.

That some of the fall-off in rail traffic should have occurred because of the increase in air and highway travel is understandable.

But that the extent of the drop-off should be as great as it has been does not quite make as much sense. It does not make sense that only 1.4 percent of all intercity travel should be by rail. Yet that is a fact.

I do not believe that the United States government should ever decide, as a matter of public policy, that it is in the national interest to foster a decline in rail passenger service with a view toward the possible elimination of all such inter-city service.

I do not believe the day should ever come when it is no longer possible to travel from city to city by railroad.

On the contrary, I believe the United States government should set itself firmly in favor of increased inter-city rail passenger service.

I do not say this because I am a sentimentalist about the railroads. I make this statement because I firmly believe that the long- and medium-haul passenger train has an important and proper role to play in our nation's future transportation "mix."

Passenger trains have their place just as jets, autos, and interstate buses have theirs. Neither the one, nor any of the others, is in any way a complete substitute for each other.

Thus, while there are services the airlines can perform which are unique, similarly the railroads offer certain advantages to the public which cannot be otherwise provided.

To take just one example, the airlines are somewhat at the mercy of the elements. During severe storms the planes often do not fly. Yet no such conditions apply to rail transport. Rain or shine the railroads almost always can operate.

Further, nearly all of our small rural communities, like many of those which I am privileged to represent, are serviced by rail links to the exclusion of any other form of transport save autos or buses. And since not every family owns a car or may want to travel by bus, there should exist a substantial reservoir of prospective rail passengers who would be more than willing to take the train if the train can be there to carry them.

It is for these reasons that I heartily endorse Section 2 of S. 3861 which authorizes the Secretary of Transportation, in cooperation with the Interstate Commerce Commission and other interested Federal agencies and departments, to undertake a study of the existing and future potential for inter-city railroad passenger service in this country.

I think such a study will clearly show that the public interest will only be served by a continuation—and expansion—of inter-city rail passenger service.

I believe that a majority of West Virginians would favor such an expansion in our State. Rail lines go into almost every city and hamlet in West Virginia. Today they are used almost exclusively for hauling coal and the other products of our industries to the marketplace. But I think there is a tremendous opportu-

nity for profitable passenger service if only a concerted effort is made to re-think this problem and find solutions to it.

It may mean using single-unit, commuter type, self-propelled cars. Perhaps it would mean consolidating stations and railroad operations into more efficient units. I believe the railroads have the ability to transfer the efficiency which they have brought to freight operations to the passenger field.

I believe the study which is authorized in this bill, if it explores every possible avenue, including subsidies, will find a way to preserve and expand inter-city rail passenger service and will prove a landmark in the history of American railroads.

I again would like to thank the Chairman of this distinguished Committee for permitting me to testify here today.

STATEMENT BY HON. CLIFFORD P. CASE, U.S. SENATOR FROM THE STATE OF  
NEW JERSEY

Unless this Committee and the Congress act affirmatively, effectively and soon, the passenger train may become a thing of the past.

In the 10 years since the passage of the Transportation Act of 1958, almost 900 trains have been discontinued. There are now fewer than 600 passenger trains operating in the country compared to more than 20,000 back in 1929, and the Interstate Commerce Commission faces a rising stack of petitions to discontinue many of these 600.

It is not for nostalgia's sake that we must retain and build upon our rail passenger system. The system is vital to our ever more urbanized and mobile society of which congestion is the predominant characteristic.

The passenger train potentially is the most efficient of all modes of transportation of large numbers of people. The trains do not require new and expensive rights-of-way, covered with tons of concrete, as do automobiles, buses and trucks. Trains typically go from city center to city center usually to the convenience of their passengers.

Airline passengers frequently lose much or even all of the time they hope to save through flying because of delays in takeoffs or landings, or, assuming they are lucky enough to encounter neither, because of the time it takes to get downtown. Only a few days ago, airlines in the Northeast Corridor were advising passengers between New York and Washington to save time by going by train.

Last year the railroads carried almost 300 million passengers at estimated revenue of \$485 million. This compares with a peak of more than 910 million passengers carried in 1944 at revenues approaching \$1.8 billion.

While these figures serve to show the sad trend of passenger service in the U.S., it is significant that millions still use the railroads and that some lines even make a profit. And millions more would use trains, I am convinced, if there were better service, on-time and cleaner trains.

For years the ICC has shown almost total indifference to the plight of railroad passengers. Thus headlines greeted the recent recommendation of ICC Examiner John S. Messer for establishment of minimum standards for service on passenger trains, including the requirement that *all* trains have air conditioning, heating facilities, lighting, rest rooms and drinking water "in good operational order."

Since the late 1950's I have introduced legislation to prevent the drain of essential rail passenger service so that there might be something to which to apply the minimum standards Mr. Messer so rightly recommends. My bills—the current measure is S. 1685—would amend the Transportation Act of 1958 (Section 13a of the Interstate Commerce Act) which regulates the discontinuance of passenger trains and ferries.

This law gave the railroads almost carte blanc power to dismember the nation's passenger railroads. With the aid of a supine Interstate Commerce Commission they have nearly succeeded in doing so.

Belatedly the ICC has proposed amendments to the law. The proposals are, however, not only late but too little.

In general the ICC bill (S. 3861) proposes a "comprehensive study" of the need for, and means of preserving, a national railroad passenger system. Further, the ICC proposes that the "study" of passenger needs be paralleled by "steps . . . to maintain a minimum level of essential passenger service." To do this, the agency recommends that Section 13a be "suitably amended to modernize its provisions and render them more effective as an instrument of policy during the duration of the study."

Unfortunately, the "suitable amendments" proposed by the ICC do not meet the need.

For example, the ICC proposal would not change existing law which does not require that some public agency, either state or federal, assume jurisdiction in an interstate passenger discontinuance. If the appropriate state agency, assuming there is one, refuses to take jurisdiction, the carrier is under no compulsion to clear a discontinuance with the ICC, and the service can be dropped unimpeded.

In a recent example of how this provision operates, the State of New Jersey and the ICC both disclaimed jurisdiction over a proposal to drop the Erie Lackawanna Ferries between Hoboken, N.J. and New York City. This left the operator of the ferries free to scuttle the service, and it was scuttled, resulting in inconvenience to thousands of daily commuters.

