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THROUGH ROUTES AND JOINT RATES

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 2245 and S. 3626

TO AUTHORIZE THE INTERSTATE COMMERCE COMMISSION,
AFTER INVESTIGATION AND HEARING, TO REQUIRE THE
ESTABLISHMENT OF THROUGH ROUTES AND JOINT RATES
BETWEEN MOTOR COMMON CARRIERS OF PROPERTY, AND
BETWEEN SUCH CARRIERS AND COMMON CARRIERS BY RAIL,
EXPRESS, AND WATER, AND FOR OTHER PURPOSES

MARCH 6 AND 7, AND JUNE 11, 1970

Serial No. 91-65

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**THROUGH ROUTES AND JOINT RATES BETWEEN
MOTOR COMMON CARRIERS OF PROPERTY, AND
BETWEEN SUCH CARRIERS AND COMMON CARRIERS
BY RAIL, EXPRESS, AND WATER, AND FOR OTHER
PURPOSES**

WEDNESDAY, MAY 6, 1970

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

The subcommittee met, pursuant to notice, at 10 a.m. in room 5110, New Senate Office Building, Vance Hartke, Hon. (chairman of the subcommittee), presiding.

Present: Senator Hartke.

OPENING STATEMENT BY THE CHAIRMAN

Senator HARTKE. The hearing will now come to order.

The legislation with which these hearings are concerned relates to providing the Interstate Commerce Commission with greater authority to impose through routes and joint rate requirements. The bill, S. 2245, was recommended by the Interstate Commerce Commission to amend part II of the act to authorize the Commission, after investigation and hearing, when necessary and desirable in the public interest, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers by rail, express, and water. S. 3626, introduced by Senator Moss is similar.

Today the shipper, particularly the shipper of small shipments is finding it extremely difficult to obtain good service. Often, instead of making one contract he must enter into several contracts with several carriers. He often must ascertain the rates of several different carriers.

In addition, some shippers, with commodities such as furniture which are not as susceptible of easy handling as other products, find it difficult at times to get any reasonable service at all. The non-commercial shipper is completely overwhelmed by the confusion attending the existing situation.

The hearings today and tomorrow will, I hope, provide the committee with information upon which we can base forthright corrective action. A copy of the bills and agency comments will be placed in the record.

(The bills and agency comments follow :)

Staff member assigned to this hearing : A. Daniel O'Neal.

91ST CONGRESS
1ST SESSION

S. 2245

IN THE SENATE OF THE UNITED STATES

MAY 26, 1969

Mr. MAGNUSON (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 216 (c) of the Interstate Commerce Act (49
4 U.S.C. 316 (c)) is amended to read as follows:

5 “(c) It shall be the duty of common carriers of prop-
6 erty by motor vehicle to establish reasonable through routes
7 and just and reasonable rates, charges, and classifications
8 applicable thereto with other such carriers and/or common

1 carriers by railroad and/or express and/or common carriers
2 by water subject to part III; and it shall be the duty of com-
3 mon carriers by railroad and/or express and/or common car-
4 riers by water subject to part III, to establish reasonable
5 through routes and just and reasonable rates, charges, and
6 classifications applicable thereto with common carriers of
7 property by motor vehicle. Common carriers of passengers
8 by motor vehicle may establish reasonable through routes;
9 joint rates, fares, or charges with common carriers by railroad
10 and/or common carriers by water. Common carriers of prop-
11 erty by motor vehicle may establish through routes and joint
12 rates with common carriers by water other than those subject
13 to part III; and in the case of through routes and joint rates
14 so established with common carriers by water subject to the
15 Shipping Act of 1916, as amended, or the Intercoastal Ship-
16 ping Act of 1933, as amended (including persons who hold
17 themselves out to transport goods by water but do not own
18 or operate vessels), between Alaska or Hawaii on the one
19 hand, and, on the other, between the other States of the
20 Union such through routes and joint rates and all classifica-
21 tions, regulations, and practices in connection therewith shall
22 be subject to the provisions of this part. In the case of joint
23 rates, fares, or charges, it shall be the duty of the carriers
24 party thereto to establish just and reasonable regulations and
25 practices in connection therewith, and just, reasonable, and

1 equitable divisions thereof as between the carriers partici-
2 pating therein which shall not unduly prefer or prejudice
3 any of such participating carriers.

4 SEC. 2. Section 216 (e) of the Interstate Commerce
5 Act (49 U.S.C. 316 (e)) is amended to read as follows:

6 “(e) (1) Any person, State board, organization, or
7 body politic may make complaint in writing to the Commis-
8 sion that any such rate, fare, charge, classification, rule,
9 regulation, or practice, in effect, or proposed to be put into
10 effect, is or will be in violation of this section or of section
11 217. Whenever, after hearing, upon complaint or in an
12 investigation on its own initiative, the Commission shall be
13 of the opinion that any individual or joint rate, fare, or
14 charge, demanded, charged, or collected by any common
15 carrier or carriers by motor vehicle or by any common
16 carrier or carriers by motor vehicle in conjunction with
17 any common carrier or carriers by railroad and/or express
18 and/or water for transportation in interstate or foreign com-
19 merce, or any classification, rule, regulation, or practice
20 whatsoever of such carrier or carriers affecting such rate,
21 fare, or charge or the value of the service thereunder, is or
22 will be unjust or unreasonable, or unjustly discriminatory or
23 unduly preferential or unduly prejudicial, it shall determine
24 and prescribe the lawful rate, fare, or charge or the maxi-
25 mum or minimum, or maximum and minimum rate, fare,

1 or charge thereafter to be observed, or the lawful classifica-
2 tion, rule, regulation, or practice thereafter to be made
3 effective.

4 “(2) The Commission shall, whenever deemed by it
5 to be necessary or desirable in the public interest, after hear-
6 ing, upon complaint or upon its own initiative without a
7 complaint, establish reasonable through routes and joint
8 rates, fares, charges, regulations, or practices, applicable to
9 the transportation of passengers by common carriers by
10 motor vehicle, or to the transportation of property by com-
11 mon carriers by motor vehicle or by common carriers of
12 property by motor vehicle and/or common carriers by rail-
13 road and/or express and/or common carriers by water sub-
14 ject to part III, or the maximums or minimums, or the maxi-
15 mum and minimums, to be charged, and, when the carriers
16 involved cannot agree, the divisions of such rates, fares, or
17 charges as hereinafter provided, and the terms and condi-
18 tions under which such through routes shall be operated. In
19 the case of any such through routes established by the
20 Commission between common carriers of property by motor
21 vehicle and/or common carriers by railroad and/or express
22 and/or common carriers by water subject to part III, the
23 Commission shall not (except as provided in sections 3, 216
24 (d), or 305 (e)) require any carrier without its consent
25 to embrace in such route substantially less than the entire

1 length of its route and of any intermediate carrier operated
2 in conjunction and under a common management or control
3 therewith, which lies between the termini of such proposed
4 through routes, (a) unless such inclusion of lines would
5 make the through route unreasonably long as compared
6 with another practicable through route which could other-
7 wise be established, or (b) unless the Commission finds
8 that the through route proposed to be established is needed
9 in order to provide adequate and more efficient or more eco-
10 nomic transportation: *Provided*, That in prescribing through
11 routes the Commission shall, so far as is consistent with the
12 public interest, and subject to the foregoing limitations in
13 clauses (a) and (b), give reasonable preference to the car-
14 rier which originates the traffic. In the case of any through
15 route established by the Commission between common car-
16 riers of property by motor vehicle and other such carriers,
17 the limitations in this section on the Commission's power to
18 establish through routes shall apply only to the carrier origi-
19 nating the traffic. No through route and joint rate applicable
20 thereto shall be established by the Commission for the pur-
21 pose of assisting any carrier that would participate therein
22 to meet its financial needs. To enable the provision of coordi-
23 nated interline service by any common carrier or carriers of
24 property subject to the provisions of this section for which

1 there is an immediate and urgent need or other emergency
2 as determined by the Commission, the Commission, upon
3 complaint or its own initiative, may, in its discretion and
4 without hearings or other proceedings, require the estab-
5 lishment of temporary reasonable through routes to a point or
6 points or within a territory having no coordinated service
7 capable of meeting such need. Such through routes may be
8 established, under such rules and regulations as the Commis-
9 sion may prescribe, for such time as the Commission shall
10 specify but for not more than an aggregate of sixty days:
11 *Provided, however,* That such through routes may be con-
12 tinued for a period beyond an aggregate of sixty days until
13 further order of the Commission where a formal proceeding
14 is instituted under the first sentence of this paragraph within
15 the time such through routes are in effect and the Commis-
16 sion finds that the continuance of such temporary through
17 routes is necessary or desirable in the public interest: *And*
18 *provided further,* That the establishment of such temporary
19 through routes by the Commission shall create no presump-
20 tion that such through routes will be prescribed thereafter
21 on a permanent basis or will be found to be otherwise neces-
22 sary or desirable in the public interest.

23 “(3) If any tariff or schedule canceling any through
24 route or joint rate, fare, charge, or classification, whether
25 established under the first sentence of section 216 (c) or pre-

1 scribed hereunder, without the consent of all carriers parties
2 thereto or authorization by the Commission, is suspended by
3 the Commission for investigation, the burden of proof shall
4 be upon the carrier or carriers proposing such cancellation to
5 show that it is consistent with the public interest.

6 “(4) Nothing in this part shall empower the Commis-
7 sion to prescribe, or in any manner regulate, the rate, fare,
8 or charge for intrastate transportation, or any service con-
9 nected therewith, for the purpose of removing discrimination
10 against interstate commerce or for any other purpose what-
11 ever.”

91ST CONGRESS
2D SESSION

S. 3626

IN THE SENATE OF THE UNITED STATES

MARCH 24, 1970

Mr. Moss introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between the motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 216 (c) of the Interstate Commerce Act (49
4 U.S.C. 316 (c)) is amended to read as follows:
5 “(c) Upon reasonable request therefor, it shall be the
6 duty of common carriers of property by motor vehicle to
7 establish reasonable through routes and just and reasonable

II

1 rates, charges, and classifications applicable thereto with
2 other such carriers and/or common carriers by railroads
3 and/or express and/or water; and, upon reasonable request
4 therefor, it shall be the duty of common carriers by railroad
5 and/or express and/or water to establish reasonable through
6 routes and just and reasonable rates, charges, and classifica-
7 tions applicable thereto with common carriers of property
8 by motor vehicle. Common carriers of passengers by motor
9 vehicle may establish reasonable through routes and joint
10 rates, fares, or charges with common carriers by railroad
11 and/or water. In the case of joint rates, fares, or charges,
12 it shall be the duty of the carriers party thereto to establish
13 just and reasonable regulations and practices in connection
14 therewith, and just, reasonable, and equitable divisions there-
15 of as between the carriers participating therein which shall
16 not unduly prefer or prejudice any of such participating
17 carriers. As used in this subsection, the term 'common car-
18 riers by water' includes water common carriers subject to
19 the Shipping Act of 1916, as amended, or the Intercoastal
20 Shipping Act of 1933, as amended (including persons who
21 hold themselves out to transport goods by water but who do
22 not own or operate vessels) engaged in the transportation of
23 property in interstate or foreign commerce between Alaska
24 or Hawaii on the one hand, and, on the other, between the
25 other States of the Union, and through routes and joint rates

1 so established and all classifications, regulations, and prac-
2 tices in connection therewith shall be subject to the provi-
3 sions of this part.”

4 SEC. 2. Section 216 (e) of the Interstate Commerce
5 Act (49 U.S.C. 316 (e)) is amended to read as follows:

6 “(e) (1) Any person, State board, organization, or
7 body politic may make complaint in writing to the Commis-
8 sion that any such rate, fare, charge, classification, rule,
9 regulation, or practice, in effect, or proposed to be put into
10 effect, is or will be in violation of this section or of section
11 217. Whenever, after hearing, upon complaint or in an
12 investigation on its own initiative, the Commission shall be
13 of the opinion that any individual or joint rate, fare, or
14 charge, demanded, charged, or collected by any common
15 carrier or carriers by motor vehicle or by any common
16 carrier or carriers by motor vehicle in conjunction with any
17 common carrier or carriers by railroad and/or express and/
18 or water for transportation in interstate or foreign com-
19 merce, of any classification, rule, regulation, or practice
20 whatsoever of such carrier or carriers affecting such rate,
21 fare, or charge or the value of the service thereunder, is
22 or will be unjust or unreasonable, or unjustly discrimina-
23 tory or unduly preferential or unduly prejudicial, it shall
24 determine and prescribe the lawful rate, fare, or charge or
25 the maximum or minimum, or maximum and minimum rate,

1 fare, or charge thereafter to be observed, or the lawful clas-
2 sification, rule, regulation, or practice thereafter to be made
3 effective.

4 “(2) The Commission shall, whenever deemed by it to
5 be necessary or desirable in the public interest, after hearing,
6 upon complaint or upon its own initiative without a com-
7 plaint, establish reasonable through routes and joint rates,
8 fares, charges, regulations, or practices, applicable to the
9 transportation of passengers by common carriers by motor
10 vehicle, or to the transportation of property by common
11 carriers by motor vehicle, or by common carriers of property
12 by motor vehicle and/or common carriers by railroad and/or
13 express and/or water, or the maxima or minima, or the
14 maxima and minima, to be charged, and, when the carriers
15 involved cannot agree, the divisions of such rates, fares, or
16 charges as hereinafter provided, and the terms and condi-
17 tions under which such through routes shall be operated. In
18 the case of any such through routes established by the Com-
19 mission between common carriers of property by motor ve-
20 hicle and/or common carriers by railroad and/or express
21 and/or water, the Commission shall not (except as provided
22 in section 3, 216 (d), or 305 (c)), require any carrier with-
23 out its consent to embrace in such route substantially less
24 than the entire length of its route and of any intermediate
25 carrier operated in conjunction and under a common man-

1 agement or control therewith, which lies between the termini
2 of such proposed through route, (a) unless such inclusion
3 of lines would make the through route unreasonably long
4 as compared with another practicable through route which
5 could otherwise be established, or (b) unless the Commission
6 finds that the through route proposed to be established is
7 needed in order to provide adequate and more efficient or
8 more economic transportation: *Provided*, That in prescribing
9 through routes the Commission shall, so far as is con-
10 sistent with the public interest, and subject to the foregoing
11 limitations in clauses (a) and (b), give reasonable pref-
12 erence to the carrier which originates the traffic. In the case
13 of any through route established by the Commission between
14 common carriers of property by motor vehicle and other such
15 carriers, the limitations in this section on the Commission's
16 power to establish through routes shall apply only to the car-
17 rier originating the traffic. No through route and joint rate
18 applicable thereto shall be established by the Commission for
19 the purpose of assisting any carrier that would participate
20 therein to meet its financial needs. No joint rate shall be pre-
21 scribed except upon a finding, (1) that the rate or charge
22 is just and reasonable with reference to the facts and circum-
23 stances attending the service to which the rate or charge
24 is applicable, subject to provision for reasonable circuitry;
25 and (2) that the carriers involved are financially and other-

1 wise fit: *Provided further*, That the Commission shall not be
2 required to make such findings unless the fitness of a par-
3 ticipating carrier is raised in a proceeding before the Com-
4 mission under this section: *Provided further*, That the party
5 raising the issue of fitness shall have the burden of proof.
6 “(3) All carriers party to a through route or joint rate,
7 whether established by the carriers under section 216 (c)
8 or prescribed by the Commission hereunder, shall promptly
9 pay divisions or make interline settlements as the case may
10 be with other carriers party thereto. In the event of undue
11 delinquency in the settlement of such divisions or interline
12 settlements, the Commission shall permit on short notice the
13 cancellation or suspension of the through route or joint rate
14 involved: *Provided*, That such cancellation or suspension
15 shall be permitted only under such circumstances and con-
16 ditions as the Commission shall by rule or regulation pre-
17 scribe. Except for failure to pay divisions or make interline
18 settlements in accordance with the Commission’s rules and
19 regulations, if any tariff or schedule canceling any through
20 route or joint rate, fare, charge, or classification, whether
21 established under section 216 (c) or prescribed hereunder,
22 without the consent of all carriers parties thereto or authori-
23 zation by the Commission, is suspended by the Commission
24 for investigation, the burden of proof shall be upon the car-

1 rier or carriers proposing such cancellation to show that it
2 is consistent with the public interest.

3 “(4) Nothing in this part shall empower the Com-
4 mission to prescribe, or in any manner regulate, the rate,
5 fare, or charge for intrastate transportation, or any service
6 connected therewith, for the purpose of removing discrimina-
7 tion against interstate commerce or for any other purpose
8 whatever.”

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., May 22, 1970.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning S. 2245, a bill

"To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes."

This proposal is recommended by the Interstate Commerce Commission and makes the following changes in existing law:

1. Section 1 of the bill imposes a duty on common carriers of property by motor vehicle to establish through routes and just and reasonable rates, classifications, charges, etc., applicable thereto with other such carriers and with common carriers by railroad, express, and water subject to part III of the Act. This section also imposes a duty on these other modes to establish similar arrangements with motor common carriers of property.

2. Section 2 authorizes, with certain specified limitations, the Commission to order the establishment of through routes and/or joint rates by motor common carriers of property with other such carriers, railroads subject to part I of the Act, and common carriers by water subject to part III of the Act. This section also authorizes the Commission to establish temporary through routes where there is an immediate and urgent need or other emergency for coordinated interline service.