The ICC proposals also are wanting in that they would not require the Commission to issue orders in cases coming before it which it decides not to investigate. Under existing law, not only does ICC "inaction" leave a carrier free to drop a passenger service, but the courts have held that the public has no appeal. Under the color of this non-provision, the Weehawken ferries in New Jersey and trains involved in more than 60 other cases before the ICC have gone out of business in the last 10 years.

The ICC bill does not recognize its own responsibility with regard to employees of a discontinued passenger service, though under existing law the ICC may routinely protect workers affected by a line abandonment.

On the affirmative side there are some slight improvements contained in the ICC bill.

(1) The proposed legislation, I am glad to say, adopts a provision in my bill giving state regulatory agencies additional time (seven months, as compared to four in existing law) to act on discontinuances of trains operating wholly within a single state.

(2) The ICC makes proposals to protect the public against a railroad dropping a train during the notice period which brings the Commission into a discontinuance case.

(3) There is a provision which would prevent the removal of a carrier's last train between two interstate points. This is strictly stop-gap to assure that passenger railroads do not go out of business altogether while the ICC study is underway.

And (4) the measure gives the Commission an additional three to five months to investigate proposed interstate discontinuances, although this is hardly sufficient in matters of such complexity.

In sum, the ICC proposals amount to only minimal improvement in the present law. They would not assure continuance of essential passenger services while rehabilitation programs are developed, as my bill (S. 1685) would.

The provisions of S. 1685 were fully explained by my testimony before the Surface Transportation Subcommittee last year. Essentially, they would revoke the arbitrary authority Congress granted the carriers under Section 13a to drop vital passenger service without hearing or appeal.

If the ICC wishes to maintain a "minimum level of essential railroad passenger service" while it investigates the nation's rail passenger system, it could help by getting behind S. 1685. My bill has been supported by the Railway Labor Executives' Association, the National Association of Railroad Passengers and by a number of state regulatory agencies.

By acting favorably on S. 1685 the Committee and the Congress will serve notice that they clearly understand the vital role that passenger railroads can, and must, play in the nation's transportation system now and in the future.

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[From the New York Times, July 27, 1968]

#### AIR OR RAIL?

Current difficulties for the airlines at New York's congested airports present a golden opportunity for the railroads to attract customers to their potentially profitable, middle-distance runs in the busy Northeast corridor.

Although the flight time from New York to Washington is under an hour, air travelers between this city and the nation's capital normally have to figure on two hours from center city to center city. With the current delays for aircraft stacked up over airports and waiting for runway clearances, the air time from

Manhattan to Capitol Hill is beginning to approach the fastest train run of three hours and 35 minutes.

The trouble is that trains are frequently behind schedule also, and that the railroads have become notoriously contemptuous of passenger comfort. Furthermore, rail schedules frequently ignore passenger convenience. For example, the two early morning trains from New York to Washington make numerous stops and take almost four hours for the trip. The 8 A.M. President out of Pennsylvania Station doesn't reach Washington until 11:50—when it's on time—and that's only seven minutes ahead of a bus that leaves New York at the same hour.

Surely the railroads can do better than that, even without the new high speed equipment that has been subject to such inordinate delays. The railroads could also attract and hold more passengers by improving the cleanliness of their cars and the quality of dining-car and other services. A little effort in these areas would go a long way toward changing the don't-give-a-damn-for-the-passenger image of railroad management.

Switching more Atlantic corridor passengers to the rail won't solve the airport congestion problem, but it could help. Currently, some 12.8 per cent of all scheduled flights in and out of New York's airports originate in or are destined for Boston and Washington. This traffic could be served almost as quickly and perhaps more efficiently on the ground if the railroads would make the effort.

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TRANSPORTATION ASSOCIATION OF AMERICA,  
Washington, D.C., July 22, 1968.

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

DEAR CHAIRMAN MAGNUSON: On behalf of the Board of Directors of TAA, I should like to reaffirm the Association's opposition to any substantive changes in Section 13a of the Interstate Commerce Act. This Section, in our opinion, provides a fair means by which railroads faced with unprofitable passenger-train operations can seek administrative relief through the Interstate Commerce Commission. The latest proposed changes in this Section are contained in S. 3861, which is the subject of current hearings before your Committee.

In May and August of 1967, two witnesses appeared before your Committee to present TAA's views on a number of bills designed to amend Section 13a, including S. 1175, a bill very similar to S. 3861. At that time, these witnesses cited reasons why TAA believed specific proposed provisions are undesirable, and why such legislation would unduly delay future unprofitable passenger-train discontinuance cases. While a number of changes have been made in S. 3861, this bill, as written, still does not overcome the basic objections that were expressed during last year's hearings. Therefore, we recommend that your Committee not give Section 1 of this bill favorable consideration. We have no objection to the study proposed in Section 2 of the bill.

We request that this letter be made a part of the official transcript of these hearings.

Sincerely,

HAROLD HAMMOND, *President.*

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THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,  
July 26, 1968.

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

DEAR MR. CHAIRMAN: The National Industrial Traffic League is greatly concerned with the provisions of S. 3861 and other pending bills which would inhibit the efforts of the railroads to eliminate unprofitable and burdensome passenger train service.

As you know, the League is a national organization of shippers and as such represents both large and small users of transportation services in every part of the country. In addition to manufacturers of all types, the League's membership embraces shippers of agricultural products, products of mines and includes Chambers of Commerce, Boards of Trade and other organizations. The

League is generally recognized as the voice of the nation's transportation rate payers.

Our concern with the pending passenger service legislation is that the deficits from passenger service must inevitably be made up either by a higher level of freight rates or a lower level of freight service—particularly with respect to the provision of an adequate car supply.

Based on the accounting procedures prescribed by the Interstate Commerce Commission for separation of expenses between freight and passenger services the railroads will likely incur a deficit from passenger services in 1968 of between \$500 million and \$600 million. The precise extent to which these constitute avoidable costs and losses is debatable but unquestionably there is an avoidable loss of at least \$100 to \$200 million.

In the last few years there has been an accelerating decline in the use of intercity rail passenger services. The Post Office Department has diverted substantial mail revenues from passenger trains and operating costs and losses have increased. The railroads' only remedy is to eliminate these hopelessly losing operations.

In August 1967 railroads increased freight rates by approximately \$300 million, again in June 1968 freight rates were increased by approximately \$300 million and the railroads are now seeking further increases.

The losses from passenger service were obviously a major factor in motivating the railroads to seek higher rates and if the passenger losses are permitted to continue and worsen they inevitably will result in still higher freight rates and consequent inflationary pressures.

The National Industrial Traffic League sees no objection to a full scale investigation of railroad passenger service such as suggested by the Interstate Commerce Commission but the other provisions of the pending bills would certainly have the effect of inhibiting and seriously retarding the railroads' efforts to relieve themselves and their shippers of the serious burden of these losses.

The League, therefore, urges the Senate Commerce Committee not to approve the provisions of any of the pending bills which would in any way inhibit the efforts of the railroads to eliminate unprofitable intercity passenger train service.

Respectfully submitted,

SAM HALL FLINT,  
*Chairman, Legislative Committee.*

WASHINGTON, D.C., July 25, 1968.

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

DEAR SENATOR MAGNUSON: This letter is responsive to inquiry from your staff concerning any possible effect passage of S. 3861 might have on pending litigation in the United States District Court for the Northern District of Illinois, No. 68 C 956, *City of Chicago, et al. v. United States of America, et al.*, an action which seeks to set aside orders of the Interstate Commerce Commission issued under section 13a(1) of the Act and thus to restore full operation of the "Georgian" passenger trains between Chicago, Ill. and Atlanta, Ga. The suit was commenced May 27, 1968 by City of Chicago, Metropolitan Government of Nashville and Davidson County Tennessee, Village of Milford, City of Watseka, City of Hoopston, City of Danville, City of Terre Haute, City of Vincennes and Brotherhood of Railroad Trainmen. These plaintiffs have been joined by the State regulatory agencies of Georgia, Tennessee and Alabama and by City of Evansville and National Association of Railroad Passengers. I serve as commerce counsel for all plaintiffs.

S. 3861 was introduced July 19, 1968 at the request of the Interstate Commerce Commission, which had transmitted its draft bill and recommendations in a report to your Committee on June 25, 1968. In so far as section 13a(1) of the Act is concerned, S. 3861 contains two amendments which are entirely new and which have not been the subject of prior hearing in the 90th Congress. One provision is the "last train" amendment. The other provision, which has received scant attention thus far, is an amendment which would specifically require that notice of a proposed discontinuance be posted at all stations served by a train which is jointly operated by two or more carriers. No change is proposed in the required service of the notice upon Governors of States in which the train is operated.

This letter is addressed to the second of the proposed amendments to section 13a(1). The case before the court at Chicago involves the discontinuance by Chicago & Eastern Illinois Railroad Company ("C&EI") of its segment of the "Georgian" passenger trains operating daily in each direction between Chicago, Ill. and Atlanta, Ga. The C&EI handles the train between Chicago, Ill. and Evansville, Ind., where Louisville & Nashville Railroad Company takes over the train for the operation between Evansville, Ind. and Atlanta, Ga. C&EI served notice that it would discontinue its segment of the operation. The Commission authorized this partial discontinuance, by final action on May 15, 1968.

Two orders were served on May 15, 1968. The first, issued at 9:30 AM, would have ruled in the traveling public's favor by dismissing the proceeding for failure of C&EI to effectively invoke the Commission's jurisdiction in that notice of the proposed discontinuance was not posted at stations served by the train south of Evansville, Ind., and the notice as posted failed to adequately describe the through-route nature of the train.

The second order, denominated "corrected order", was issued at 3:00 PM. It found that C&EI had invoked the Commission's jurisdiction, thus ruling in the railroad's favor.

The sole justification for the notice amendment contained in S. 3861 was given yesterday by I.C.C. Chairman Paul J. Tierney:

"Fifth, lines 8-10 page 2 of S. 3861 provide more adequate notice to all patrons of a given train."

The sole comment contained in the I.C.C.'s June 25, 1968 report to the Committee is:

"Requires the posting of the notice on the property of carriers other than those proposing a discontinuance where the train or trains are part of a joint service—*This provision is new.*" (p. 60)

"Item 2 provides for more adequate notice to rail passengers and is basically self-explanatory." (p. 63)

I know of no discontinuance proceeding pending before the I.C.C. or the federal courts (other than the instant action in Chicago) where the issue of the I.C.C.'s failure to require notice at all stations served by a train is in issue. Plaintiffs take the position before the court in Chicago that notice is presently required at all stations served by a train, and that the failure to provide proper and adequate notice rendered the agency without jurisdiction to authorize the discontinuance of C&EI's segment of the "Georgian" train.

A contrary interpretation of existing law, by enactment of the I.C.C.'s proposal without satisfactory explanation, could possibly be adverse to the 14 plaintiffs, including three state agencies, seeking to restore the "Georgian" train for its full run between Chicago, Ill., and Atlanta, Ga.

Very truly yours,

GORDON P. MACDOUGALL.

*Service Date: May 15, 1968.*

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 8th day of May, 1968.

Finance Docket No. 24725

CHICAGO & EASTERN ILLINOIS RAILROAD Co.—DISCONTINUANCE OF TRAINS NOS. 93 AND 54 BETWEEN CHICAGO, ILL., AND EVANSVILLE, IND.