In essential respects, the majority of these amendments are modeled after S. 751/H.R. 6533 (90th Congress, 1st Sess.) and the existing provisions of parts I and III of the Act which deal with the establishment of joint rates and through routes between railroads and common carriers by water on an intramodal and intermodal basis.

According to the justification submitted by the Commission with its recommendation, other parts of the bill restate, in revised form, provisions of existing law which permit, but do not require: 1) the establishment of joint rates and through routes between motor common carriers or passengers and common carriers of passengers by other modes; 2) the establishment of joint rates and through routes between motor common carriers of property and common carriers by water, other than those subject to the jurisdiction of the Commission under part III of the Act; and 3) the retention, in a somewhat revised form, of the special provisions of Public Law 87-595, commonly known as the "Rivers Act," which deals with the jurisdiction of the Commission over water-motor through routes and joint rates applying between Alaska and Hawaii on the one hand, and the other States of the Union on the other. This appears in existing law as a proviso to section 216(c) of the Interstate Commerce Act.

This legislation has much to commend it. Many of its merits have been cited in the Commission's statement of justification. This legislation would at long last bring greater equality of regulation among all of the various surface modes of transportation subject to the Interstate Commerce Act except freight forwarders, an omission from the bill the Department regards as unfortunate. As the Subcommittee is undoubtedly aware, part I carriers (railroads, pipelines, and express companies) can be required to enter into joint rates and through routes among themselves, as can railroads with part III water carriers. Similarly, part III water carriers of passengers and property and motor common carriers of passengers can be so required on an intramodal basis. We believe that the motor carrier industry has so come of age as to be required to participate on more equal regulatory footing intramodally as well as on an intermodal basis. To the end that barriers against effective coordination would be eliminated by statutory language comparable to that now existing as to the other carriers set forth above, this bill has our support. We would note in this regard that such language permits the use of reasonable discretion on the part of the Commission, a necessary tool of effective regulation.

Although the bill may be viewed as an aspect of ratemaking, in fact, it reflects a strong concern that a greater degree of the true common carrier

service shall be afforded the public. Not only would this be so as to small shipments where it is so vitally needed, but also in other areas and categories of traffic. Given the long needed authority contemplated by this bill, the Commission will also be in a position to encourage necessary innovations and experiments both in service concepts and in ratemaking.

It may also prove feasible under this authority for the Commission to reduce the vast number of motor carrier applications for operating authority. Effective joint-line or intermodal rates may serve to avoid, or at least reasonably limit, the unsystematic proliferation of operating rights.

Although for these reasons the Department supports the basic objectives of this legislation, we believe that two aspects of it should be given careful examination by your Committee before favorable action is taken. These concern the provisions of section 1 of S. 2245 (lines 10-22), which vest jurisdiction in the Commission over through routes and joint rates established voluntarily between common carriers of property by motor vehicle and common carriers by water not subject to part III of the Interstate Commerce Act.

The first deals with the Commission's jurisdiction over transportation between Alaska and Hawaii and the other forty-eight States which is jointly provided by an ICC regulated motor carrier and a water carrier otherwise subject to the jurisdiction of the Federal Maritime Commission (lines 13-22). It is our understanding that this provision is simply a revision of a portion of present section 216(c), as amended by Public Law 87-595, which vests exclusive regulatory jurisdiction in the ICC over such joint transportation even though the water carrier portion is otherwise subject to FMC regulation. While we are not convinced that the present division of regulatory jurisdiction between the ICC and FMC in the Alaskan and Hawaiian trades is wholly satisfactory, and are giving this matter, including several pending bills in this area, detailed study, we have no objection at this time to the retention of this provision.

The second aspect of these provisions concerns the authorization of voluntarily established motor-water carrier joint rates and through routes where the water carrier, subject to FMC regulation, operates in trades other than Alaska and Hawaii, chiefly international commerce (lines 10-13). Here, as in the case of Alaska and Hawaii, we understand that these provisions of S. 2245 are intended simply to restate existing law. However, unlike the situation with respect to Alaska and Hawaii, existing law does not *expressly* confer exclusive regulatory jurisdiction over such transportation on the Interstate Commerce Commission. As your Committee is aware, the respective scope of the jurisdiction of the FMC and the ICC to accept and regulate rates and tariffs for jointly offered transportation between a point in the United States and a point in a foreign country has been the subject of formal proceedings before each agency. (FMC Docket No. 69-53; ICC XP-261.) The FMC proceeding has recently been concluded and a decision reached that tariffs containing joint rates and through routes established by ICC and FMC-regulated carriers may be filed with the FMC. The ICC's decision is still pending.

This matter is also directly related to this Department's proposed Trade Simplification Act (S. 3142/H.R. 14489) which was transmitted to Congress last year. While it may be that existing law, as restated in this bill, is adequate for resolving certain of the regulatory issues in international transportation, we believe that the provisions of the Trade Simplification Act provide a more complete and up-to-date resolution of the many issues in this area. Specifically, the Trade Simplification Act provides authority for the three agencies to establish uniform tariff rules; prescribes the manner in which each agency may regulate the portion of an international through route or joint rate subject to its jurisdiction without conflicts arising between agencies; provides for antitrust immunity for agreements between carriers subject to the jurisdiction of different agencies; and authorizes the three agencies to develop a through intermodal bill of lading. We would, therefore, request that your Committee give careful consideration to the international aspects of this legislation concurrently with your evaluation of the Trade Simplification Act.

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

Sincerely,

JAMES A. WASHINGTON, Jr.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 23, 1969.

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

DEAR MR. CHAIRMAN: We refer to your letter of June 2, 1969, asking for our comments on S. 2245. The bill would amend Section 216(c) of the Interstate Commerce Act, 49 U.S.C. 316(c), to impose a duty upon common carriers of property by motor vehicle to establish through routes and joint rates with one another and with railroads, express companies, and water carriers subject to regulation under the Act. The amendment also would permit, but not require, such carriers to establish through routes and joint rates with water carriers other than those subject to regulation under the Act, and would permit common carriers of passengers by motor vehicle to establish through routes and joint fares with railroads and water carriers.

The bill also would amend Section 216(e) of the Act, 49 U.S.C. 316(e), to authorize the Interstate Commerce Commission, after hearing, upon complaint or in an investigation on its own initiative, to prescribe the lawful rate to be observed over through routes established pursuant to the amended section 216(c). The amendment also would authorize the Commission to establish through routes and joint rates and fares applicable to the transportation of passengers and property by common carriers by motor vehicle and to establish through routes and joint rates applicable to the transportation of property jointly by common carriers by motor vehicle, rail, or water. The Commission would have the power to prescribe the lawful rates for application and also the divisions of such rates in the absence of agreement among the carriers.

A thorough analysis of the bill's provisions and comments showing the need for this legislation is contained in the justification statement made when the bill was introduced. The growth of the national economy, the expansion of the motor carrier industry, and recent technological improvements in the transportation field are cited as factors indicating the need for a more efficient national transportation system coordinated on both an intramodal and an intermodal basis. While some coordination between and among carriers in the various transportation modes has been achieved by voluntary action, we believe this proposed legislation will make possible even greater cooperative efforts. Also, the grant of power to the Commission to require coordination between and among carriers in the several modes in those instances where the public interest is demonstrably of paramount importance may serve as a spur to further voluntary action.

Similar legislative proposals were introduced in the 90th Congress. We supported those proposals because we believe any legislation which aids intramodal and intermodal coordination between and among the carriers comprising our national transportation system is desirable and in the public interest. We believe this bill, if enacted, will contribute to the establishment of a better coordinated, more efficient national transportation system. Accordingly, we recommend its enactment.

Sincerely yours,

R. F. KELLER,
For the Comptroller General of the United States.

S. 2245

THROUGH ROUTES AND JOINT RATES

The Interstate Commerce Commission recommends that part II of the Act be amended to authorize the Commission, after investigation and hearing, when necessary and desirable in the public interest, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers by rail, express, and water.

With the growth of the Nation's economy, the expansion of the motor carrier industry, and technological improvements in the transportation field, greater stress has been placed upon the importance of having a more coordinated national transportation system. Of fundamental importance to the accomplishment of this objective is the establishment of through routes and joint rates within and between the various modes of carriage. It follows, therefore, that in many instances the failure of refusal of carriers to enter into such arrangements is contrary to the public interest in the furtherance of a more coordinated national transportation system.

The availability of through routes and joint rates inures to the benefit of the shipping public in numerous ways. It enables a shipper to make one contract with the originating carrier on behalf of all carriers participating in the arrangement. In addition, the shipper may ascertain the rate for a through movement by consulting a single tariff instead of many. Both shipper and consignee also have the advantages provided by section 20(11) and similar provisions in other parts of the Act of recovering from either the originating or delivering carrier for loss or damage caused by any carrier participating in the through movement. Moreover, experience has shown that because of the economy of established channels of commerce through which substantial amounts of traffic may flow, and reduced freight rate calculation costs, joint rates are generally lower than a combination of local rates of connecting carriers not participating in such through service arrangements.

At present, the only common carriers of different modes which may be required by the Commission to establish through routes and joint rates with each other are railroads, pipelines, and express companies subject to part I of the Act; and railroads subject to part I and common carriers by water subject to part III. The only intramodal joint-rate arrangements that may be required by the Commission are between railroads, pipelines, and express companies, respectively, subject to part I, common carriers of passengers by motor vehicle subject to part II, and common carriers by water subject to part III. Common carriers of property by motor vehicle subject to part II are permitted, but may not be required to enter into joint-rate arrangements with other such carriers or with common carriers of other modes, nor on the other hand, may common carriers of other modes be required to establish through routes and joint rates with motor carriers. Our recommendation would close this gap in existing law.

In the case of through routes among motor common carriers of property, most of the regular-route, general commodity motor carriers participate in agency tariffs and are parties to the joint rates published therein. Tariffs filed under such voluntary joint arrangements often contain many restrictions as to individual carriers or classes of commodities, thereby limiting the availability of through interline service to the shipping public as to points of interchange. At the present time, the Commission's authority over motor carrier through routes and joint rates is limited. Since existing law neither imposes a positive duty on the carriers to establish such joint arrangements nor authorizes the Commission to order their establishment, the Commission's present authority is essentially confined to situations where tariffs containing through routes and joint rates voluntarily established are subsequently cancelled by one or more of the participating carriers. In such situations, the Commission has found in certain cases that such actions constitute an unreasonable, and therefore unlawful, practice within the meaning of section 216(b) of the Act or an undue and unreasonable disadvantage under section 216(d) of the Act as to certain classes of commodities and/or shippers. In a recent decision¹ applying these principles to a tariff rule providing that the carrier publishing the rules maintained no through routes, joint rates or interchange arrangements on shipments of furniture, the Commission upon finding the tariff rule in question unlawful, pointed out:

Our decision herein in no way lessens the overall need as we see it for through route-joint rate legislation. Our decision herein will curb the practice of extreme selectivity, but will fall short of the goal of placing a positive duty upon rail, water and motor common carriers to promote coordinated through service.

Absent the special circumstances present in this or similar situations, or in the absence of the establishment of joint-rate arrangements among motor common carriers of property on a voluntary basis, the only feasible way in which the Commission may provide for through motor carrier service under existing law is by granting extensions of operating rights to existing carriers or by approving consolidations and mergers of connecting carriers. The granting of such extensions is not always desirable, however, since it may result in a surplusage of carriers over certain routes. Many shippers have demonstrated their reluctance to rely on voluntary arrangements by prevailing upon motor common carriers to file applications to extend their operating authority to include every point to which

¹ No. 34815, *National Furniture Traffic Conference, Inc., v. Associated Truck Lines, Inc.*, 322 I.C.C. 802, decided December 31, 1968.

the shipper's traffic moves. Shippers justify their position, in many instances, by claiming that they are entitled to hold one carrier responsible for the safe and efficient transportation of their freight. Frequently, the Commission finds it necessary to grant such authority because of the failure of connecting carriers to adduce evidence of their willingness and ability to participate in joint-line service.

As noted, the fundamental purpose of this proposal is the advancement and promotion of a coordinated transportation system by common carriers of all modes subject to the Commission's jurisdiction on an intra and intermodal basis. Although the economic advantages of coordination have served to stimulate considerable voluntary action by the carriers, the full benefits of coordination have not been evenly distributed among the carriers or the shipping public. Indicative of the difficulties in this area is the major problem of adequate transportation for small shippers, particularly in the case of service to smaller communities. In 1967, a report on the problems in the small shipment area, issued by a special Committee on the Small Shipments Problem, composed of three members of the Commission, outlined the many transportation difficulties confronting the user of small-shipment service. Among these difficulties, the Committee found that one of the most serious was the lack of suitable interline service by motor carriers. If the Commission were granted the authority to require through routes and joint rates it could then require carriers to establish such interline service to small shippers. This would provide a significant contribution to the solution of the small shipment problem.

Although the problems with respect to the full development of intermodal coordination are neither so acute nor widespread at the present time, there is ample reason to cover this area as well in this proposal. For many years railroads and motor carriers were reluctant to enter into through route and joint-rate arrangements. While, in recent years, there has been some relaxation of this attitude on the part of the carriers, especially with the growth of "piggyback" service, such arrangements are, as in the case of those between motor common carriers of property, entered into on a permissive and voluntary basis subject to termination at any time. Here again, the lack of any obligation on the part of the carriers to continue in effect such joint through route arrangements is not conducive to the maintenance of dependable joint-line service.

Although no serious problems appear to have arisen in connection with the establishment of through routes and joint rates between common carriers by water and motor common carriers of property, the fear of collapse of such arrangements because of their permissive and voluntary nature is, of course, always present.

In sum, enactment of this proposal would permit the Commission, in proper cases, to compel the establishment and maintenance of dependable joint-line service responsive to the needs of the shipping public, and, at the same time, protect the carriers from unfair or unreasonable demands to provide through service. It would also have the effect of accordng greater equality of treatment in the regulation of the carriers of the various modes. We feel strongly that this recommendation would be a major contribution to a more coordinated transportation system, and would provide vastly improved service for the shipping public.

The draft bill implementing this recommendation revises section 216(c) and 216(e) of part II of the Interstate Commerce Act by making the following changes in existing law:

(1) Section 1 imposes a duty on common carriers of property by motor vehicle to establish through routes and just and reasonable rates, classifications, charges, etc., applicable thereto with other such carriers and with common carriers by railroad, express, and water subject to part III of the Act. This section also imposes a duty on these other modes to establish similar arrangements with motor common carriers of property.

(2) Section 2 authorizes, with certain specified limitations, the Commission to order the establishment of through routes and/or joint rates by motor common carriers of property with other such carriers or with common carriers by railroad, express and water carriers subject to part III of the Act. This section also authorizes the Commission to establish temporary through routes where there is an immediate and urgent need or other emergency for coordinated interline service.

In essential respects, the majority of these amendments are modeled after S. 751/H.R. 6533 (90th Cong., 1st Sess.) and the existing provisions of parts I and III of the Act which deal with the establishment of joint rates and through routes between railroads and common carriers by water on an intra and inter-modal basis. The provision dealing with the establishment of through routes on a temporary basis is new and is designed to deal with the situation where a carrier or carriers fails in their duty, under section 1 of the bill, to establish reasonable through routes for the benefit of the shipping public. It thus may become necessary for the Commission to institute, upon complaint or its own motion, a formal proceeding, under section 2, leading to the prescription of such through routes. Since such a proceeding could entail a lengthy hearing or other proceedings, it seems desirable to provide for the establishment of temporary through routes for a limited time to avoid adverse effects on the shipping public due to a lack of available through interline service. This provision limits the establishment of such through routes to an aggregate of sixty days unless such time is extended in conjunction with a subsequent formal proceeding involving the prescription of through routes and joint rates. The establishment of such temporary through routes by the Commission would be subject to the same limitations on the Commission's authority as are imposed by the draft bill in a case of through routes prescribed on a permanent basis in the course of a formal proceeding.

The draft bill does not contain specific provisions specifying such matters as the conditions under which any through route would be operated, divisions of joint rates, or the settlement of interline balances. It seems more desirable and appropriate that these and similar matters be handled, where necessary, through either a formal case-by-case determination or through the exercise of the Commission's rulemaking power in which all interested parties could participate.

Other parts of the draft bill restate, in revised form, provisions of existing law which permit, but do not require: 1) the establishment of joint rates and through routes between motor common carriers of passengers and common carriers of passengers by other modes; 2) the establishment of joint rates and through routes between motor common carriers of property and common carriers by water, other than those subject to the jurisdiction of the Commission under part III of the Act; and 3) the retention, in a somewhat revised form, of the special provisions of Public Law 87-595, commonly known as the "Rivers Act", which deal with the jurisdiction of the Commission over water-motor through routes and joint rates applying between Alaska and Hawaii on the one hand and, the other States of the Union on the other.