Upon consideration of the record in the above-titled proceedings, including the petition filed by the Cities of Chicago, Danville, Hoopston, Terre Haute, Cincinnati and Watska and the Village of Milford, on March 1, 1968, for reconsideration of the order of the Commission, Division 3, dated January 25, 1968, authorizing the above-titled discontinuance; applicant's reply thereto; petitioners' motion to strike certain matter appearing in the reply; and applicant's reply to the motion, and

*It appearing,* That the matters appearing in the reply to the petition objected to in the motion to strike are not of record in this proceeding and therefore not properly before this Commission as evidence and that no objection is made to motion to strike;

*It further appearing*, That in order to invoke the jurisdiction of this Commission under section 13a(1) of the Interstate Commerce Act a carrier must comply with certain requirements, including the posting of notice "in each station, depot, or other facility involved" (49 CFR 43.5(j)), which notice must contain a "complete description of the present service of the train . . . involved and of the discontinuance or change of operation or service proposed" (49 CFR 43.5(c)); and that the purpose of requiring such notice is to give the travelling public affected the opportunity to protest the proposed discontinuance; and

*It further appearing*, That applicant in the above-titled proceeding failed to give the proper notice required, as described above, in that no notice was posted in those facilities along the through route of trains Nos. 93 and 54 south of Evansville, Ind., and the notice as posted contained no mention of the through-route nature of the trains south of Evansville; and that applicant therefore has not effectively invoked the jurisdiction of this Commission in the above-titled proceeding:

*It is ordered*, That the motion to strike certain matters appearing in applicant's reply to the petition for reconsideration be, and it is hereby, granted;

*It is further ordered*, That the petition, insofar as it seeks dismissal of the above-titled proceeding for failure to invoke this Commission's jurisdiction under section 13a(1), be, and it is hereby, granted, and in all other respects is denied.

By the Commission, Division 3, acting as an Appellate Division.

[SEAL]

H. NEIL GARSON, *Secretary*.

*Service Date: May 15, 1968.*

CORRECTED ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 8th day of May, 1968

Finance Docket No. 24725

CHICAGO & EASTERN ILLINOIS RAILROAD Co.—DISCONTINUANCE OF TRAINS Nos. 93 AND 54 BETWEEN CHICAGO, ILL., AND EVANSVILLE, IND.

Upon consideration of the record in the above-titled proceedings, including the petition filed by the Cities of Chicago, Danville, Hoopeston, Terre Haute, Vincennes, and Watseka and the Village of Milford, on March 1, 1968, for reconsideration of the order of the Commission, Division 3, dated January 25, 1968, authorizing the above-titled discontinuance; applicant's reply thereto; petitioners' motion to strike certain matter appearing in the reply; and applicant's reply to the motion; and

*It appearing*, That the order of the Commission, Division 3, acting as an Appellate Division, dated May 8, 1968, and served earlier on May 15, 1968, erroneously indicated that the Commission had granted the petition insofar as it sought dismissal of the above-titled proceeding for failure to properly invoke this Commission's jurisdiction under section 13a(1);

*It further appearing*, That the matters appearing in the reply to the petition objected to in the motion to strike are not of record in this proceeding and therefore not properly before this Commission as evidence and that no objection is made to the motion to strike;

*It further appearing*, That in order to invoke the jurisdiction of this Commission under section 13a(1) of the Interstate Commerce Act a carrier must comply with certain requirements, including the posting of notice "in each station, depot, or other facility involved" (49 CFR 43.5(j)), which notice must contain a "complete description of the present service of the train . . . involved and of the discontinuance or change of operation or service proposed" (49 CFR 43.5(c)); and that the purpose of requiring such notice is to give the travelling public affected the opportunity to protest the proposed discontinuance;

*It further appearing*, That applicant in the above-titled proceeding gave the proper notice required, as described above; and

*It further appearing*, That no other new issues are raised or evidence of substance offered to support the request for reconsideration, and good cause has not been shown for granting the relief requested;

*It is ordered*, That the motion to strike certain matters appearing in applicant's reply to the petition for reconsideration be, and it is hereby, granted;

*It is further ordered*, That the petition for reconsideration be, and it is hereby, denied in all respects.

By the Commission, Division 3, acting as an Appellate Division.

[SEAL]

H. NEIL GARSON, *Secretary*.

THE BOARD OF PUBLIC TRANSPORTATION  
OF MORRIS COUNTY, N.J.,  
*Morristown, N.J., August 1, 1968.*

HON. WARREN G. MAGNUSON,  
*Chairman, Senate Commerce Committee,*  
*Washington, D.C.:*

The Board of Public Transportation of Morris County, New Jersey, an Agency of County Government dedicated to protecting and preserving the public interest in public transportation, respectfully requests that the following Statement be entered into the Record, on S. 3861.

It is the belief, and recommendation of this Board that before any Legislation is considered, The Congress should find and determine that the National economy, welfare, future and security require the preservation and improvement of rail passenger service. Attention is directed to the fact that all over the World, including throughout the U.S.S.R., each year shows more, better and faster rail passenger service, whereas in the United States of America, the exact reverse is true.

If The Congress believes that balanced public transportation services, with each mode doing the job for which it is best adapted, is required in the public interest, then it becomes necessary for The Congress to decide how adequate, reliable, and attractive public transportation services, including that by rail, can be provided in a manner fair to all parties at interest.

To determine how rail transportation, as one example, can be provided in a manner fair to all concerned, it is first necessary for The Congress to recognize that there are four basic types of rail passenger service. They are: the Trans-continental; the long-haul runs of say between 500 and 1,000 miles; the inter-city runs of say between 100 and 500 miles; and last but by no means least, the suburban runs of up to 100 miles, including the most essential, commuter service.

Each of these types of service presents a different problem, and the problems vary with the area served and with the railroads performing the service. There are no simple, quick, easy or pat answers, as the problems are serious and their roots go deep.

To date, The Public has received little consideration and even less protection under transportation legislation, which invariably is drawn to protect and to further the interests and desires of the railroads. There is no "Public Defender", nor does The Public have skilled lobbyists to present its side of the case. It is time for a change. The Public must receive equal consideration with that accorded the common carriers.

The Congress should recognize, and insist, that the seven indispensable links required to solve railroad passenger problems be forged into a chain without further loss of time. The Seven Links are: *The Federal Government; The State Government; County Government; Municipal Government; Railroad Management; Railroad Labor*; and last, but by no means least, *The Public*.

Before writing legislation intended to preserve and to improve railroad passenger service, The Congress should make sure that it has heard and received all facts bearing on the case, from all sides of the problem. "The Public" should be invited to present its side of the case, whenever the Railroads or regulatory bodies are asked to testify. The facts presented by "The Public"—who, after all, are the people who patronize the services—should receive as serious consideration as is accorded those presented by anyone else.

This Board recommends that The Congress direct the Department of Transportation to arrange and to conduct a symposium requiring from three to six days, if necessary, so that all parties at interest in rail passenger service can present their facts and recommendations. One or two days should be devoted to Trans-continental, and Long Haul passenger service; one or two days to Inter-City runs; and one or two to suburban and commuter service, since these various types of service have little in common.

Today, the record is very clear as to what has happened, and is happening to rail passenger service in the United States of America. How it has happened

is quite obvious, but far too little attention has been directed to "Why It Happened". The only reasons given have been those which interested parties, generally other than "The Public" have placed in the record—the whole story has never been told.

When our fine Country spends billion of dollars on esoteric projects such as trying to put a man on the moon—and yet it cannot insure him a convenient, comfortable ride between his home and place of business—where he works to earn the money to pay the taxes, some part of which are spent on far-out projects—it is high time for a change.

Respectfully submitted For The Board.

THOMAS T. TABER, *Chairman.*

LOUISVILLE & NASHVILLE RAILROAD Co.,  
*Louisville, Ky., July 8, 1968.*

Re S. 2711, S. 1685, S. 1175, S. 512, S. Con. Res. 25, S.J. Res. 52, and bill introduced on June 28: passenger trains.

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

DEAR SENATOR MAGNUSON: The Captioned bills have for their purpose extension of the period in which a railroad must operate a losing passenger train after the date upon which it proposes discontinuance, authorization of the Interstate Commerce Commission to impose conditions not only upon the discontinuance of the train but upon the overall passenger service of the applicant, and authorization of imposition of conditions for the protection of labor.

The Louisville and Nashville Railroad Company respectfully urges that Section 13a be left as it is. We oppose any amendments of this statute. Section 13a has enabled L&N to discontinue, with resulting economies, passenger trains which had been abandoned by the public and which were suffering staggering operating losses, but which, under prior law, would have been discontinued only after long delay while running virtually without patronage. These discontinuances, and other actions, have enabled the nation's railroads to render low-cost service to shippers and to those passengers who actually *use* the trains that can justifiably be continued in operation. This contrasted with the long delays this Company encountered prior to 1959 when we had to proceed before state commissions. In every case before the Interstate Commerce Commission it decided the proposal within the time limits set by the statute, and nobody requested L&N to extend the time. Our experience does not show that additional time would serve any needed purpose.

The imposition of conditions relating to the passenger service would be a tremendous invasion of the responsibilities of management and would impose terrific burdens upon the Interstate Commerce Commission. Job protection conditions are not needed when one aspect of service over a given line is discontinued. In all L&N train discontinuances the crews manning the trains were able to exercise their seniority rights to other L&N positions, and the junior employee on the extra board who was unemployed temporarily because of the level of business received the job protection provided by Congress through the provisions of the Railroad Unemployment Insurance Act.

Yours very truly,

W. H. KENDALL, *President.*

THE KANSAS CITY SOUTHERN RAILWAY Co.,  
LOUISIANA & ARKANSAS RAILWAY Co.,  
*Kansas City, Mo., July 8, 1968.*

HON. WARREN G. MAGNUSON,  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: I am informed that the proposed legislation which has for its purpose altering Sec. 13a of Interstate Commerce Act so as to place a "freeze" on the removal of passenger trains, will be considered in executive session of the respective Commerce Committees of the Senate and House of Representatives this week.

Section 13a as now written, fully protects the public, in that it provides for full review, including public hearings, by the Interstate Commerce Commission; and after having just recently experienced a series of hearings in connection with a

passenger train-off application, we can attest to the depth and thoroughness of the Commission's inquiry into such applications. To remove this means of affording the public and the carriers of dealing with the merit, or lack of merit, of train removal applications, and substitute therefor measures shortly to be considered in executive session of the Commerce Committee, will place an undue burden upon the railroads vis-a-vis the public inasmuch as it has been proven in many specific instances that intercity trains, for the most part, are economically unfeasible and an imposition upon an industry already operating at a rate of return which would be considered unconscionable in other industries.

I trust, and respectfully request that the deliberations of the Commerce Committee will result in no change in the existing law which will deprive the railroads of the forum procedure, and time they now have for proving the lack of need for and obtaining relief from the necessity of operating at a loss, specific intercity passenger trains.

With kind regards, I am,  
Sincerely yours,

W. N. DERAMUS III, *President.*

ILLINOIS CENTRAL RAILROAD,  
*Chicago, Ill., July 10, 1968.*

HON. WARREN G. MAGNUSON,  
*U.S. Congress, Washington, D.C.*

MY DEAR MR. MAGNUSON: This letter is intended to supplement my telegram of yesterday, in which I urged that your committees give cautious consideration to the proposed changes in Section 13a of the Interstate Commerce Act dealing with train discontinuance legislation.

As I indicated in my telegram, the provisions of Section 13a are not, as is commonly believed, applicable only to discontinuance cases. They may also be used as a vehicle for constructive improvements in passenger train service. A perfect example of this situation is found in a recent Illinois Central case, Finance Docket No. 25129. Here, by the application of the now flexible provisions of Section 13a(1), the Illinois Central was able to quickly implement a great improvement in the service provided by Trains 3 and 4, the Mid-American, between Chicago and Memphis. Upon receiving authority from the Interstate Commerce Commission to make the change in service as proposed, with one exception involving stopping at one point, these trains were speeded up greatly by the elimination of certain little-used intermediate station stops. A full one hour and 45 minutes was cut from the schedule of Train No. 3, while one hour and 50 minutes was taken from the running time of Train No. 4. Additionally, No. 4 was rescheduled on a convenient daytime schedule, instead of its former overnight schedule. Of particular importance is the fact that these improvements in service were placed in effect on June 30, only 49 days after we posted notices to make them effective.

The rescheduling of Trains 3 and 4 is, of course, a part of the Illinois Central's "Mini Corridor" concept of operation between Chicago and Carbondale. This proposal, which to date has only been partially implemented, due to the necessity of securing regulatory approval from both the Interstate Commerce Commission and the Illinois Commerce Commission, has been enthusiastically supported by civic and university officials, including the following:

Mr. John Scouffas, Assistant Dean of Students, University of Illinois, Champaign, Illinois.