A BILL To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, 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 216(c) of the Interstate Commerce Act (49 U.S.C. 316(c)) is amended to read as follows:

"(c) It shall be the duty of common carriers of property by motor vehicle to establish reasonable through routes and just and reasonable rates, charges, and classifications applicable thereto with other such carriers and/or common carriers by railroad and/or express and/or common carriers by water subject to part III; and it shall be the duty of common carriers by railroad and/or express and/or common carriers by water subject to part III, to establish reasonable through routes and just and reasonable rates, charges, and classifications applicable thereto with common carriers of property by motor vehicle. Common carriers of passengers by motor vehicle may establish reasonable through routes; joint rates, fares, or charges with common carriers by railroad and/or common carriers by water. Common carriers of property by motor vehicle may establish through routes and joint rates with common carriers by waters other than those subject to part III; and in the case of through routes and joint rates so established with common carriers by water subject to the Shipping Act of 1916, as amended, or the Intercoastal Shipping Act of 1933, as amended, (including persons who hold themselves out to transport goods by water but do not own or operate vessels) between Alaska or Hawaii on the one hand, and, on the other, between the other States of the Union such through routes and joint rates and all classifications, regulations, and practices in connection therewith shall be subject to the provisions of this part. In the case of joint rates, fares, or charges,

it shall be the duty of the carriers party thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers."

Sec. 2. Section 216(e) of the Interstate Commerce Act (49 U.S.C. 316(e)) is amended to read as follows:

"(e) (1) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect, or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

"(2) The Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish reasonable through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or to the transportation of property by common carriers by motor vehicle or by common carriers of property by motor vehicle and/or common carriers by railroad and/or express and/or common carriers by water subject to part III, or the maxima or minima, or the maxima and minima, to be charged, and, when the carriers involved cannot agree, the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of any such through routes established by the Commission between common carriers of property by motor vehicle and/or common carriers by railroad and/or express and/or common carriers by water subject to part III, the Commission shall not (except as provided in sections 3, 216(d), or 305(c)), require any carrier without its consent to embrace in such route substantially less than the entire length of its route and of any intermediate carrier operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through routes, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation: *Provided*, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier which originates the traffic. In the case of any through route established by the Commission between common carriers of property by motor vehicle and other such carriers, the limitations in this section on the Commission's power to establish through routes shall apply only to the carrier originating the traffic. No through route and joint rate applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. To enable the provision of coordinated interline service by any common carrier or carriers of property subject to the provisions of this section for which there is an immediate and urgent need or other emergency as determined by the Commission, the Commission, upon complaint or its own initiative, may, in its discretion and without hearings or other proceedings, require the establishment of temporary reasonable through routes to a point or points or within a territory having no coordinated service capable of meeting such need. Such through routes may be established, under such rules and regulations as the Commission may prescribe, for such time as the Commission shall specify but for not more than an aggregate of sixty days: *Provided, however*, That such through routes may be

continued for a period beyond an aggregate of sixty days until further order of the Commission where a formal proceeding is instituted under the first sentence of this paragraph within the time such through routes are in effect and the Commission finds that the continuance of such temporary through routes is necessary or desirable in the public interest: *And provided further*, That, the establishment of such temporary through routes by the Commission shall create no presumption that such through routes will be prescribed thereafter on a permanent basis or will be found to be otherwise necessary or desirable in the public interest.

"(3) If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, whether established under the first sentence of section 216(c) or prescribed hereunder, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest.

"(4) Nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 14, 1970.

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

DEAR MR. CHAIRMAN: We have your letter of March 31, 1970, in which you asked for our comments on S. 3626.

S. 3626, which Senator Moss introduced, is similar in purpose to S. 2245, now before your Committee, on which we reported to you in our letter of July 23, 1969, B-89746, B-142070. Both bills would amend section 216(c) of the Interstate Commerce Act, 49 U.S.C. 316(c), to make mandatory the establishment of through routes and joint rates between common carriers of property by motor vehicle and between such carriers and common carriers by railroad, express and water. Under the terms of S. 3626, however, the duty imposed is conditioned upon the making of a reasonable request for such through routes and joint rates.

S. 3626 differs from S. 2245 also in that the duty to establish such through routes and joint rates extends to common carriers by water, defined to include those subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, operating between Alaska or Hawaii and the other states; as proposed in S. 2245, the duty to establish such through routes and joint rates would be imposed only on water carriers subject to Part III of the Interstate Commerce Act; as to the other water carriers, under S. 2245 the establishment of through routes and joint rates with motor common carriers would be permissive. Under both bills, the establishment of through routes and joint fares or charges between common carriers of passengers by motor vehicle and common carriers by rail and water would be permissive.

S. 3626 would also amend section 216(e) of the act, 49 U.S.C. 316(e), to authorize the Interstate Commerce Commission to prescribe the lawful rates applicable over through routes established pursuant to the amended section 216(c), after hearings held upon complaints or after investigations on the Commission's own motion. The Commission would also be authorized to establish through routes and joint rates and fares for the transportation of passengers and property by common carriers by motor vehicle and to establish through routes and joint rates for the transportation of property jointly by common carriers by motor vehicle, railroad or water. The Commission would be empowered not only to prescribe the lawful rates but also, in the absence of agreement among the participants, the divisions of such rates. Preliminary to the prescription of a joint rate, S. 3626, unlike S. 2245, would require finding that the rate is just and reasonable in the circumstances of its application and that, if fitness is in issue, the involved carriers are financially and otherwise fit.

Paragraph (3), section 2 of S. 3626, contains a provision not in S. 2245 which would require carrier participants in a rate to pay divisions to or make interline settlements with other participants promptly. The Commission would be authorized to prescribe rules and regulations for short notice cancellation or suspension of a through route or joint rate if there is undue delinquency in the payment of divisions or in the making of interline settlements. This provision is designed to protect carriers from the payment problems which have sometimes prompted cancellation of voluntarily made intermodal and intramodal rates. It is designed to reduce potential carrier objection to participation in through routes and joint rates.

Legislative proposals of similar import were introduced in the 90th and preceding Congresses; for example, S. 751, 90th Congress, 1st Session, on which we commented in our letters to you of February 27, 1967, and January 17, 1968, B-89746, B-142070. We supported those proposals because we think legislation which promotes intramodal and intermodal coordination between and among carriers is in the public interest. The expansion and the economic stability of the motor carrier industry warrants mandatory intramodal through routes and joint rates and justifies requiring such routes and rates between motor carriers and carriers via other modes. Either S. 3626 or S. 2245, if enacted, probably would contribute to an improved transportation system.

We prefer S. 3626 because we think the condition precedent to the imposition of the duty to establish through routes and joint rates, that is, that there be a reasonable request therefor, is advisable and proper, provided that in event of a dispute the Commission may determine (as S. 3626 seems to allow) whether a request is reasonable. We therefore recommend that your Committee give favorable consideration to S. 3626.

Sincerely yours,

R. F. KELLER,

Assistant Comptroller General of the United States.

Senator HARTKE. Let me alert everyone to an unfortunate situation. At 11 a.m. the Senate is scheduled to take up the rail passenger service bill once again. It will be necessary for me to adjourn at that time and if we have not heard from all of the witnesses by then, we hope to reconvene at 2 p.m. in the afternoon.

The first witness we will have is George M. Stafford, Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. GEORGE B. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ROBERT L. MURPHY, COMMISSIONER

Mr. STAFFORD. Good morning, Mr. Chairman. I have with me Commissioner Murphy who has been so deeply involved in this question for a number of years that we around the Commission look upon him as sort of the founder of our thinking on this particular question.

Senator HARTKE. I am glad we have somebody thinking these days.

Mr. STAFFORD. If I may proceed.

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to testify on Senate bills 2245 and 3626. Both bills provide authority to the Commission for establishment of joint rates and through routes between motor common carriers and other such carriers between such carriers and railroads, express companies and water carriers. S. 2245 implements one of the Commission's legislative recommendations transmitted to Congress on April 24, 1969.

The growth of the Nation's economy, the expansion of the motor carrier industry, and technological improvements in the transporta-

tion field have caused greater stress to be placed upon obtaining a more coordinated national transportation system.

Fundamental to this accomplishment is the establishment of through routes and joint rates within and between the various modes of carriage. In many instances the failure or refusal of carriers to enter into such arrangements is contrary to the public interest in the furtherance of such a coordinated national transportation system.

Section 1(4) of the Interstate Commerce Act, among other things, imposes a duty on all carriers subject to part I; that is, railroads, express companies, and pipeline companies, to establish reasonable through routes with other such carriers and, in the case of railroads only, with water carriers subject to part III of the act.

A similar obligation is imposed on water common carriers by section 305(b). The Commission is also authorized under sections 15(3) and 307(d) to require the establishment of these joint arrangements between these same carriers where necessary or desirable in the public interest, except that authority to prescribe such arrangements on an intermodal basis is limited to those between railroads and common carriers by water. The provisions of section 1(4) and 305(b) are subordinate to this power of the Commission, which power is, in turn, limited, in the case of railroads, by section 15(4) of the act.

Although similar provisions, set forth in section 216(a) exist with regard to motor carriers of passengers, no duty is imposed on motor common carriers of property to enter into these arrangements with other such carriers or carriers of other modes, nor may the Commission require the establishment of such arrangements.

Because it is recognized more than ever that adequate intramodal and intermodal coordination is clearly in the public interest and because the lack of this authority has brought about a number of serious problems, which I will mention subsequently, we believe that these gaps in the present law should be eliminated through the enactment of joint rates and through routes legislation.

Our existing authority over motor carrier through routes and joint rates is limited. Since the law neither imposes a positive duty on the carriers to establish such joint arrangements nor authorizes the Commission to order their establishment, our present authority is essentially confined to situations where tariffs containing through routes and joint rates voluntarily established are subsequently canceled by one or more of the participating carriers.

In such situations, we have found in certain cases that such actions constitute an unreasonable, and therefore unlawful, practice within the meaning of section 216(b) of the act of an undue and unreasonable disadvantage under section 216(d) of the act as to certain classes of commodities and/or shippers.

In a recent decision applying these principles to a tariff rule providing that the carrier publishing the rules maintained no through routes, joint rates or interchange arrangements on shipments of furniture, the Commission found the tariff rule in question unlawful. At the same time, we indicated that such decision is somewhat limited and in no way minimized the need for legislation imposing a positive duty on motor common carriers to promote coordinated through service.

Often the only way in which we may provide for through motor carrier service under existing law is by granting extensions of operating rights to existing carriers or by approving consolidations and mergers of connecting carriers. In our opinion, the wholesale granting of such extensions is not desirable because it results in an excess number of carriers over certain route.

As we have indicated, our main purpose in recommending this legislation, is the advancement and promotion of a coordinated transportation system by common carriers of all modes subject to the Commission's jurisdiction on an intramodal and intermodal basis.

Although serious problems have not arisen in connection with the establishment of through routes and joint rates between common carriers by water and motor common carriers of property, the fear of collapse of such arrangements because of their permissive and voluntary nature is always present.

I will now compare certain provisions of the two bills.

Under section 1 of S. 3626 the duty of the carriers to establish through routes and joint rates would not arise until "reasonable request therefor" had been made upon the carriers. We are uncertain as to whether this means the request of the shippers or other carriers.

Assuming it to mean either, we would not find it objectionable if the word reasonable were deleted. We believe that if the duty to establish through routes is to be conditioned upon at least one carrier and maybe two or more deciding whether the request is reasonable, little voluntary action will be taken.

It seems to us that the requirements in this proposed legislation that the Commission find that the through routes are "necessary or desirable in the public interest" before ordering them established would be protection enough to the carriers from unreasonable demands.

We believe the duty to establish reasonable through routes, charges and classifications should be absolute. Similarly, an absolute duty is imposed by parts I and III upon the railroads and express companies and water carriers, respectively.

The same statutory duty is imposed upon motor common carriers of passengers in section 216(a). The provisions of the subject bill imposing a duty only after a "reasonable request therefore" is made are not consistent with the general statutory scheme of the act.

S. 3626 would impose a duty upon motor carriers to establish reasonable through routes and rates with all water carriers, whether subject to the Commission's jurisdiction or not, and a corresponding duty upon all such water carriers to join with motor common carriers. The term "common carrier by water" is defined as including water carriers subject to the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933, on traffic moving between Alaska and Hawaii, on the one hand, and, on the other, between the other States of the Union.

These provisions, embracing, as they do, all water common carriers, would require water carriers, subject to the jurisdiction of the Federal Maritime Commission (aside from Alaska and Hawaii) including offshore foreign countries, and those engaged in exempt transportation under the act, to establish through routes and rates with the motor carriers.

This is not now required under the act as construed by the Commission up to this time. We do not think this bill, having as its main

purpose the compulsory establishment of through routes, primarily by motor carriers, should be used as a vehicle to broaden the extent to which through rates and joint rates to foreign countries may be filed with this Commission.

S. 2245 limits the requirement with respect to water carriers to those subject to part III. It would be permissive as to nonpart III carriers and as to FMC carriers on traffic to and from Alaska and Hawaii. We believe that S. 3626, if enacted, should be similarly restricted. The same comments apply to section 2 of S. 3626.

S. 3626 would require the Commission, prior to prescribing a joint rate to find: "(1) That the rate or charge is just and reasonable with reference to the facts and circumstances attending the service to which the rate or charge is applicable, subject to the provision for reasonable circuitry."

S. 2245 does not contain a similar provision. The required finding is unnecessary in view of the fact that under the general provisions of section 216(e)(2) applicable under both 3626 and 2245, the Commission is authorized only to establish "reasonable joint rates."

The requirement that the Commission make a finding respecting the reasonableness of the rate could place an undue burden upon the Commission. Extensive rate investigations would, presumably, have to be conducted before the Commission could make a finding that the rates are reasonable, under the circumstances.

The act now provides, in section 216(c) that rates and charges established by the carriers be reasonable, and section 216(e), as amended by this proposal, requires through routes and joint rates established by the Commission under this authority to be reasonable.

The general provisions covering reasonableness should, therefore, apply without the Commission having to make a finding to that effect whenever it prescribes a through route.

If this compulsory requirement, that a finding be made, were omitted, the Commission could conceivably simply require the through routes to be established and leave the measure of the rates up to the carriers, unless there was a specific request that the Commission fix the rates.

Ordinarily, though, the general level of rates in the territory would apply, but the carriers could ask the Commission to fix something higher if they could justify the reasonableness of such higher rates, without destroying the effect of prescribing through routes.

S. 3626 also requires the Commission, prior to prescribing joint rates, to find: "(2) that the carriers involved are financially and otherwise fit * * *." S. 2245 does not contain a similar provision.

We would have no objection to this condition precedent to the prescription of joint rates, but "otherwise fit" as used in the legislation is an ambiguous test and should be clarified.

Page 6, paragraph (3), commencing at line 6, of S. 3626 relates to the prompt settlement of divisions by the carriers and requires the Commission to take certain action in case of undue delinquency. These provisions are not contained in S. 2245.

We would have no objection to the requirement that carriers make prompt settlement of divisions and interline settlements. In the second sentence, however, the Commission is required, in the event of "undue delinquency" in settling divisions, to permit the cancellation or suspension of through routes and joint rates.

The term "undue delinquency" is not explained and may be subject to varying interpretations. Furthermore, the Commission is given no discretion here to apply other remedies but must permit the cancellation or suspension of through routes and joint rates.

This, apparently also contemplates that the carriers are to take such action under rules fixed by the Commission. However, the withdrawal of through routes and joint rates prescribed by the Commission should not be left to the discretion of the carriers.

Since the Commission, in such situations, prescribed the through routes and joint rates after hearing and finding they were necessary in the public interest, the cancellation or other action with respect thereto should be by order of the Commission on a proper showing that the public interest would not be affected thereby. The carriers should not be permitted to withdraw, at will, from routes and rates prescribed by the Commission.

S. 2245 contains provisions for the establishment of temporary through routes, which are not present in S. 3626. These provisions for establishing through routes on a temporary basis are designed to deal with the situation where a carrier or carriers fail in their duty, under section 1 of the bill, to establish reasonable through routes for the benefit of the shipping public.

Thus, it may become necessary for the Commission to institute upon complaint or upon its own motion, a formal proceeding under section 2, leading to the prescription of such through routes. Since such a proceeding could entail a lengthy hearing or other proceedings, it seems desirable to provide for the establishment of temporary through routes for a limited time to avoid adverse effects on the shipping public due to a lack of available through interline service.

This provision limits the establishment of such through routes to an aggregate of 60 days unless such time is extended in conjunction with a subsequent formal proceeding involving the prescription of through routes and joint rates.

The establishment of such temporary through routes by the Commission would be subject to the same limitations on the Commission's authority as are imposed by the draft bill in a case of through routes prescribed on a permanent basis in the course of a formal proceeding.

We feel this is adjunct to the main thrust of S. 2245. Although strictly a service matter, it will give the Commission power to help furnish better service to small shippers by requiring existing carriers to join their services to fill an immediate and urgent need.

The rates to be charged cannot be prescribed under this shortcut procedure, but only the requirement that through service be rendered. It is a supplement to the Commission's present power to grant temporary authority to fill an immediate and urgent need for service. The latter power proves ineffective where shippers that need service do not have sufficient volume to support a carrier by themselves to all the points they wish to reach.

This ancillary power is necessary and we strongly feel that any legislation passed on this subject should include this provision.

The Commission has previously recommended through route-joint rate legislation and has appeared in support of it. The reasons for our support have not diminished in the intervening period. If any-

thing, the demand for improved service on small shipments and traffic moving to or from rural or isolated points has increased.

As you are aware, the bulk of such shipments are presently handled by motor carriers, and the trend is ever upward. We can no longer sit idly by while the commerce of the Nation is stifled due to inability on our part to require its prompt and efficient transportation. The frustration and irritation of countless numbers of the Nation's shippers, large and small alike are legion today and should be ignored no longer.