Mr. David Keene, Mayor, City of Carbondale, Illinois.

Mr. Alexander McMillan, Director, Transportation Institute, Southern Illinois University, Carbondale, Illinois.

Mr. Henry Loeb, Mayor, City of Memphis, Tennessee.

Presently pending before the Interstate Commerce Commission is a proceeding to reschedule and speed up Trains 9 and 10 between Chicago and Carbondale, in order to bring their schedules into the overall Mini Corridor concept of service. Additionally, a similar proceeding is pending before the Illinois Commerce Commission for Trains 25 and 28. It is our hope that the complete Mini Corridor service will be implemented by the fall of this year; however, changes in Section 13a could well result in serious setbacks for this target date, delaying the implementation until 1970, if then.

Apart from our Mini Corridor proposal, the present provisions of Section 13a have been of vital importance in permitting the expeditious discontinuance of a number of trains providing local type service, trains which, prior to their discontinuance, had been almost totally deserted by the traveling public in

favor of the automobile. Such trains can be viewed as the cancerous parts of the total passenger operation. Without the ability to promptly terminate their operations, these trains, operating with little patronage and revenue to support them, serve only to incur deficits of such magnitude that the economic viability of the entire passenger operation, including its profitable parts, is threatened. It would be tragic if the entire passenger service were destroyed simply because of an inability to eliminate its cancerous parts, an inability caused by radical changes in the present provisions of Section 13a.

It is hardly necessary to dwell upon the importance of the benefits that have inured to the general public as a result of the application of the present provisions of Section 13a. If the railroads had not been able to eliminate the number of deficit ridden passenger trains that have, to date, been eliminated by use of Section 13a, the present level of freight rates would have had to be substantially higher to support such deficits, and the recent increases in freight rates would have been much greater. However, if there were such a very much higher level of freight rates, a vast amount of competitive freight traffic would have been lost to motor carriers and water carriers, carriers which are not in the position of being required to support huge passenger deficits. But as the vicious cycle would continue, the remaining freight traffic, not lost to competitive carriers, would have had to be charged an even higher level of rates to support the fixed costs of operating the railroads. And then most of this traffic would probably have been driven away by the then unbearably high rates.

The end result, and I submit that it is not a far-fetched end result *if* such events had occurred, is that those railroads with significant passenger operations would have been forced into bankruptcy.

Such a result did not occur simply because it was possible to eliminate the deficit ridden trains, through the application of the provisions of Section 13a. However, if the provisions of this section are changed so that it will no longer be possible to quickly remove such trains, the above described vicious circle could well come into operation. This is the case even though the present passenger deficit may not, in itself, be sufficient to cause such a result. Yet as present trends of sharply declining revenue and sharply escalating costs continue, and there is no reason to believe they will not do so, present deficits will climb sharply—from their already high level—if it is impossible to eliminate trains which operate at a substantial loss.

Accordingly, I urge that extreme caution be exercised in the revision of Section 13a of the Interstate Commerce Act, lest it become most difficult, if not impossible, to utilize its provisions for the implementation of changes designed to improve service, as well as to eliminate those cancerous trains whose deficits sap the economic viability of the passenger operation as well as jeopardize the economic stability of the railroad system as a whole.

Sincerely yours,

WILLIAM B. JOHNSON, *President.*

CHICAGO & NORTH WESTERN RAILWAY CO.,  
*Chicago, Ill., July 26, 1968.*

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

DEAR SENATOR MAGNUSON: In my letter to you of July 9, 1968, I expressed North Western's opposition to the proposed revision of Section 13a of the Interstate Commerce Act to revise procedures and standards for passenger train discontinuances as contained in the ICC's recommended bill, H.R. 18212. That revision is now also proposed in S. 3861, and for the reasons stated in my letter of July 9th, a copy of which is attached, we oppose S. 3861.

Particularly objectionable are the special standards for discontinuance of last trains during a two year period. Unless Congress sees fit to subsidize the losses on last trains which might otherwise be discontinued, there will be an excessive burden placed on the railroads in continuing unnecessary service.

I respectfully urge that S. 3861 be amended to exclude any provisions as to last trains.

North Western stands willing, of course, to participate fully in any study of the passenger problem conducted by the Department of Transportation as proposed in S. 3861. However, we see no useful purpose in revising the existing train discontinuance standards or procedures.

Sincerely yours,

BEN W. HEINEMAN, *Chairman.*

CHICAGO & NORTH WESTERN RAILWAY CO.,  
Chicago, Ill., July 9, 1968.

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

DEAR SENATOR MAGNUSON: I would like to take the opportunity to express this Company's opposition to S. 1175, S.J. Res. 52, S. Con. Res. 25, and to H.R. 18212, which are various proposed revisions of Section 13a of the Interstate Commerce Act dealing with train discontinuances. We are opposed to what are unnecessarily drastic revisions of the train discontinuance statute because such legislation would inevitably result in a severe imposition of continued very large losses in operating relatively unused passenger services.

Section 13a has remained unchanged since its passage in 1958 and has been effective in alleviating serious burdens in providing passenger service between intercity markets. In the case of North Western we experienced intercity passenger deficits from 1958 through 1967 as included in the passenger deficits reported to the I.C.C. in our annual Report Form A as follow:

1958	-----	\$14,728,000
1959	-----	13,860,000
1960	-----	10,926,000
1961	-----	8,282,000
1962	-----	6,712,000
1963	-----	6,053,000
1964	-----	4,482,000
1965	-----	4,138,000
1966	-----	4,032,000
1967	-----	4,841,000
Total	-----	78,054,000

We had made steady progress in reducing the intercity passenger deficit from 1958 to 1966 despite large increases in operating costs and a continuing decline in passenger revenue. The reduction has been almost entirely through removal of intercity passenger trains under Section 13a. If the huge deficit level of 1958 had continued from 1958 through 1967, we would have experienced a cumulative intercity passenger deficit of \$147,280,000 instead of \$78,054,000. In fact, the cumulative deficits would have been much, much greater than \$147 million due to increased operating costs which would have been applicable to the trains which were removed and due to a probable severe decline in revenue on the trains had they been operated.