We recommend to you a bill which we believe to be the best solution to the problem. It is, of course, S. 2245.

S. 3626 will not, in our judgment, provide the Commission with the tools necessary to accomplish as cleanly and effectively the ends sought through the provisions of S. 2245. S. 3626 contains what we feel are too many built-in roadblocks which may, in practice, operate largely to defeat the intended purposes of the legislative proposals before you.

S. 2245, on the other hand, constitutes what we believe to be a more realistic and promising approach toward the solution of transportation problems of some long standing. It represents the results of an extended and exhaustive analysis of many complex factors, including operational, economic, and public interest considerations. We, therefore strongly urge that S. 2245 be enacted.

If Congress, nevertheless, enacts S. 3626 instead, we will, of course, do our utmost to carry out its provisions.

We reiterate, however, that the enactment of S. 3626 would represent a proposal that falls short of that which S. 2245 would provide and that the Commission's capability in striving for greater efficiency in service to the public will be weakened if S. 3626 is passed instead of S. 2245.

Senator HARTKE. Thank you Mr. Stafford.

In this bill you do not make any reference to or provide any provision for or discuss in your statement anything concerning through routes and joint rates for air traffic. Could you comment on that?

Mr. STAFFORD. We were trying to keep this just within the limits of our particular jurisdiction. The evergrowing concern expressed in letters that we have before us complaining about the service we have under the Commission and that is the problem we tried to remedy.

Senator HARTKE. I understand that. What I am asking you is, is there any reason to give consideration, while we are giving consideration to that matter, to also include air within the purview of that authority?

Mr. STAFFORD. Insofar as we are concerned, that would be a two-agency question.

Senator HARTKE. I understand that. The Government doesn't operate in little boxes. That has been part of our problem.

Now the problem we have in the National Transportation Act, S. 2425, which we are considering in this committee at the present time is to try to come up with a comprehensive system.

Mr. STAFFORD. Commissioner Murphy has reminded me that we can do it voluntarily now.

Senator HARTKE. You can do it voluntarily.

Mr. STAFFORD. Of course, the service area for delivery from the air-lines is the area that has been designated by the Commission, which

is your cities they are serving. Otherwise, they must be carried by regular route carriers.

Senator HARTKE. You do not want to address yourself as to the desirability or the undesirability of including air?

Mr. STAFFORD. I think it is desirable to make every effort to take away any stumbling blocks toward the delivery of any goods anywhere in this country.

Senator HARTKE. You do feel that it would be possible to then provide for joint routes and rates with air as well as with the motor carriers, and the rail carriers?

Mr. STAFFORD. I would hope so. We would be happy to enter into a study on this to try to work out any problems in the area.

Senator HARTKE. Why would you have to have any more study on this than you do upon the question of rail and motor carrier combinations?

Mr. STAFFORD. We like to work very closely with our sister agencies.

Senator HARTKE. I am not worried about bureaucratic difficulty. I understand that. I would think that this is one of the really difficult things for bureaucratic agencies—that they tend to mother their own nests, but they forget that they all live in the same house.

Mr. STAFFORD. If you put that in the bill, we will live with it and work with it.

Senator HARTKE. Unenthusiastically, but you would.

Mr. STAFFORD. No; enthusiastically, sir.

Senator HARTKE. Have you noticed any change for the better recently in small shipment areas?

Mr. STAFFORD. No, we have not, Senator. We just recently made another survey on this. It appears that we now have in the neighborhood of some 6,000 complaints a year in service problems in this country.

Senator HARTKE. Is there any special characteristic of the shipment in regard to the complaints? Is there any cataloging that you can give us in broad general terms as to what the complaints concern?

Mr. STAFFORD. Well, of course one of the big ones we have always had started with our furniture shipments to small outlying communities. There was no problem with shipping the furniture to larger cities, but to your smaller communities, the ones where they ordered one or two or three pieces, where it was beyond the authority of any one carrier, carriers were quite reluctant, and almost always refused to interline with other carriers.

In this case there were several reasons. But, be that as it may, we had too many complaints in this area and we carried out one of our proceedings then. I am trying to find the number of it. (*Ex Parte MC-77.*)

That is only one compact area of our problems.

Other areas that we have are representative of the problems of small hardware stores in small communities feeling that if he is going to get his goods, he has to get them himself. All too often he has ordered one refrigerator for Mrs. Jones, for example, and he may have to find some way to drive into the larger city to get it there quicker, because the larger shippers delivered it to a certain point. We then have problems having it delivered.

We think that those are some cases. We get a number of cases from small communities like my hometown—1,200 population. These are the communities that need that kind of service.

Senator HARTKE. You mentioned that you had taken some steps with regard to furniture. Do you consider the steps you have taken to be effective in any degree whatsoever?

Mr. MURPHY. Yes, Mr. Chairman. It has had its effect. It has brought some very desirable results. There may be some confusion on the scope of the case as referred to a furniture case, but actually as pointed out in the testimony here, what was involved was where a carrier voluntarily participated in through routes and joint rates on certain commodities, and, at the same time, excluded other commodities which he considered less desirable. The furniture was one of the items.

Now, the Commissioner in approaching that particular complaint, found that it was unlawful for the carrier to select certain commodities from the certain franchises that he held on which he would establish through routes and joint rates and, at the same time exclude it, as it did in the furniture case.

The Commission said that if he is going into through routes and joint rates, he must do it on all commodities that he has authority to perform the service on, or he should stay out of it. In other words, he cannot select and choose a particular commodity that he will join in on, and exclude the other.

Senator HARTKE. Do you feel that this procedure could be helpful in other areas?

Mr. MURPHY. It is helpful in other areas.

We have directed the carriers to correct their tariffs where these conditions exist, and we have given them a reasonable time within which to correct them. Then, if necessary, we will take formal action to compel corrections by those who do not.

I would like to say this: Up to the present time, the mother carriers, generally speaking, seem to be making these corrections on a voluntary basis, and it looks very good as to the numbers of them that are correcting the tariff situation that we would require under the furniture decision.

Senator HARTKE. It has been contended, of course, that one of the problems here in regard to this situation is simply that it is a rate problem. Now, if you have adoption of this legislation, will it lead to an increase in rates?

Mr. STAFFORD. Not necessarily, but with the way the whole economy is going, and the problems that the trucking industry is having—

Senator HARTKE. The economy is not going any place.

Mr. STAFFORD. The problem of trying to say that this will or will not lead to an increase is not the whole picture. One of the points that I have always made was that there probably was a way shippers could get service if they were willing to pay for it—the amount that the trucker felt was an amount that would pay him a reasonable profit.

Senator HARTKE. I understand that. What you are really saying is that you do think it will really result in an increase in rates.

Mr. MURPHY. I would say that generally speaking, it would not, but it could.

I think you would have to be perfectly honest and say if you prescribe the joint rates and through routes and it required a service that the carriers had not been performing, and now, if they could show from the cost standpoint of reasonable service being rendered that it costs more, certainly you would have to grant the carrier compensation for the services performed that are within a zone of reasonableness.

I would be the last one to say that we ought to require any carrier to haul for anyone and take a loss. You do not stay in business that way.

Undoubtedly, you would have some charges that would have to be increased. I think, at the same time, you would find some of the service put in where perhaps there must be a reduction in the charges.

Senator HARTKE. What will be the special benefits in general, in your opinion, if this legislation is adopted in regard to the consumers?

Mr. MURPHY. I think it will affect the consumer in a number of ways. It will give some assurance that a reasonable regular service will be performed where the store or whoever may be the purchaser, or the consumer, can depend upon a reasonable service. He can manufacture and sell his product and be assured that he will have it distributed, rather than having it returned. We are getting a number of complaints today that large numbers of shipments moving out to carriers and they are refusing it, either because he has no through service in effect, or because he has got more desirable traffic that he prefers to handle.

Then you have to get out and shop around. When you start hauling traffic out and returning it, it is very similar to a loss and damage claim. No one profits by it.

If a carrier has to haul a shipment 500 miles and turn right around and bring it back for the reason that the connection would not accept it, or that the connection would accept it and let it lay in the warehouse and make a very poor delivery so as to destroy any future use, no one would make out on that. The manufacturer and the consumer loses. I think the carrier in many respects is the loser.

Senator HARTKE. Suppose that this authority is granted to the Commission as this legislation provides, is it going to result in protracted hearings before the Commission and have months and months of delay before you can put the whole scheme of the legislation into operation?

Mr. STAFFORD. We, of course, hope not. There is no way of really knowing whether you are going to have long protracted hearings or not. We would hope that we could put them all under our modified procedure. Our average time is 2 months on a modified procedure.

The added point that we have recommended here is temporary authority. If we can have temporary authority which we are asking, then if it is a protracted case and the need is such that we see that they need temporary authority, we can grant the temporary authority immediately. In such case, the shipper is getting the service that he needs and should have during that interim period while the case goes on.

Mr. MURPHY. May I say something?

Senator HARTKE. Certainly.

Mr. MURPHY. Mr. Chairman, I do not personally, and from my experience look for any long drawn out protracted hearings of any substance—that is, in large numbers.

I still have the feeling that if this legislation is enacted, you are going to see the majority of carriers voluntarily come in and establish what they would consider as reasonable routes and joint rates.

You will have some certainly that will not, as you had in the rail situation when that was enacted. You will have some hearings. By and large, I think that the public will benefit from it as soon as it becomes effective, because, as I see it, the carriers will do what the law is ultimately going to require. I think they will work it out among themselves and come up with a better suggestion than if they had to leave it to us to hold formal hearings.

I think they are in business to know what they are doing. I do not think you are going to have a large number, compared to the number of carriers we have today, that will compel us to go into formal proceedings.

Senator HARTKE. Can you for the record supply for us the total number of cases, month by month, as they were filed all last year and up to the time of these hearings?

Mr. STAFFORD. I would think we could get something.

Mr. MURPHY. You mean the correspondence we are having on it?

Senator HARTKE. You said you have 6,000 complaints. I just want to say that in all these instances that I do not believe in truth by assertion. I know that you would not intentionally mislead me. It is just nice to have the record here to show month by month how many complaints were filed all of last year and up until the time of the hearing this year.

Mr. MURPHY. We have it where it can be broken down. I do not take truth by assertion either.

Senator HARTKE. Thank you, gentlemen. Senator Prouty will be submitting some questions for you in writing and would appreciate your answering them for the record.

(The letter was subsequently received for the record.)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 13, 1970.

HON. VANCE HARTKE,
Chairman, Subcommittee on Surface Transportation, U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: This is in reply to your request at the hearings on May 6, 1970, before your Subcommittee on Senate Bills 2245 and 3626.

While responding to your question whether there had been any change for the better recently in the small shipments area, my testimony was that the Commission received 6,000 complaints relative to motor carrier service during 1969. This number of complaints was an estimate, and information subsequently obtained from our field offices discloses we actually received 8,707 complaints during 1969 where motor carriers failed to adequately perform a transportation service. This is a substantial increase from the preceding year. In addition, 3,156 similar complaints were received during the first four months of 1970. Enclosed is a tabulation you sought of the complaints, with a breakdown by month and by ICC Region.

In my statement I informed you that in many instances the failure or refusal of carriers to enter into joint rate and through route arrangements is contrary to the public interest in the furtherance of a coordinated national transportation system. In this respect, the following example of the problems manifested by a lack of such joint rate and through route arrangement has been brought to my attention by Commissioner Murphy, Chairman of Division 1 of this Commission.

On July 28, 1966, five owners of small motor common carriers of property conducting operations in the middle Tennessee area requested a meeting with Division 1. The carrier officials explained that there were more than twenty so-called

feeder-line carriers located in middle Tennessee which were having great difficulty in obtaining connecting service. Virtually all line-haul motor common carriers serving points in Tennessee were alleged to have restricted their participation in through traffic. Efforts were made to persuade line-haul carriers to take remedial action, and three such carriers made a favorable response. The remaining line-haul carriers continued their restrictive practices, but to some extent were powerless to change the situation because of the restrictive practices of their own connecting carriers serving ultimate destinations located beyond Tennessee.

On July 21, 1967, it was reported that the situation had become even worse, and Commissioner Murphy met with representatives of the middle Tennessee carriers pursuant to their request. The carriers expressed interest in pending legislative proposals to empower the ICC to establish through routes and joint rates, but no concerted action to support this legislation was taken by the carriers. Subsequently, on November 1, 1968, Commissioner Murphy inquired whether the situation in middle Tennessee had improved. A representative of the carriers responded that as a result of Commission efforts and because of the pending through route-joint rate legislation, the involved carriers had gotten together and had begun to work out their problems.

On December 17, 1969, Division 1 again was requested to meet with representatives of the middle Tennessee carriers relative to a further deterioration of interline conditions at Nashville, Tennessee. Renewed efforts were made to resolve the problem; and on February 18, 1970, the Division met with top representatives of both the small feeder lines and the major line-haul carriers. The carrier officials in attendance were cooperative and sincere efforts were made to obtain relief. On March 25, 1970, and in later correspondence, it is reported that efforts to ease the interchange problem at Nashville apparently have been to no avail, as the line-haul carriers involved justify themselves and appear powerless to improve the overall situation.

This is but one of the examples of what causes the frustration and irritation of many shippers, large and small. I believe the Commission should have the power to help furnish better service by requiring existing carriers to join their services to fill the needs of the nation's shippers, and passage of S. 2245 would be the best solution to the present problems.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

Enclosure.

INTERSTATE COMMERCE COMMISSION

NUMBER OF MOTOR CARRIER SERVICE COMPLAINTS HANDLED BY FIELD STAFF, BUREAU OF OPERATIONS

	Regions					
	1	2	3	4	5	6
1969:						
January	68	66	153	95	79	60
February	68	53	173	77	65	63
March	105	75	160	83	78	105
April	94	74	226	91	81	145
May	75	51	181	83	78	114
June	103	96	194	78	82	135
July	134	101	222	89	146	164
August	172	121	223	106	155	138
September	143	135	245	104	164	154
October	113	131	258	129	134	152
November	78	107	201	125	106	125
December	97	88	197	120	98	125
Total	1,250	1,098	2,433	1,180	1,266	1,380
Grand total						8,707
1970:						
January	112	98	229	101	105	153
February	96	90	218	103	111	149
March	117	92	219	110	104	152
April	72	123	188	70	175	169
Total	397	403	854	384	495	623
Grand total 1st 4 months, 1970						3,156

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, May 7, 1970.

HON. GEORGE M. STAFFORD,
*Chairman of the Interstate Commerce Commission,
Interstate Commerce Commission Building, Washington, D.C.*

DEAR MR. CHAIRMAN: I very much regret that I was unable to be present when you testified before the Committee on S. 2245 and S. 3626. I had a number of questions which I would like to have discussed with you at that time.

Pursuant to an understanding with other members of the Committee, I am submitting to you with this letter those questions, and would very much appreciate your reply to them at your earliest convenience.

A copy of this letter, the questions, and your responses thereto will be incorporated in the record of this proceeding.

Sincerely yours,

WINSTON PROUTY,
U.S. Senator.

Enclosures.

Question. Mr. Chairman, does S. 2245, the bill which was introduced at the Commission's request, represent simply a restatement of the law on through routes and joint rates presently applicable to carriers subject to regulation under Parts I and III, except for the provision which would permit the Commission to require the establishment of through routes on a temporary basis?

Answer. In a sense S. 2245 is a restatement of the law on through routes and joint rates presently applicable to carriers subject to regulation under Parts I and III of the Interstate Commerce Act. However, it extends the principles of through routes and rates presently existing under Parts I and III of the Act to encompass also motor common carriers of property. This would be accomplished by requiring the establishment of such routes and just and reasonable rates between and/or among (1) such motor carriers and (2) such motor carriers and other common carriers by (a) railroad, (b) express, or (c) water (subject to part III of the Act). Thus, only insofar as the statutory provisions relating to Parts I and III would apply under S. 2245, does the legislation represent a restatement. Insofar as it would impose a duty upon motor carriers to establish through routes and rates between and among themselves and between and among such carriers and other common carriers referred to above, it represents an extension of the present law. In other words, rail and water carriers presently have the duty to establish through routes with their own kind and with rail, express, and domestic water carriers, and the latter will have a correlative duty as to motor carriers. The power to require temporary establishment of through routes would not be entirely new, but presently under section 15(4) of the act, our emergency power to establish temporary through routes is limited to rail and rail-water movements.

Question. To what extent do you oppose the various provisions contained in S. 3626 which would limit the Commission's discretion in requiring the establishment of through routes and joint rates among motor carriers?

Answer. The Commission's misgivings about the restrictive language of S. 3626 and its reasons for preferring the provisions of S. 2245 were set forth in the testimony of Chairman George M. Stafford, presented on May 6, 1970. We believe that the requirement that the Commission find, as a prerequisite to prescribing joint rates, that the rate or charge is just and reasonable is unnecessary. Under the general provisions of Section 216(e) (2) the Commission is authorized only to establish "reasonable . . . joint rates." In addition, as we stated, such condition would place an undue burden on the Commission in that extensive rate investigations might be required to comply with the condition. On the other hand, we have no objection to the inclusion of the requirement that the carriers to be parties to prescribed joint rates be found financially and otherwise fit. The latter criterion, however, should be clarified. Obviously, though, to the extent that we are required to make multiple formal findings, our ability to provide speedy relief, and hence, the effectiveness of the proposed legislation, would be reduced.

Question. Inasmuch as such limitations are not contained in the comparable provisions of Parts I and III of the Act, it could be argued, could it not, that we would still be according the motor carrier industry favored treatment if we

adopted the bill, S. 3626, instead of S. 2245 which tracks the present provisions of Parts I and III?

Answer. Insofar as S. 3626 contains limitations upon the prescription of through routes and joint rates for motor carriers not found in the provisions of Parts I and III of the Interstate Commerce Act, the measure would be according the motor carrier industry treatment more favorable than the act presently extends to the railroads and water common carriers.

Question. You have asked for authority to temporarily require the establishment of through routes (but not joint rates) in your bill, S. 2245. The Commission does not have such authority with respect to other carriers subject to the Interstate Commerce Act. Please explain why you feel that it is appropriate and necessary to grant the Commission such extraordinary authority with respect to motor carriers.

Answer. The authority to require the establishment of temporary through routes in S. 2245 is intended to deal with situations where a carrier or carriers fail in their duty, under section 1 of that bill to establish reasonable through routes for the benefit of the shipping public. When it becomes necessary for the Commission, upon complaint or its own motion, to institute a formal proceeding, the time required for an ultimate determination could adversely affect the shipping public because of the lack of through interline service. As you know, virtually all of the small-shipment traffic now moves by motor carriers. The provision will empower the Commission to help furnish better service to the small shipper by requiring existing carriers to join their services to fill an immediate and urgent need. It is a supplement to our present power to grant temporary operating authority. Additionally, as previously noted, we do have emergency power under section 15(4) of the act to establish temporary rail and rail-water through routes.

Question. The provision which limits the establishment of through routes to an aggregate of 60 days is comparable to the 60 day limitation on grants of temporary operating authority in connection with applications for motor carrier operating authority, is it not?

Answer. The sixty-day limitation on prescribed through routes would be shorter than the period of time for which the Commission presently can order temporary motor carrier operations. Under sections 210a(a) and 210a(b) the Commission is empowered to grant temporary authority for no more than 180 days, though this may be extended indefinitely upon the filing of applications for corresponding permanent authority. Similarly, however, under S. 2245, the temporary establishment of through routes by the Commission could remain in effect beyond the 60-day period, until final determination of a corresponding formal proceeding, if any.

Question. Could you supply, for the record, a figure indicating the average length of time which permits for temporary authority granted in connection with such proceedings have remained outstanding before either being encompassed within a grant of permanent authority or expiring upon denial of the application for permanent authority?

Answer. There is no exact information available indicating the average length of time that grants of temporary motor carrier authority made in connection with applications for permanent authority have remained outstanding. However, the average age of motor carrier permanent authority applications is between nine and ten months.

Question. Have you any reason to believe that applications seeking the establishment of through routes will be more expeditiously handled than applications for motor carrier operating authority?

Answer. We contemplate that there will be substantial voluntary compliance with the law if the legislation is enacted, and, to that extent, formal proceedings will be unnecessary. However, where such proceedings are necessary, there is every reason to believe that they will be determined as expeditiously as applications for motor carrier operating authority, the time in either situation being dependent upon the scope of the application, the issues posed, and the size and complexity of the case presented in support and in opposition thereto.

To cope with possible lengthy proceedings, the authority for the establishment of temporary through routes is therefore, requested. Such authority, in considerable measure, would assure adequate service to shippers during the pendency of the proceedings.

Senator HARTKE. We will now hear from the Honorable Paul A. Rasmussen, commissioner, Minnesota Public Service Commission, on behalf of the National Association of Railroad & Utilities Commissioners.

We are going to adjourn at 10:59 so that I have time to go over to the Capitol.

STATEMENT OF PAUL A. RASMUSSEN, COMMISSIONER OF THE MINNESOTA PUBLIC SERVICE COMMISSION, AND A MEMBER OF THE EXECUTIVE COMMITTEE OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; ACCOMPANIED BY PAUL ROGERS, GENERAL COUNSEL

Mr. RASMUSSEN. Do you want me to start now?

Senator HARTKE. I would hope that you could include your whole statement. Maybe you could summarize it. Your entire statement will appear and you can omit that part of it that you think can be omitted, and cover the points you wish to.

Mr. RASMUSSEN. Senator Hartke, members of the committee, and ladies and gentlemen; in view of the time factor, I will summarize what I have stated in my formal statement.

I am representing the National Association of Regulatory Utility Commissioners and appearing with me today is Paul Rodgers, general counsel for this organization.

The NARUC, which I am representing, has a membership of the 50 State regulatory commissions, and also the commissions of the District of Columbia, Puerto Rico, and the Virgin Islands.

The NARUC and the Public Service Commission of the State of Minnesota are of the opinion that this legislation is long overdue from a practical point of view. The present statute in the Interstate Commerce Act, section 216, parts 1, 2, and 3, provide that the Interstate Commerce Commission has jurisdiction transporting property only as it relates to establishing through routes and joint rates pertaining to the railroads, water, and motor vehicles in the transportation of passengers.

Now, it appears that this same provision should apply to the transportation of property by motor carriers. There are many cases, for instance, where the motor carrier industry is very selective. Many carriers stipulate in their tariffs that they will not transport merchandise that involves more than two carriers in a line haul. If a third interline carrier is needed, they will not accept such freight using a joint rate.

It often happens that when it is necessary to interline a shipment, a motor carrier will deliberately refuse in an indirect way to accept certain shipments that are bulky and carry a low tariff. When such shipments are tendered to them, they state that they do not have the equipment available to transport such shipments, anticipating and hoping that the carrier offering them such interline shipments will under the circumstances find another carrier to transport the merchandise.

It often happens that immediately after turning down such an unprofitable shipment, if a carrier asks them to take an interline

shipment that carries a high tariff and is financially desirable, they would have no difficulty in providing necessary equipment to transport this shipment.

If the law provided that the Interstate Commerce Commission had the jurisdiction to establish through routes and joint tariffs affecting interline shipments by motor carrier and intermodal shipments by motor carrier with rail, water, or express, the public would benefit and the carriers involved would not refuse to accept such shipments.

In establishing joint rates involving through shipments affecting one type of carrier and intermodal shipments, it will be absolutely necessary for the Interstate Commerce Commission to establish compensatory rates.

Representatives of the industry that I have talked with are apprehensive that if S. 3626 prevails, they will be compelled to place in their tariff thousands of paper rates that will never be used.

In reading the bill, I do not interpret that this will be the case. There is also a provision in S. 3626 as to the financial stability and the fitness of the carrier.

The motor carrier industry is unduly apprehensive with respect to having a tariff that would have in it thousands of paper rates.

When it comes to the financial statement and the fitness of the carrier, the fact that the Interstate Commerce Commission and State commissions, in granting a certificate, find that a carrier is fit and able and that they are financially solvent, it should not become the duty of the Interstate Commerce Commission to make another determination as to the fitness and the financial solvency of these carriers. You can take it for granted that they are.

One thing that is a characteristic of the industry today is that most of the railroads have practically no LCL transportation by rail. Specialization in the transportation of less-than-carload traffic is developing rapidly. For instance, United Parcel Service, Inc., limits their shipments by weight and size. The American Courier and Sweeney-Loomis limit the shipments to commercial paper and letters of credit for banks.

I just spoke briefly with Commissioner Murphy about the matter of having transit balances pertaining to grain shipments, which is something that should not be disturbed. It is my judgment that through routes and joint rates would not necessarily affect specialization and transit balances.

I would appreciate it if I had more time, but I do realize that there is a time element here. There are many factors from the standpoint of the equity of the public that I would like to discuss.

I just want to state that whether it is the United States Senate, whether it is the Interstate Commerce Commission, or a State commission, when we respond to legislation and our responsibility, I think that we have to keep this fact in mind: It is our responsibility to realize that the equity of the public has to prevail. The public does not exist for public utilities. The public utilities exist in essence for the benefit of the public.

Thank you very much.

Senator HARTKE. Thank you for abbreviating your time.

We will recess until 2:30 this afternoon.

Mr. RASMUSSEN. I do not have to appear?
 Senator HARTKE. You endorse this bill?

Mr. RASMUSSEN. Yes.

Senator HARTKE. I have read it all and it is fine.
 (The statement follows:)

STATEMENT OF PAUL A. RASMUSSEN, COMMISSIONER, MINNESOTA PUBLIC SERVICE COMMISSION, AND A MEMBER OF THE EXECUTIVE COMMITTEE OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ON BEHALF OF THE STATE OF MINNESOTA AND OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and members of the Committee: My name is Paul A. Rasmussen, a member of the Minnesota Public Service Commission. I have been a member of this Commission since 1952, and prior to that I was Budget Commissioner for the State of Minnesota for 4 years during which time I compiled and edited 2 State budgets. Prior to that, I was a college professor at Concordia College, Moorhead, Minnesota, for 10 years.

I am a member of the NARUC (National Association of Regulatory Utility Commissioners) Executive Committee and also a member of the NARUC Committee on Communications. For 8 years, I was chairman of the NARUC Committee on Railroad Car Shortages.

I have on many occasions given testimony before Committees of Congress and Federal agencies.

I was 1 of 3 cooperators, representing the NARUC, in connection with the investigation made by the FCC of the American Telephone and Telegraph Company, and, currently, I am 1 of 3 cooperators, representing the NARUC, in the TWX (Teletypewriter Exchange Service) concerning having this service purchased by Western Union from the Bell Company.

The NARUC, which I am representing, has a membership of the 50 State regulatory commissions and also the commissions of the District of Columbia, Puerto Rico, and the Virgin Islands.

The legislation proposed in S. 2245 and S. 3626 has the support of the NARUC, and I am officially authorized to advise your Committee that the NARUC is of the opinion that this type of legislation should crystallize into law because of the beneficial effect it will have on the economy of the nation and accrue to the benefit of the shipping public.

On behalf of the NARUC, I want to express their appreciation for the opportunity of sponsoring this constructive legislation.

S. 2245 (Magnuson) and S. 3626 (Moss) concern legislation that would amend the Interstate Commerce Act by requiring the establishment of through routes and joint rates between motor common carriers of property and between such carriers and common carriers by rail, express, and water.

The 2 bills cited above are basically the same in their aim to amend Part II of the Interstate Commerce Act in order to make it the duty of common carriers of property by motor vehicle to establish reasonable through routes and just and reasonable rates and charges with other motor common carriers and/or common carriers by railroad and/or express and/or common carriers by water. S. 2245 (Magnuson) contains stronger language than S. 3626 (Moss), as S. 2245 reads "It shall be the duty . . ." (mandatory) while S. 3626 reads "Upon reasonable request . . ."

Another basic difference in the two bills appears to be that S. 2245 (Magnuson) provides for the ICC to require the establishment of temporary reasonable through routes to a point or points within a territory having no coordinated service capable of meeting such need, while S. 3626 contains no comparable provisions. The NARUC considers this a necessary stipulation in the law.

Both bills contain the words "No through route and joint rate applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

S. 3626 (Moss) is more specific and definite, containing the following language on Page 5, Line 25: "that the carriers involved are financially and otherwise fit."

The first statement that I refer to contained in both bills appears rather superficial because any service performed by a carrier would assist the carrier

participating in meeting its financial needs. On the other hand, the language in S. 3626 (Moss) is very definite and would guarantee that any carrier participating in a through route and joint rate would be financially solvent and fit and able to perform this service and pay to the participating carriers, that interline, their share of the pro rated revenue collected in performing the service.

The fact that a carrier is a certificated carrier, authorized by the ICC, guarantees their fitness and ability and financial solvency, and no hearing should be expected or required by the ICC in challenging the financial solvency and fitness and ability of an authorized carrier unless there is evidence to the contrary, and it should then be the burden of the complaining carrier to challenge the fitness, ability, and financial status of the carrier involved.

Part I (rail) and Part III (water) of the Interstate Commerce Act contain language which could result in compulsory establishment of through routes and joint rates. Part II (motor) of the Interstate Commerce Act (216(e)) states that the Commission shall, whenever deemed necessary or in the public interest, establish through routes and joint rates applicable to the transportation of *passengers*, by common carriers by motor vehicle. The proposed legislation seeks to also include the transportation of *property* within the purview of jurisdiction in establishing through routes and joint rates.

Section 216(c) (motor) of the Interstate Commerce Act now reads "Common carriers by motor vehicle *may* establish reasonable through routes and joint rates with other motor carriers, or with common carriers by rail, express, or water," while S. 2245 says they "shall" establish such through routes and rates.

I would suggest that the Committee analyze thoroughly any difference that might result because of a difference in the language contained in the 2 bills. I refer to Line 5, Page 1, of both bills: S. 2245 reads "It shall be the duty of common carriers of property . . .", while S. 3626 reads: "Upon reasonable request therefore, it shall be the . . ." The investigation I have made concerning both of these bills indicates that the motor carriers are apprehensive that if the language in S. 2245 becomes a part of the law, it will require them to establish thousands of paper rates and that they will have to place in their tariffs through routes and joint rates for any service regardless of whether or not such service is ever required on the part of its customers. I do not read such a requirement in the language of this bill, and I am of the opinion that if there is any possibility that it would result in establishing unnecessary and useless routes and joint rates, the language of the bill should be modified so as to eliminate such a superfluous requirement; however, I am of the opinion that it should be the responsibility of the Interstate Commerce Commission to determine reasonable through routes and equitable joint rates.

The motor carriers—whether the service is limited to motor carriers or is intermodal in nature—should not have the responsibility of determining whether the required service is reasonable.

As I read both of these bills, such a determination is the responsibility of the ICC and it is my judgment that the motor carrier industry is unduly apprehensive in anticipating that S. 2245 (Magnuson) would burden the industry with a superficial tariff containing a large number of paper rates. If there is a remote possibility that such a condition exists, certainly then the bill can be edited to eliminate such a possibility.

The present provision in Section 216(e) of the Interstate Commerce Act, in regard to prohibiting the ICC from prescribing any rates or charges for interstate transportation for the purpose of removing discrimination against interstate commerce, remains unchanged in both of the proposed bills.

The Hepburn Act of 1906 resulted in an amendment to the Interstate Commerce Act which conferred upon the Commission the power to establish through routes and joint rates applicable to the transportation of passengers or property by carriers in Part I (rail) or by rail and water carriers in Part III. The proposed bills seek to give the ICC authority to order the establishment of through routes and/or joint rates by motor common carriers of *property* with other such carriers (motor) or with common carriers by railroad, express, subject to Part I and common carriers by water subject to Part III of the Act.

The need for specific ICC authority to order the establishment of through motor routes and joint rates was amply demonstrated in ICC Docket No. 34815, *National Furniture Traffic Conference v. Associated Truck Lines*. This proceeding stemmed from a complaint by the National Furniture Traffic Conference against a tariff provision published by Associated Truck Lines which stated

that Associated "maintains no through routes, joint rates or interchange arrangements on shipments of furniture" between certain territories, while maintaining no restriction on general commodities moving in this same territory. The majority of the Commission held that Associated Truck Lines unfairly discriminated against one type of traffic, and ordered that the offending tariff rule be cancelled. Associated Truck Lines, Inc., contested this order to the United States Supreme Court, which upheld the ICC order that furniture should be allowed to move under through routes and joint rates to the same degree as general traffic. The net effect of the tariff restriction in Associated Truck Line tariff, if allowed to become effective, would have been to restrict shipments of furniture to those territories which could be served by Associated Truck Lines, Inc., in single line service. The traffic could move beyond Associated Truck Lines on combination rates, which would result in higher charges than would apply on joint rates and through routes.

The ICC decision in requiring cancellation of this offending rule was not unanimous. For example, Commissioner Walrath dissented from the majority, on the premise that Section 216(c) of the Interstate Commerce Act does not confer the Commission with authority to find that motor carriers under Part II of the Act cannot be selective in their establishment of joint rates and through routes. He recommended corrective legislation so that the Commission would have the authority to prescribe through routes and joint rates. The proposed bills in S. 2245 and S. 3626 seek to remedy this deficiency.

During the past 10 years, it has become more apparent that there is a need for through routes and joint rates, not only via motor carriers under Part II of the Act, but also similar inter-modal arrangements as between motor, rail and/or water. The Interstate Commerce Act now confers authority to the ICC for the prescription of through routes and joint rates involving rail and water, and the need for that authority involving motor carriers and inter-modal is also apparent. Several changing transportation trends of the past several years dictate that this legislation is needed: (1) The disappearance of LCL freight from the railroad scene. LCL shippers are almost wholly dependent upon motor carrier service. Motor carriers have been gradually merging into fewer, but larger systems, wherein again the need for authority to prescribe through routes and joint rates is imperative.

In summary, this corrective legislation is long overdue. Not only will it (S. 2245) impose a duty on common carriers of property by motor vehicle to establish through routes and just and reasonable rates with other motor carriers, but it also imposes that duty for through routes and joint rates via motor, rail and/or water.

S. 2245 further contains a provision allowing the Commission to require the establishment of temporary reasonable through routes on an intra-modal or inter-modal basis to points within a territory having no coordinated service, limited to 60 days, unless extended because of continued need or unless formal proceedings have been inaugurated as to the need for such service.