North Western's intercity passenger deficits have been a significant factor in causing a meager rate of return and inadequate or nonexistent net railway operating income. From 1962 through 1967 North Western had the following rates of return and net railway operating income:

Year:	Rate of return (percent)	Net railway oper- ating income
1962	-----	(\$291,662)
1963	-----	11,349,938
1964	-----	10,657,636
1965	-----	13,534,090
1966	-----	13,807,615
1967	-----	(9,856,408)

The losses from intercity passenger service are still with us, however, and they are increasing. From 1966 to 1967 North Western's intercity passenger deficit increased by \$809,000 due primarily to increased operating costs including large increases in wages and fringe benefits.

Confronted with an increasing intercity passenger deficit, North Western in an effort to preserve as much intercity passenger service as possible will raise its intercity passenger fares by 25% on July 10, 1968, and is seeking to curtail portions of loss-producing service north of Green Bay, Wisconsin.

The intercity passenger losses are very real indeed. The 1967 loss of \$4,841,000 almost equaled our net railway operating deficit from all other operations. While

the passenger deficit reported to the I.C.C. is on a fully distributed basis, the direct out-of-pocket above-the-rail losses have been unduly burdensome as well. For example, the direct loss from intercity passenger service in 1967 was over \$1,992,000.

Continued losses from intercity passenger service put an unwarranted strain upon our ability to provide essential freight service to freight shippers. We cannot proceed with modernization of the railroad plant and purchase of needed equipment as rapidly as required when faced with the drain of large passenger deficits. For example, the 1967 direct losses of over \$1,992,000 if eliminated would have provided savings for purchase of 133 boxcars for freight service in one year alone. Revision of Section 13a as contained in S. 1175, S.J. Res. 52, S. Con. Res. 25, and H.R. 18212 will impede modernization of freight service to the detriment of the public.

Section 13a has prevented the collapse of several railroads from the sheer economic waste of unneeded passenger service. The serious economic plight of the railroads in 1958 has not improved markedly by 1968. In terms of a revival of passenger rider volume on intercity passenger trains, the prospects are as dim as in 1958 except perhaps in the North East corridor where the costly high speed passenger service experiment remains untested.

The purport of S. 1175 combined with S.J. Res. 52 and S. Con. Res. 25 and of H.R. 18212 appears to be to preserve passenger service by lengthening procedures, imposing a moratorium, or imposing special standards until Congress or some government agency can yet again study the problem and recommend some form of relief. A great burden would be placed on the railroads during the study period of one year and sixty days under S. 1175 combined with S.J. Res. 52 and S. Con. Res. 25 through imposition of a moratorium on train discontinuances. A similarly excessive burden would be placed upon the railroads during a study period of at least two years under H.R. 18212 through imposition of special standards as to discontinuance of last trains between interstate points.

There is no useful purpose in imposing a moratorium on discontinuances for any period of time. If a discontinuance is warranted, the carrier should be permitted to effect the savings from discontinuance without delay. The railroads simply cannot afford the continuing losses which will mount if a moratorium occurs. Nor can the railroads afford the continuing losses which would occur if the I.C.C.'s recently proposed revision of Section 13a is adopted. That proposal as introduced in the House in H.R. 18212 imposes special standards for two years for discontinuance of last trains.

Last trains are particularly costly to operate since many direct costs are related only to the operation of the last train which would be spread among several trains if operated between the same points. This is quite apparent in the case of terminal costs. The costs per mile operated of last trains are normally much higher than other trains and the savings to be afforded by discontinuance are usually greater. The burden of operating last trains can be unusually severe.

The special standards proposed by the I.C.C. in H.R. 18212 to be applied to last trains are unwarranted in that they ignore the financial burden of operating such trains except in the case of a failing carrier close to or in bankruptcy. Under Section 13a as now in effect there is a proper balancing of the factors of public convenience and necessity and the financial burden of continued operation of the trains. Under the I.C.C.'s proposal, the balancing of factors would be eliminated and, in effect, the sole test would be public convenience and necessity. This elusive standard as normally applied would result in the required continued operation of last trains in almost every case where some members of the public testified that they needed the service. The last train would probably have to be continued for two years despite any showing of large out-of-pocket losses.

As a practical example, I would point to a case we now have before the Public Service Commission of Wisconsin involving discontinuance of last trains seasonally between Green Bay and Ashland, Wisconsin. We have proposed to discontinue these trains from Labor Day to Memorial Day each year and have arranged for a substitute bus service to be operated by a local bus carrier. The trains operate at an out-of-pocket loss of \$240,000 during the period they are proposed to be discontinued and carry an average daily load of passengers of less than 40. If this case were before the I.C.C. under the proposed special standards for last trains contained in H.R. 18212, any proof of a \$240,000 loss would not be considered and a showing of 40 riders per day could easily be interpreted as a public need for service by rail even though bus service would be more than adequate. In effect, we could be required to continue the service for two consecutive years while we await the solution, if any, to be provided

by a special study—all at cumulative losses during the period of over \$480,000. H.R. 18212 is particularly unfair in changing the standards in the middle of proceedings already in progress before the I.C.C. under Section 13a or before State regulatory agencies under State statutes. At a minimum H.R. 18212 should provide that proceedings already commenced before the I.C.C. or any state regulatory agency should be permitted to be completed. Again I would turn to our example of the case we now have before the Public Service Commission of Wisconsin on our Green Bay-Ashland service. This case originated in June, 1968 (with a proposal to discontinue the trains involved after Labor Day, 1968. The matter is now set for hearing in late July and we anticipate a ruling on the discontinuance by Labor Day. We have taken this case to the Wisconsin Commission even though an interstate train is involved between Chicago, Illinois, and Ashland, Wisconsin, because the service problem involved is peculiarly a local one of the need for service in part of Wisconsin and the lack of a need for service in another part. Under H.R. 18212, this case would be superseded entirely, and we would have to start all over again with an entirely new proceeding under protracted time periods before the I.C.C. involving notices, hearings, reconsideration, etc., which could delay the case by one year beyond the date in September, 1968, when the case may be decided by the Public Service Commission of Wisconsin. Delay in this matter would be completely unjustified. We submit, therefore, that any revision of Section 13a should not supersede any state law and at a minimum should not supersede any state law already invoked by a carrier.