S. 2245's language "It shall be the duty" is preferable to S. 3626's "Upon reasonable request therefore, it shall be the duty." The latter language would weaken this legislation in its stated purpose to require through routes and joint rates. The first conflict of interpreting this legislation would be how do you define "reasonable request." It has been our experience in Minnesota, that common carriers often do not act upon "reasonable request," but rather, only after being ordered by the Commission to perform its duty in a situation where the public need is apparent.

Tariff restrictions of various types, involving routes, weight, and territory have become more prevalent during the past several years. The nation's commerce must not be hampered by this trend. The bills under consideration will certainly be a welcome corrective step.

The NARUC sponsors and recommends the basic objectives of this proposed legislation. It may be the judgment of your Committee and Congress that some minor modifications be made in order that the bill cannot be misinterpreted.

At the present time, there is a tendency toward specialization in transporting LCL freight. I refer to operations like United Parcel Service, Inc., which limits the size and weight of the shipments they transport, and American Couriers and Sweeney-Loomis, who transport commercial papers and letters of credit for banks.

The proposed legislation will not in any way affect or curtail this type of specialized transportation service. It will, however, encourage "piggyback" and "containerized" transportation and result in placing more freight on the rails which are not over-encumbered and removing a portion of the traffic from the highways which are definitely over-encumbered.

It will be a joint responsibility of both the motor carrier industry and the Interstate Commerce Commission to establish through routes and joint rates—the ICC having final jurisdiction.

At the present time, some motor carriers stipulate in their tariffs that they will not participate in 3-line hauls. It will become the duty of the ICC to establish a rate structure that is compensatory in 3-line and inter-modal hauls in order that this type of service can be available to the public and, if such a tariff is established, it will guarantee the support of the trucking industry.

At the present time, there are 5 piggyback tariffs in effect, and the variations in these tariffs are such that a through route and joint rate can make allowances for the various differences characteristic of the different type of piggyback rates.

There undoubtedly will be several details characteristic of the joint responsibility of the motor carrier industry and the ICC that will have to be determined.

The NARUC is grateful to your Committee for the opportunity to discuss this important legislation.

Senator HARTKE. We will recess the hearing now.

(Whereupon, at 11 a.m. the subcommittee was recessed to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Senator HARTKE. The committee will come to order again.

The first witness this afternoon will be Mr. R. F. Bohman, Jr., president and executive secretary, National Furniture Traffic Conference, accompanied by Burt Fenn, Tell City Chair Co., and R. E. Sturm, JOFCO, Jasper, Ind.

STATEMENT OF R. F. BOHMAN, JR., PRESIDENT AND EXECUTIVE SECRETARY, NATIONAL FURNITURE TRAFFIC CONFERENCE, GARDNER, MASS.

Mr. BOHMAN. Unfortunately both had prior commitments and were unable to make it and express their regrets.

In addition to representing the National Furniture Traffic Conference, I am also representing 12 other national associations, many in the furniture industry, but others in the nursery, hobby, game, toy, bicycle, looseleaf, office products and other industries, all of which are faced with this problem of lack of through-route service.

Senator HARTKE. Do you want to pull the microphone over in front of you?

Mr. BOHMAN. Yes, sir.

This is my second appearance before the committee and since my appearance 3 years ago, we, I think, now believe that the most critical aspect of the problem we have been facing in the through-route joint rate area, particularly in the furniture business, is at a stage of being materially lessened as a result of the Commission's decision in the Associated Truck Lines Case which was sustained by the U.S. Supreme Court in February.

The Commission, through its Bureau of Traffic, has been contacting all carriers in the country that maintain through-route restrictions, selective restrictions, not only against furniture, but other com-

modities and we just announced to our members that the initial response to the Commission's efforts is 17 major interstate carriers are removing these restrictions voluntarily beginning the middle of this month.

We feel that a large part of the problem that has hit the shippers throughout the country and even in your own State of Indiana will be eased considerably as a result of this. Certainly this isn't going to end the problem. There are many rural small cities and towns that, in order to secure adequate service, require the interchange between two or three truck lines.

Many, many carriers are now restricting their service to two-line hauls. They are hauling all commodities over those routes, but are limiting their service to two-line hauls. If it takes three-line hauls, we are finding instances where our members are shipping out products and 2 or 3 weeks later, back comes the trucking line with a shipment.

In some instances, like nursery products, which are perishable, it creates a problem. We are getting to the point in this country where it is becoming easier for foreign producers to get into these small cities and towns than for our own domestic manufacturers located throughout the heartland and of the United States.

They can come in through the ports and use the local trucking companies that go out direct to the outer tip of Long Island or Cape Cod or isolated areas like this.

I think we have a very definite need for legislation in this area and there has been nothing done since 1935. That is 35 years ago. The trucking industry was in its infancy at that time.

Now it has become of age and won the competitive battle for the small shipments field and today it is the acknowledged dominant mover of the Nation's small lot shipments.

Certainly we feel they should shoulder a greater responsibility in providing adequate service to all cities and towns throughout the country. We feel that particularly in the area of motor carrier service, that is the critical field.

I think it is rather unfortunate that these bills have gone beyond that. I think the Interstate Commerce Commission is thinking maybe 5 years ahead of its time in some instances in trying to bring about coordination.

Our immediate problem is between two or more truck lines. This bill has been bogged down in Congress for several sessions and we seem to be getting nowhere. I think part of it is because there is this long-standing controversy between the railroads being forced to tie up with the motor carriers, vice versa, or the water carriers.

We feel, let's get some legislation going at least on the motor carrier aspect of the problem.

I agree with some of the comments made by Commissioner Stafford this morning in regard to Senator Moss' bill. I think the way the bill is drafted in some instances it would put the ratemaking function on the Commission and I think this would be an impossible burden for the Interstate Commerce Commission to shoulder.

They have not been in the business of actually fixing rates. This is a carrier responsibility. We feel it should continue to be a carrier responsibility, but that the Commission should oversee this.

If these rates are not just and reasonable, they should rule as to whether or not they are just and reasonable and, if not, make them come back with another set of rates that are. I think we would have a very difficult situation and impose a very heavy burden on the Commission if the Moss bill, in that regard, was passed.

I think other safeguards are certainly called for. The requirements that one carrier not be required to work out a joint line arrangement with a carrier that is not financially responsible or if he doesn't pay his bills that there is some procedure set up so the bills are paid and the moneys that are due are paid immediately.

Senator HARTKE. What about the suggestion that there was a possibility of an excessive amount of paperwork to be required by carriers for publishing tariffs which would never really be utilized?

Mr. BOHMAN. I don't think this would involve any additional work. The rates are pretty well there today. They are already published. It is a question of more carriers becoming participants in them.

If the rates are not compensatory today, there are procedures available where the carriers themselves can make changes without the need of a lot of additional paperwork.

I don't foresee this as any problem whatsoever.

Senator HARTKE. Your preference would be to limit it strictly to motor carriers—not to extend it as I suggested to air carriers in addition?

Mr. BOHMAN. This will have to come about, but I don't think while we are working toward this end we should allow the immediate problem to fester as it has for so long.

I would like to see, perhaps in the next session, a bill introduced that would just solely take care of the motor carrier problem and we would then go on from there and work out a total coordination with air and surface transportation. This is going to come. It is very necessary.

Senator HARTKE. We are, as you well know, in other hearings and other legislation attempting to work out a national transportation policy here which hopefully would take some of these matters into consideration.

Mr. BOHMAN. It is too disjointed today the way it is. I would fully agree with that.

Senator HARTKE. Thank you, sir.

(The statement follows:)

STATEMENT OF RAYNARD F. BOHMAN, JR.

This is my second appearance before your Subcommittee in behalf of the above named trade associations, urging passage of legislation which would confer authority on the Interstate Commerce Commission to require motor common carriers of property to establish through routes and joint rates whereupon hearing and investigation the establishment of such routes and rates are found necessary in the public interest.

When I appeared before your Subcommittee three years ago this month, I reported that many shippers throughout the country, particularly in the furniture industry, were experiencing very critical problems in securing adequate motor common carrier service to reach certain areas of the country.

While the problem is still extremely burdensome, I am pleased to report that as a result of a recent landmark decision by the Interstate Commerce Commission in *National Furniture Traffic Conference v. Associated Truck Lines, Inc.*, 332 I.C.C. 802—a decision affirmed by the United States Supreme Court on Feb-

ruary 24, 1970—it appears the most critical aspect of the problem, namely selective through route restrictions against specific commodities such as furniture, will shortly disappear.

In response to urging by the Commission to secure the voluntary cancellation of similar through route restrictions against furniture—and other commodities—published by other motor carriers, we note that beginning in mid-May and later, at least 20 major interstate carriers have instructed their publishing agents to cancel their long standing restrictions against furniture, thus reopening all through routes and joint rates to shipments of new furniture. We are hopeful that similar voluntary compliance will be forthcoming by all other motor carriers that maintain selective commodity through route-joint rate restrictions in the very near future.

Here is a case where the Commission, despite recent criticism in certain quarters that it is failing to protect the interests of the shipping public, can—and should—be highly commended for its forthright action, which was unanimously sustained by the courts, in alleviating this most critical aspect of the problem.

Regretably, despite the Commission's best efforts to guarantee adequate for-hire motor common carrier service to all shippers, under Part II of the Interstate Commerce Act, as now written (and unchanged since 1935 when the motor carrier industry was first regulated), its hands are tied insofar as joint line service is concerned.

Recent mergers in the motor carrier industry notwithstanding, there are still many areas of the country which cannot be reached by direct, single line service. Shipments to such areas require joint line service between two or more carriers, and the Act as now written, the Commission is powerless to require motor carriers to initially establish through routes and joint rates, and is also powerless to prevent their cancellation at some future date. The motor common carriers—unlike the railroads—are free to open and close through routes at will, thus placing the shipping public entirely at its mercy.

Shippers and receivers in many small rural cities and towns have been particularly hard hit by lack of through routes from and to their areas.

On February 14, 1970, Mr. Porter Henegar, executive secretary of the Tennessee Nurserymen's Association headquartered at McMinnville, Tennessee, wrote the following to the American Association of Nurserymen:

Nurserymen in this area call this office frequently advising that LTL shipments by motor freight to points requiring more than two carriers, the third carrier declines to accept the shipment as a rule and the shipment is returned to the shipper after some two weeks after shipment is made.

So here we are, the largest, most industrialized nation in the world and even to this day many shippers cannot secure adequate, for-hire motor common carrier transportation service to reach certain markets.

It has been some 35 years since the motor carrier industry was first regulated under Part II of the Interstate Commerce Act. They are now the dominant mode of transportation for small lot shipments (under 5000 lbs.). The industry has matured and we feel should now be called upon to assume greater service responsibilities to the shipping public.

At the very least we believe the Interstate Commerce Commission should have additional authority conferred upon it by the Congress to permit it to require two or more motor carriers to establish through routes and joint rates where, after investigation and hearing, a need for such service is found necessary in the public interest.

As for authority to require motor carriers to establish through routes and joint rates between railroads, water carriers and express companies, let that aspect of the bill be considered at some future time. The immediate and pressing need is for authority between two or more motor carriers, and should be separately dealt with at once. For the time being, let's get the railroads, water carriers and express companies out of the arena so that we can focus in on the real problem.

Finally, we wish to strongly caution the Congress on the inadvisability of inserting any provision in any change to Section 216(c) of the Act—or any other provision in the Act—which would impose on the Commission the requirement to initially prescribe actual joint rates where a carrier is ordered to establish through routes and joint rates. The initial rate making requirement has been—is today—and should be in the future on the carrier. The prescription of joint rates initially should not be a Commission function. It's function should continue

to be to insure that rates proposed—or actually published—are just and reasonable and not preferential or discriminatory. Any shift in initial rate making responsibility from the carriers to the Commission would place a costly and impossible burden on the ICC, and would, in our view, place a responsibility on a governmental agency it has no business shouldering.

Under the Interstate Commerce Act as now written the carriers have adequate protection to insure they will never be required to maintain joint rates that are not compensatory.

Senator HARTKE. Our next witness is Keith Brown, president of the Brown Distributing Co., Salt Lake City, Utah, on behalf of the National Wholesale Furniture Association.

STATEMENT OF KEITH BROWN, PRESIDENT, BROWN DISTRIBUTING CO., SALT LAKE CITY, UTAH, ON BEHALF OF THE NATIONAL WHOLESALE FURNITURE ASSOCIATION

Mr. BROWN. Mr. Chairman, as has been mentioned, I am connected with the furniture industry.

Knowing that the ladies purchase 90 percent of the furniture in America I am glad to have some of the contingent here that can support me.

I am president of the Brown Distributing Co. of Salt Lake City. We cover the area of Utah, Idaho, Montana, western Colorado and Wyoming, eastern Nevada, and parts of Oregon, a lot of square miles. I am past president of the National Wholesale Furniture Association. Furniture wholesalers sell approximately one-quarter of the total furniture manufacturers' output, and the ratio has been increasing.

The largest furniture manufacturer in the country sells 35 percent of the firm's production through distributors. Few producers can afford to maintain sales representatives in areas such as ours, when they sell single lines. Handling a variety of noncompeting factories, our sales force can travel a broad territory, serve a useful purpose and make a good living from widely scattered retail outlets. In floor coverings, well over half of the carpet mill production is sold through distributors.

Our area has been conducive to wholesaling because we are long distances from our source of supply and it is natural that we would bring in large quantities and break it down and ship it out.

When the LCL ratings were discontinued with railroads a few years ago it was of great concern to us, and then we had hopes that the trucklines would have the same regulations governing them which govern the railroads.

There is a divergence of opinion here. This is creating quite a bit of problem. If you were a little furniture dealer in Aberdeen, Idaho, 48 miles out of Pocatello and only one truckline serves this area, none of the major trucklines will interline with this one particular truckline—

Senator HARTKE. What is the population of those two places?

Mr. BROWN. 1,500 people in Aberdeen and 26,000 in Pocatello. Pocatello isn't a major distribution point. There are no distributors there, so the dealer has a choice of either buying from his competition to some extent or buying a truck and going into the trucking business or going out of business. This is what is happening predominantly

throughout the area that we serve. In manufacturing the conglomerates are getting bigger all the time. Many invaded the furniture field that were never interested before. Some of the major firms are completely swallowing the smaller ones; and dealers are going out of business because of lack of getting the merchandise to them.

Furniture, particularly, has a certain amount of discrimination in the handling. It doesn't have the density. It doesn't have the weight factor. There is a possibility of freight damage even despite the approved packing classifications which make it not a satisfactory product for some of the truckers.

We recently had one of the major trucking companies come to our warehouse and point out items which they would not take for reshipping into small areas and items which they would. Yet in many cases the ones they turned down were items their own truckline had delivered to us. We had to discontinue buying from a major source down in Mississippi recently, a source of Early American furniture that was important to us, because there was no way we could get the goods in without straight carload. Their production was such that they couldn't stockpile and ship the cars to us.

We replaced this source by bringing in merchandise from Japan imported through the west coast. This is happening more and more. Many of our major suppliers are delivering to us in their own trucks from Bay Minette, Ala., to Salt Lake City, from Anadarko, Okla., from Dalton, Ga., from Memphis, from Scottsdale, Ariz., from Lumberton, Miss. Yet when their goods are brought in they are not reshipped to some of the smaller areas because public carrier trucks will not operate on a freight interchange basis.

We are faced with the problem of perhaps putting our own trucks on in our area. This is true of many of the wholesalers throughout the country. I don't want to get into the trucking business. There are too many perils in it. I don't see much choice at this particular time.

We have lost I don't know how many dealers in the last 5 years because we can't supply them. They have actually gone out of business. That is speaking of our area only.

Let me quote a couple of things from another area. This is from Monroe, La., Joe Durrett of Joe and Bill Wholesale Furniture Co.

"Failure of truck carriers to pick up and deliver merchandise from our warehouse when interlining is involved, has decreased the number of customers on our books from between 15 to 20 percent. We were finally forced against our will to put in our own truck to further clog the highways. Small stores have been forced out of business.

"It becomes increasingly more difficult to receive shipments from North Carolina where furniture production is concentrated. When the delayed shipments do arrive, our customers have become tired of waiting and canceled their orders."

Joseph Komen of Peck & Hills, Chicago, says: "We have goods waiting for months in our warehouse for pick up when shipments must be interlined. Our dealers blame us, not the carriers, and it is costing us customers. Mom n' Pop stores in Chicago—and the entire Midwest are dying on the vine because they just can't get goods delivered."

Here are observations from J. P. Awalt, Jr., executive vice president of J. P. Awalt & Co., a furniture distributor serving more than 1,500

merchants in his home territory out of Dallas, Tex.—2,500 more if you add those served by his branches in Shreveport, La.; Denver, Colo.; and Oklahoma City: “Trucklines in many cities in the Southwest, mid-South, and West just flatly refuse to accept our furniture at interline transfer points, and many won’t pick up at our own dock.

“I can’t document this because they don’t put their refusal in writing, but I can and will name specific motor carriers who stymie furniture shipments in our area. Consequently, the goods just sit. The trucking business has been in a “sellers’ market” for years, and they don’t like to handle furniture, so they just don’t pick up. And when they do, we often get very bad service. I refer, of course, to damage resulting from carrier negligence and their unfair policy on damage claims settlements.

“How does lack of through routes and joint rates affect our customers? This leaves some cities served by only one or two uncooperative truckers impossible for us to serve. Right now, we have orders from 15 to 20 dealers situated where we can’t get them goods.

“Within the area we serve, I would estimate that about 15 percent of our trade from Dallas is severely handicapped by uncooperative truckers with a monopoly on service in these cities, towns, hamlets, waysides, and crossroads. Around Shreveport, Denver, and Oklahoma City the situation is almost as bad.”

He has some 4,000 accounts which they serve in that area. I guess part of it is due to the fact that we are in a different field. You know, the lady of the household used to be willing to wait for sometime for her merchandise. If she decided to buy, she might wait for, oh, 2 or 3 months.

Now, she is interested in having it there for the bridge club next Thursday. Too often it is 2 months late for the bridge club.

Senator HARTKE. You have instant coffee, instant tea, and they want instant furniture delivered.

Mr. BROWN. It is particularly true or carpets. Two women wouldn’t be caught dead in the same hat, but will have the same carpet all the way around the block. And they want it tomorrow. We had hope 2 years ago when S. 751 was passed by this group and went on to the Senate. Recess came about, and it didn’t go through. I feel like Mr. Bohman and Mr. Stafford, 2245 has more teeth in it and doesn’t permit voluntary compliance but is more mandatory.

I have great respect for Senator Moss from my home State, but I feel this is the bill which can be implemented properly. And that is why we are very concerned about it.

Senator HARTKE. Thank you, Mr. Brown. Certainly very interesting testimony.

(The statement follows:)

STATEMENT BY KEITH C. BROWN, PRESIDENT, BROWN DISTRIBUTING COMPANY, SALT LAKE CITY, UTAH, REPRESENTING NATIONAL WHOLESALE FURNITURE ASSOCIATION OF WHICH HE IS A PAST PRESIDENT

My name is Keith Brown. I am President of Brown Distributing Company, of Salt Lake City, Utah. Our specialty is home furnishings, specifically furniture and floor covering. We serve retailers in Idaho, Montana, Nevada, Wyoming, Western Colorado, and parts of Oregon, as well as Utah.

I am Past President of the National Wholesale Furniture Association, a nation-wide trade association with warehouses and branches in about 125 locations.

Ours is a big business done up in small packages. We principally buy in large quantities, break lots, and sell in smaller quantities for a substantial part of our business. However, we have many large store accounts which depend on us for quick service on items which they stock in relatively small or negligible assortments.

Furniture wholesalers sell approximately one quarter of the total furniture manufacturers' output, and the ratio has been increasing. The largest furniture manufacturer in the country sells 35 percent of the firm's production through distributors. Few producers can afford to maintain sales representatives in areas such as ours, when they sell single lines. Handling a variety of non-competing factories, our sales force can travel a broad territory, serve a useful purpose and make a good living from widely-scattered retail outlets. In floor coverings, well over half of the carpet mill production is sold through distributors.

There is a popular saying that "Nothing is certain except death and taxes". To this we would add freight as an urgent certainty. We can be sure that the cost will go up—and the service will go down. That is the consensus in the wholesale furniture distribution field.

When I started in the wholesale furniture business our area was a "wholesalers' heaven". The savings on freight—in carloads to Salt Lake City, and trucking on to dealers in Rock Springs, Wyoming, Pocatello, Idaho, Elko, Nevada, or Cedar City, Utah—was such, in comparison with less-than carload rates from Southern furniture factories to such retail destinations—that we could almost absorb the transportation costs and compete on even terms with factory costs of merchandise . . . at point of origin.

The trucking business has mushroomed in the past two decades. They compete—on public highways—with the railroads—which are required by law to establish joint rates and provide through routes. Motor common carriers *may* join with each other in performing through transportation but *there is no requirement in the law that they do so*. Consequently, many such carriers decline to handle traffic from other lines, or restrict their acceptance against certain classes or commodities of products.

The result is, in the words of George M. Stafford, currently ICC Chairman, made two years ago in Atlanta, when he was a member of the Commission: "The motor carrier service which furniture shippers have received from the trucking industry ranks with the worst service suffered by any shippers in the country."

Is it equitable to require the long-suffering railroads to perform for the public interest and convenience, and NOT require the same standards for their competition—whose right-of-way is constructed and maintained by public taxation? Having been given a license to use such facilities, should the motor carriers be allowed to be selective in the goods they agree to carry?

The principle is right. The United States Supreme Court affirmed it, on February 24th of this year, by refusing to reverse an ICC decision issued in National Furniture Traffic Conference vs. Associated Truck Lines. Our Association is a member of the NFTC. Your Senate Subcommittee previously approved S. 751 two years ago, but the Senate then recessed to attend political conventions, and nothing happened. This bill is one of urgency for small business survival.

Furniture volume is growing tremendously, but so are the Big Operators—the Conglomerates. The number of small furniture stores decline with each Census. The very nature of my own business has changed, due to the fact that railroad less-than-carload freight service has been almost completely eliminated, and because regulated freight forwarders have steadily eased out of the short-haul business. We have been restricted by drastic increases in classification ratings and outright refusals to provide service. One result has been the decrease in the number of Mom n' Pop stores, and a resultant concentration of our volume on larger retail operations.

Several weeks ago two executives from one of the largest trucking companies serving our area walked through our warehouse, pointing out the goods which their lines would accept or would not accept for shipment—even though it was all delivered to us packed in accordance with the specifications approved by the trucking industry for L.T.L. re-shipment! In several cases the goods rejected had been delivered to us by public motor carrier. At the same time, recently we found it necessary to discontinue an excellent source of Early American furniture manufactured in Mississippi because we couldn't handle shipment in full carload quantities by rail and the truck lines would not interline to bring the goods to us. We had to replace the source with a line manufactured in Japan and imported through the West Coast!

Throughout the territory that we serve many furniture dealers are finding it hard to survive in small towns where the major truck lines simply refuse to interline with the small truck lines operating out of metropolitan centers in their vicinity. Sometimes delays are interminable. On a recent shipment, April 21st, from Salt Lake City to St. Anthony, Idaho, a distance of 265 miles, the goods was delivered April 27th, or six days later although it was handled by one carrier only! This is typical of the service which can be expected and which the dealers have to accept because they have no alternative.

One of the major truck lines operating from Los Angeles into our area served notice recently on one of the factories on the West Coast that they preferred not to pick up furniture from them because the goods is "damage prone". This is merchandise packed in accordance with the specifications which the trucking industry is supposed to honor.

Our appeal is not in opposition to the truck lines who have their standards and must operate at a profit if they are to stay in business; our appeal is that when a truck line is granted a franchise to serve an area, the same standards should be used in handling furniture as any other commodity where packing specifications are properly observed. We feel, too, that truck lines should be required to interline with other carriers properly approved by the Interstate Commerce Commission and operating in accordance with their provisions. Several years ago the railroads discontinued L.C.L. handling of commodities. This means we have only the truck lines to provide this service, and where they do not provide it as they should, it becomes a fight to stay in business.

We have factory-owned trucks delivering all the way to Salt Lake City from Bay Minette, Alabama, from Memphis, Tennessee, from Lumberton, Mississippi, from Dalton, Georgia, and from Scottsdale, Arizona. At the present time we are investigating the possibility of putting on our own trucks to cover the intermountain area from our own point of distribution. We have no desire to get into the trucking business because we know its perils, but it becomes a matter of survival.

Many dealers have eliminated us as a source as a result of the motor carriers' arbitrary action. In areas which represent problems for shipment, we have just discontinued covering the territory rather than fight it.

Here is the report of Joseph G. Durrett, Joe and Bill Wholesale Furniture Company, Monroe, La.: "Failure of truck carriers to pick up and deliver merchandise from our warehouse when interlining is involved, has decreased the number of customers on our books from between 15 to 20 percent. We were finally forced, against our will, to put in our own truck to further clog the highways. Small stores have been forced out of business."

Durrett continues: "It becomes increasingly difficult to receive shipments from North Carolina where furniture production is concentrated. When the delayed shipments do arrive, our customers have become tired of waiting and cancelled their orders."

Says Joseph Komen, Manager, Peck & Hills, Chicago: "We have goods waiting for months in our warehouse for pick-up when shipments must be interlined. Our dealers blame us, not the carriers, and it is costing us customers. Mom n' Pop stores in Chicago—and the entire Midwest are dying on the vine because they just can't get goods delivered."

William Eads, Sr., Eads Brothers, Ft. Smith, Arkansas, advises that: "It takes an awful lot of extra work to convince the motor carriers to do their duty, and then it takes an extraordinary amount of time for them to get around to doing it."

Here are observations from J. P. Awalt, Jr., Executive Vice-President of J. P. Awalt and Company, a furniture distributor serving more than 1,500 merchants in his home territory out of Dallas, Texas . . . 2500 more if you add those served by his branches in Shreveport, La., Denver, Colo., and Oklahoma City: "Truck lines in many cities in the Southwest, Mid-South, and West just flatly refuse to accept our furniture at interline transfer points, and many won't pick up at our own dock. I can't document this because they don't put their refusals in writing, but I can and will name specific motor carriers who stymie furniture shipments in our area. (In fact, I am compiling a list and more facts on our freight problems and sending them off to Washington—hopefully, in time to reach Keith Brown before his appearance before the Senate Subcommittee.) Consequently, the goods just sit! The trucking business has been in a "sellers' market" for years and they don't like to handle furniture, so they just don't pick up. And when they do, we often get very bad services. I refer, of course, to damage resulting from carrier negligence and their unfair policy on damage claims settlements.

How does lack of through rates and joint rates affect our customers? This leaves some cities served by only one or two uncooperative truckers impossible for us to serve. Right now, we have orders from fifteen to twenty dealers situated where we can't get them the goods. Within the area we serve, I would estimate that about 15 percent of our trade from Dallas is severely handicapped by uncooperative truckers with a monopoly on service in these cities, towns, hamlets, waysides, and crossroads. Around Shreveport, Denver, and Oklahoma City, the situation is almost as bad—with about 10 percent of the towns suffering a virtual embargo on furniture shipments by common carrier. Unfortunately, the furniture dealers in these towns are left high and dry because they are where direct factory representation is thin; and besides, they are beyond the range of factory or distributor-owned trucking service. And our own company simply can't resort to private carriage. We *must* rely on common carrier motor freight for outbound shipments. Fortunately, we have enough volume to have our factory sources ship us pool cars by rail, so the lack of through routes and joint rates does not hurt our *inbound* shipments. Some other wholesalers and many retailers are not so fortunate."

While the past decade has been a strong transportation sellers' market, it is likely that the years ahead will see a decided shift to a transportation buyers' market by the furniture industry. Contributing to the ill-will engendered by the Motor Carriers is their illegal and arbitrary guideline—"Rule 10" for limiting settlement of claims for concealed damage—patently a Combination in Restraint of Trade by the American Trucking Associations. This ill-conceived action is bound to cost the truckers more in ill-will ten times over than any savings on settlement of such claims.

If the for-hire common carriers face a condition where they get less tonnage than they can comfortably handle, you are going to see some imaginative changes in attitude, and some forward-looking competition offered by company-operated trucks, which most furniture wholesalers can't afford and don't want.

Section 216(b) of the Interstate Commerce Act requires *all* common carriers to provide adequate service, equipment, and facilities. In addition, the certificates of these carriers have conditions under which the holders must provide continuous, adequate service, or face possible suspension or revocation of the rights.

Gentlemen, we appreciate your great service in protecting and stimulating the economy of our country—but, it would be travesty for this Committee to modify this bill to a document merely endorsing "voluntary" compliance—on through routes and joint rates. Please keep the teeth in it! Please help Small Business to survive! Don't just ask the truckers to be "nice". The ICC, the entire furniture industry, all wholesale distribution urge that this legislation get prompt action—not only by your Committee—but by the full Senate as well.

Senator HARTKE. Charles A. Washer, transportation counsel, American Retail Federation, Washington, D.C.

STATEMENT OF CHARLES A. WASHER, TRANSPORTATION COUNSEL, AMERICAN RETAIL FEDERATION, WASHINGTON, D.C.

Mr. WASHER. Thank you.

If it meets with your approval, I will put my statement in.

Senator HARTKE. The entire statement will appear in the record. You can cover what part you are concerned with most.

Mr. WASHER. This is still a problem for the smaller retailers, not the larger ones, but the smaller retailers throughout the country do have a problem in service, the smaller ones in the smaller communities.

We feel that the authority—and have long felt that the authority that would be vested in the Commission would be a help to this problem.

In here we quote some of the things that the Commission has done that have already been brought to the attention of your subcommittee. And we think those are very fine, but we still need this authority. We are not trying to impose an unreasonable joint rate arrangement on the

motor carriers, but under S. 2245 we think they are protected adequately against any unreasonable combinations or one which will be unprofitable to them.

But we would prefer I think—both Mr. Bohman and Mr. Brown before me have said that we would prefer to have the stronger provisions of S. 2245. And it will be a big help to the small retailers.

Senator HARTKE. I know you say in your statement—you made a statement concerning the fact about rates. And rates are related to service.

Mr. WASHER. Yes.

Senator HARTKE. Do you think if we adopted this legislation it would result in an increase in rates?

Mr. WASHER. I think it might in some cases. In my home State of Florida, for example, we pay an unduly high rate because of service to Florida being a dead end run more or less. And so they have arbitraries that are applied to shipments coming down south of Jacksonville into our territory in south Florida.

I think perhaps that is reasonable because of the cost of operation in that territory. I think in some of the smaller communities where they are going to have to provide better service—upper Michigan, for example, is a bad area. It may very well be that the rate schedule will have to be adjusted somewhat, but it doesn't necessarily follow.

I think Commissioner Stafford and Commissioner Murphy were trying to temper that a little bit, because by limiting the amount of service or concentrating it, we will not be faced with the added rate.

But our problem on the small retailers is honestly one of service. He wants to get the service.

Senator HARTKE. Thank you, sir.

(The statement follows:)

STATEMENT OF THE AMERICAN RETAIL FEDERATION BY CHARLES A. WASHER,
TRANSPORTATION COUNSEL

The American Retail Federation, comprised of 50 statewide and 28 national associations of retailers, includes a composite membership of individual retail firms from all facets of the retail industry. A vast majority of these retailers has been increasingly concerned with the deterioration in the service accorded small shipments by the principal medium—the common carrier motor vehicle group. Aside from the specialized small shipment transportation services of parcel post, REA Express, United Parcel Service, and perhaps the passenger bus package systems, the motor carrier is the supplier of the basic transportation service required by the retail industry. This is especially true for the retailers located in the thousands of smaller communities of the nation.

The Interstate Commerce Commission has been aware of this problem on small shipments for some time and in 1967 published a report of a special, ad hoc committee which had been created to study the matter. This committee aptly comments:

"Simply stated, the problem from the shippers' point of view is the practice of the carriers (1) of selecting the commodity they desire to transport because of its physical characteristics, (2) of selecting shipments on the basis of the volume tendered, and (3) of the inability of carriers to interline in certain circumstances, thereby preventing the through movement of a shipment. Another common complaint is the inability to obtain service from or to small cities or areas not generating large amounts of traffic."

The Commission, since the date of the above report, has done much to alleviate some aspects of the situation. In a landmark decision called the Associated Truck Line case (332 ICC 802) motor carriers were ordered to cancel tariff restrictions that closed through routes and joint rates on one particular commodity, in this case furniture, while leaving such arrangements in effect

on other commodities. This decision was upheld in the appellate court (304 F.Supp. 1094) and in a per curiam decision of the U.S. Supreme Court on Feb. 24, 1970. As shippers, we trust that this I.C.C. order, which will now become effective on May 15, will do much to correct item (1) of the problem as listed above.

Another aspect of the problem, listed in (2) above, was partially corrected by the Commission with a ruling in MC-77, *Restrictions on Service by Motor Carriers* (111 MCC 151) that motor carriers will not be permitted to publish tariff items which restrict the service offered to less than that contained in the carrier's certificate of authorization. Henceforth, motor carriers will not be able to restrict service to shipments of a certain weight by tariff nor, for that matter, to the points to be served or to the commodities to be handled. This takes care of the overt efforts to limit service to the larger shipments but, of course, it does not cover the daily, unauthorized but unpublished, subtle practices in refusing to provide the requested service on smaller shipments.

Although we applaud the action of the Commission on these matters, of benefit to the shippers and contrary to the vigorous protests of the carriers, neither will be of assistance in correcting item (3) in requiring the interlining of motor carrier services to provide through routes and joint rates. Part II of the Act, unlike other Parts, does not give the I.C.C. that authority and for this reason we urge passage of the proposed legislation.

In fact, the result of the favorable Commission actions in the two instances above may very well aggravate the problem of service to the smaller communities. By forbidding the exclusion of one commodity in a through route—joint rate situation as in the Associated Truck Line case, carriers might exercise the prerogative of eliminating the through route concurrences in some areas or from certain origins and revert to single line carriage only. There is nothing now requiring the maintenance of such joint arrangements. This might throw them within the ban of the MC-77 decision but, as a consequence of that, some carriers may be willing to have the authority to serve smaller origin and destination points eliminated from the certificates rather than to attempt service without restriction on uneconomic traffic. In either such event we would be even more in need of the proposed power in the Commission.

It is believed that the amendments adopted as a result of the protests of the motor carrier industry to the original S. 751 in the last Congress are sufficient protection to protect them from the institution of any service that would unduly short-haul the originating carrier, require a concurrence with a financially unresponsible carrier, or result in an unreasonable or uneconomic service. Perhaps these objections have stemmed from what may be a cause of the problem—the tendency for the motor carrier industry to change from a system of small, independent carriers thoroughly serving all traffic in a relatively small area, through mergers and acquisitions, into huge transcontinental carrier combinations aiming at the long-haul, heavier weighted, and most profitable traffic. Part II of the Act was written without the requirement for through routes and joint rates at the time of the small, independent, more localized motor carrier operations.