In the event Section 13a is amended to provide for the I.C.C.'s proposed special standards for last trains, I can foresee an immediate reaction by passenger railroads to discontinue other trains which are not last trains which they otherwise would not have sought to discontinue. The carriers will have to seek some form of relief and other trains will quite suddenly become ripe for discontinuance. In the case of North Western if we are not permitted to remove last trains, we might very well have to turn to our Chicago-Milwaukee-Green Bay service where six to ten trains daily are operated. While the losses on those trains might not be as great as on last trains, they would be factors which could be considered under Section 13a which could result in a discontinuance. I believe, therefore, that it would be most unwise for Congress to set special standards for last trains because it would inevitably result in removal of trains for which there is a greater public need. Congress would have protected the public right out of more necessary services.

The implicit suggestion in S. 1175, S.J. Res. 52, S. Con. Res. 25 and H.R. 18212 is that intercity passenger service may ultimately be subsidized by the Federal government after special studies and investigation are completed. In other words, let's preserve the service, regardless of use by the public, until we determine how it may be paid for. I do not believe that an uneconomic service should be continued unless there is a genuinely purposeful need for the service. In the case of our suburban service in the Chicago area we have converted what was a very uneconomical service which was needed by the public to get to and from work into a service which rather remarkably now earns over \$2,000,000 per year. This was done, however, without subsidy by the government, primarily through a complete modernization of equipment, more efficient operating methods, vigorous promotion, and a realistic fare structure. I am not suggesting that such methods will work in the case of intercity passenger service where quite obviously the market is too limited and has been eroded by automobile and air transportation. I do not foresee how intercity passenger service in most areas can be operated without continuing large deficits. And when the time comes for replacement of existing equipment, most of the service may disappear completely as no prudent management will be able to make large investments in losing services. For the time being so long as existing equipment can be used, intercity service may continue except to the extent it is discontinued where it is an unnecessary burden.

It is clearly in the public interest to remove those lightly patronized passenger trains not needed by the public and reduce the deficits so that the railroads may get about the business they are best able to perform for the public. The savings to be afforded from discontinuance of unnecessary service are essential to the continued modernization of the railroad plant and purchase of equipment needed by freight shippers.

However, if intercity passenger service is desired by the public and efficient management cannot provide the service within its own financial capacity, we can only turn to government subsidy as the answer. I would, therefore, suggest that if any proposed revision of Section 13a is seriously designed to preserve service

until a complete examination of the service needs are made, there should be an immediate subsidy from the Federal government of 90% of the savings which might otherwise be afforded by discontinuance of a train. If Congress desires to preserve passenger service, for example, no matter how much it is used by the public, then Congress should provide for the alleviation of the major part of the cost of providing such service. I do not believe it is useful to preserve all of the remaining intercity passenger service, but if this is a public policy which appears to be desired, then it should be paid for immediately as a public expense. I see no material justification for continued imposition of the burden upon the railroads. I suspect that Congress would not find it to be justified as a burden upon the public either in most instances.

In summary, we are opposed to any revision of Section 13a which involves a lengthening of procedures before the I.C.C., which involves a moratorium on discontinuances, or which involves special standards as to last trains and supersession of State authority over cases already in progress. Finally, if Congress determines that a preservation of the existing level of passenger service is required, and we certainly do not believe it is, then a form of subsidy should be provided to a carrier equal to 90% of the savings which might otherwise be afforded if the carrier were to discontinue a train or trains pursuant to Section 13a as presently written.

Sincerely,

BEN W. HEINEMAN, *Chairman.*

SOUTHERN PACIFIC CO.,  
San Francisco, Calif., July 5, 1968.

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

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

GENTLEMEN: Upon careful analysis, Southern Pacific Company is strongly opposed to any of the proposed changes to the present provisions of Section 13a (1) of the Interstate Commerce Act. As enacted in 1958, this statute has been and is fair and equitable to not only the rail carriers but also railway labor and other members of the interested public. These provisions have permitted the discontinuance of passenger trains only when the Interstate Commerce Commission has satisfied itself that there is no public need for these trains and that their continued operation results in out-of-pocket losses. The law has not permitted wholesale abandonment, as is evidenced by the substantial number of I.C.C. decisions denying proposals to discontinue passenger-train service.

Any of the proposed changes in the law would in effect require the freight shippers of this, and other railroads, to subsidize the waste of maintaining a passenger service which the traveling public has in most instances abandoned.

So far as Southern Pacific Company is concerned, our passenger deficit in 1967 aggregated almost \$20 million. I submit that no privately-owned company, even in the public utility field, should be asked to absorb such a deficit, which represents some 27 per cent of its earnings from freight service.

Very truly yours,

B. F. BIAGGINI, *President.*

CHICAGO, MILWAUKEE, ST. PAUL &  
PACIFIC RAILROAD CO.,  
Chicago, Ill., July 5, 1968.

HON. WARREN G. MAGNUSON,  
*Senate Office Building,*  
Washington, D.C.

MY DEAR SENATOR: I am opposed to the pending so-called Train-off Legislation, which will come up for consideration in your Committee soon.

I feel that the Railroad Industry as a whole has been acting with restraint in discontinuing its passenger service under the existing law. I am not aware of any change in circumstances which make it necessary to place more restrictive conditions on the railroads in their attempt to rid themselves of unprofitable passenger service.

The present law permits the handling of each case on its merits. The proposed law, which would include a general moratorium, could and undoubtedly would,

We regret that the subject matter of this legislation has received considerable attention by the Government in the circumstances except that we would not favor any proposed restriction that may be placed on the right of the Government to acquire land in connection with such transportation. It is the policy of the Government to acquire land in connection with such transportation. It is the policy of the Government to acquire land in connection with such transportation. It is the policy of the Government to acquire land in connection with such transportation.

W. MARVIN WATSON

Secretary