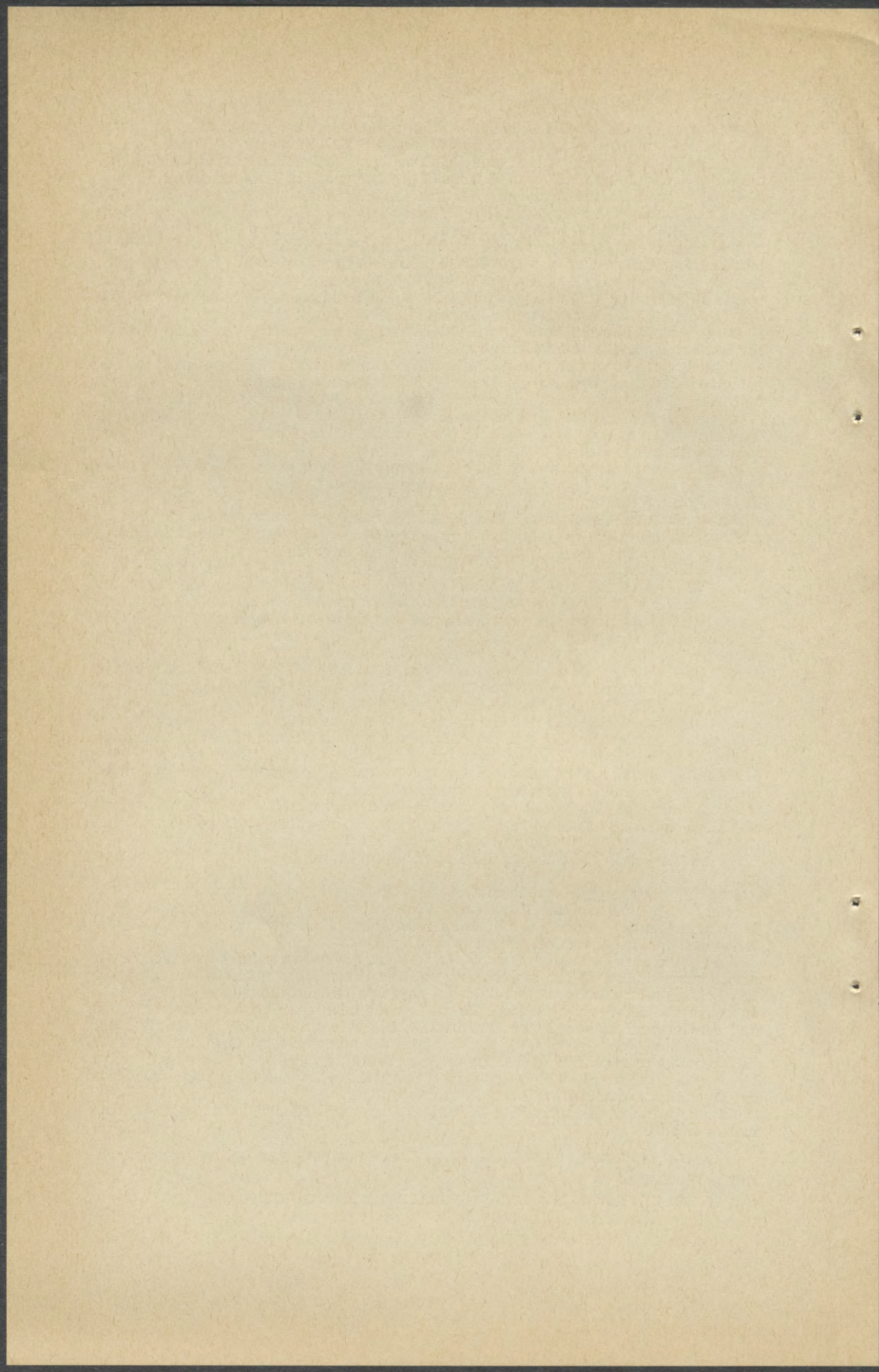
It is the prescription authority on through routes—joint rates for Part II carriers in which we are interested. While the future may hold promise of joint arrangements between and among different modes of transportation, our immediate needs are for motor carrier combinations.

We should also point out that we have been discussing routes and not rates. Another problem with the motor carriers is in the establishment of an equitable rate schedule on smaller shipments, but this is a battle that we are able to fight out with the I.C.C. as a referee. There is a definite relationship between rates and service and although the Commission has adequate authority on the rate considerations we believe that they should be empowered to deal directly with this particular service feature. In urging your approval of this legislation we believe that the result will be extremely helpful to thousands of small retailers in the smaller communities throughout the country.

Thank you for the privilege of explaining the Federation's views on this matter to you.

Senator HARTKE. That concludes the witnesses for today. The hearing is recessed.

(Whereupon, at 3:15 p.m., the hearing was adjourned.)



**THROUGH ROUTES AND JOINT RATES BETWEEN
MOTOR COMMON CARRIERS OF PROPERTY, AND BE-
TWEEN SUCH CARRIERS AND COMMON CARRIERS
BY RAIL, EXPRESS, AND WATER, AND FOR OTHER
PURPOSES**

THURSDAY, MAY 7, 1970

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

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 5110, New Senate Office Building, Hon. James B. Pearson, presiding.

Present: Senators Pearson and Baker.

Senator PEARSON. The committee will come to order, please.

We continue hearings this morning on S. 2245 and S. 3626, and the first witness is Mr. John M. Cleary. Mr. Cleary is an attorney at law and appears on behalf of the National Industrial Traffic League, with offices here in Washington.

Good morning, sir.

**STATEMENT OF JOHN M. CLEARY, ATTORNEY AT LAW, NATIONAL
INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY LESTER
DORR, EXECUTIVE VICE PRESIDENT, NATIONAL INDUSTRIAL
TRAFFIC LEAGUE**

Mr. CLEARY. Mr. Chairman, I have with me Mr. Lester Dorr, who is the executive vice president of the National Industrial Traffic League, and if there are any questions regarding the league in particular he might be able to answer that I wouldn't be able to, he is here to assist.

Senator PEARSON. Pleased to have you, Mr. Dorr.

Mr. CLEARY. Rather than read the entire statement, I would like to identify myself and then give some of the highlights of the National Traffic League's position with respect to these two pending bills.

Senator PEARSON. I appreciate that. We have a number of witnesses today, and your statement in its entirety will be incorporated in the record.

Mr. CLEARY. I appear on behalf of the National Industrial Traffic League. The National Industrial Traffic League is identified in the statement as a voluntary organization of shipper associations, boards of trade, et cetera, located throughout the United States.

The members consist of enterprises large, medium, and small, using all modes of transportation. In other words, the league is the representative of the shippers who would be paying the freight charges and utilizing the services that would result from the joint rates and through routes bill, if enacted.

The highlight of the league's position is strong support for the granting to the ICC of authority to require joint rates and through routes as between all modes, both on a permanent basis and particularly we think we should stress the need for temporary authority also.

We are concerned that the permanent authority for requiring the joint rates and through routes only after the hearings might not be the relief needed by the public under the circumstances for immediate relief of a particular situation.

Therefore, we think the temporary authority powers should be granted the ICC as now contemplated in S. 2245, the Commission's bill, but noticeably absent from S. 3626. In general concept, we support both bills, but we think this is one important distinction that shows the need for the better language in S. 2245.

The carriers should not be permitted to withdraw at will from such rates. This was a point made yesterday quite properly by Chairman Stafford of the Commission. There was some concern expressed by him, and we join that concern, that language in the S. 3626 bill might permit the carriers to withdraw when they found a situation where there was a delinquency in payment of interline accounts.

And that would permit a voluntary withdrawal without proper controls from the Commission. We would object to that and think that the Commission should have the power to regulate the circumstances under which not only the joint rates and through routes would be established, but to control the withdrawal.

Therefore, we would be concerned that any voluntary withdrawal could be accomplished without proper controls.

Third, we do not believe that the ICC should be limited in its powers in such a way that the joint route and rate might only be achieved at a level of a rate higher than the normal or average level prevailing in the particular territory. That is, we are concerned that the joint rate or through route might be achieved only at an arbitrary or additional charge.

This could be the result of language contained in S. 3626 and referred to in general terms by Chairman Stafford yesterday. In particular, the language is in S. 3626 at page 5, lines 22 and 23, referring to the fact that the rate or charge is just and reasonable "with reference to the facts and circumstances attending the service." I have had experience in a series of general rate cases dealing with motor carriers at the Interstate Commerce Commission, and one of the elements that comes through the cost and revenue comparisons developed by the motor carriers is the differential in the average cost of providing service in single-line versus joint rates.

The joint rate and joint service necessarily implies interchange and the cost incidental thereto. When these are costed on an average, they do reflect a relatively higher level for handling the interchange service than the single-line service. And we would be concerned that this language in S. 3626 might be used to require that when the Commission did establish such a joint rate and through route and applying this language with reference to the facts and circumstances attending that

service, that the argument would be made it could only be accomplished at an arbitrary additional charge for the joint-line service.

We don't think that that is a principle that should be built in because it would, to a great extent, deny the precise relief sought, the ability of points considered less attractive by the carriers, off-line points, small towns, small shippers; it would limit their ability to get service at the applicable average rate level prevailing in the territory that might be enjoyed by other shippers in other localities.

Lastly, we would like to emphasize that in view of these various points the league favors the Commission's bill, S. 2245, because it contains the features which are absent or specifically restrained in the motor carrier bill, S. 3626.

Again, while supporting the general purposes of both bills, we think in view of the foregoing points that I have highlighted here this morning that S. 2245 would be preferable and accomplish the objective.

Senator PEARSON. Senator Baker?

Senator BAKER. Have you developed any familiarity with the proposal S. 3760 which I introduced to provide for the consolidation of functions of the ICC, the CAB, and the FMC? If you have, would you care to comment on how, if at all, these proposals might be incorporated in that situation?

Mr. CLEARY. I would have to confess that I have just seen the bill. I saw it yesterday. I only had the opportunity to briefly read through it and really haven't had an opportunity to give it my personal consideration, and I don't think it has been considered by the National Industrial Traffic League.

Perhaps Mr. Dorr could elaborate on that.

Mr. DORR. Mr. Baker, we received your letter and with its attachments, and I have circulated it to the league's officers and the chairmen of committees who would be interested, and we have not had any reply yet.

Senator BAKER. Thank you very much. Thank you.

Senator PEARSON. Mr. Cleary, I don't think I have any questions. I understand your concern about temporary as well as permanent authority and voluntary withdrawals and the possibility of higher rates. You have indicated very firmly that you believe S. 2245, the Commission's bill, covers these concerns.

I thank you very much. Again your entire statement will be made a part of the record, and we appreciate your consideration.

(The statement follows:)

STATEMENT OF JOHN M. CLEARY ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman, Members of the Subcommittee, my name is John M. Cleary. I appear in behalf of The National Industrial Traffic League. I am a partner in the law firm of Donelan, Cleary and Caldwell with offices in the Washington Building, 15th Street and New York Avenue, N.W., Washington, D.C. 20005.

IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League (which I shall sometimes refer to as the League) is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation. The members of the The National Industrial Traffic League are located throughout the United States, consist of enterprises large, medium and small, and use all modes of transportation by land, sea and air. Carriers are ineligible for membership in the League.

A basic objective of The National Industrial Traffic League, under its Constitution, is " * * * to promote adequate national transportation * * * " Over the years the League has presented its views to the Congress on transportation legislation. We appreciate very much the opportunity afforded us to do so today.

THE LEAGUE'S APPROACH TO S. 2245 AND S. 3626

Both of these of these bills are specifically described as bills:

"To authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes."

At the outset, I wish to state that The National Industrial Traffic League is approaching this legislation as a matter of principle rather than in terms of any specific statutory terminology. It is the League's hope that the views we express will be helpful to this Subcommittee and to the Congress in approaching the problems involved. In making this statement, I wish to emphasize that the League appears in strong support of the principles and objectives of either S. 2245 or S. 3626.

THE NEED TO CLOSE THE GAP IN THE REGULATORY AUTHORITY OF THE INTERSTATE COMMERCE COMMISSION

It is not necessary, I am sure, to labor the point that interstate surface transportation by common carriers is a dynamic section of the nation's economy. One of the notable events in the field of interstate transportation has been the obvious growth of the common carrier trucking industry into a powerful member of the nation's transportation system. Put differently it would be an erroneous oversimplification indeed to think of the common carrier trucking industry in terms of its status in 1935 when Part II of the Interstate Commerce Act was initially enacted.

Another notable trend has been the growing recognition of the value of coordinated surface transportation, in which the various modes of transportation join together in serving the public.

As is to be expected, there are forward and there are backward movements in such a dynamic sphere as interstate surface transportation. In that connection we would cite the tremendous drop in less-than-carload service now available on the nation's railroads. There is undoubtedly a substantial connection between the growth in the common carrier trucking industry and the sharp drop in less-than-carload shipments via railroad throughout the country.

The Commission, as an arm of the Congress, has long had the power to require the establishment of through routes and joint rates between railroads, and between railroads and common carriers by water subject to Part III of the Interstate Commerce Act. However, the Interstate Commerce Commission does not have the power to require the establishment of through routes and joint rates among common carrier truckers, or between common carrier truckers and/or railroads and/or common carriers by water.

It has long been the view of The National Industrial Traffic League that this is a gap in the Commission's regulatory power which should be closed. The League's official policy on this subject reads as follows:

"Mandatory Through Routes and Joint Rates: The League will support legislation authorizing the I.C.C. to require the establishment of through routes and joint rates between various modes of transportation."

Our transportation system has reached a stage in its evolution where, in appropriate cases, the Interstate Commerce Commission should have the power to require the establishment of through routes and joint rates involving common carriers by motor vehicle in interstate commerce. In the present sturdy state of the common carrier trucking industry, the League sees no reason why truckers should continue to be exempted from such a power in the Interstate Commerce Commission.

It is not our purpose here today to level a barrage of criticism against any particular mode of transportation. Rather, it is to state the view of The National Industrial Traffic League, in behalf of its members, that the Interstate Commerce Commission must be in a position to act, and act effectively to prevent abuses which can be extremely injurious to the more modest members of the shipping public. The smaller communities throughout the nation are entitled to common

carrier trucking service, whether or not such trucking service is as attractive to the long-haul carriers as transportation between major urban centers. Yet, such service may prove feasible and reliable ultimately only if the Commission, on a proper showing, can compel the establishment of through routes and joint rates between long-haul common carrier by truck A and short-haul common carrier by truck B. Further, through routes and joint rates, in the aforesaid example, must have substance and permanency, and should not be subject to the arbitrary termination of such through routes and joint rates, by one carrier or the other.

At this stage in the development of our transportation system it is entirely inappropriate to subject shippers to the harassment which can arise if through routes and joint rates in the tariffs are either not honored or are summarily terminated. While under the present state of the law, motor carriers cannot without any I.C.C. control withdrawal at will from joint rates and through routes, shippers are helpless to obtain and the Commission to require joint rates and through routes unless, in a Commission formal proceeding, they can meet the technical requirements of proof of unjust discrimination or undue preference and prejudice. Very often even this remedy is a matter of theory rather than practicality in terms of the time, expense and delay involved.

It needs no elaboration to imagine the complexity and confusion confronting shippers when motor carriers refuse to establish through routes and joint rates.

In the nature of things it would appear that if the Commission has this power to compel the establishment of through routes and joint rates there will be some diminution of the pressure for single-line certificate authority on the part of certain carriers into some areas. In saying this, we are mindful, of course, that into the smaller communities this factor may not be applicable, since the problem may very well be a lack of interest on the part of the larger carriers to have anything to do with such smaller communities.

In using by way of illustration the establishment of through routes and joint rates between common carrier truckers, the League also wishes to advance strong support for the principle that the Commission should likewise have the power with respect to the establishment of through routes and joint rates between common carrier truckers and/or railroads and/or common carrier water lines. It is our judgment that this power vested in the Commission will make a contribution toward the attainment of progress in the sphere of coordinated transportation among all modes.

The League wishes to make it clear that it is not proposing, by any means, that any particular common carrier trucker would have the right under any and all circumstances to insist that another common carrier trucker, or railroad or water line, join with it in through routes and joint rates. We note the provision in the language of both bills for "reasonable through routes".

We further note that provision is made for investigation by the Commission. The Commission would be given power, among other things, to establish the divisions of the rates, fares or charges and the terms and conditions under which the through rates shall be operated.

While we can see some reasonableness to the carriers' concerns lest they be rushed into improvident arrangements, possibly with financially unstable carriers, we believe the overriding public interest in the establishment of needed joint routes and rates should have temporary relief available without the time lag incidental to the full administrative procedure contemplated in permanent relief.

The objective should be the establishment of through routes and joint rates which meet the legitimate needs of the shipping public. It will be well in the legislative history to emphasize that fact, in our opinion. The League is also hopeful that the vesting of the power here involved in the Commission will serve to encourage the establishment of through routes and joint rates between common carriers by truck and other common carriers—whether by truck, by rail or water, without the necessity of intervention by the Interstate Commerce Commission. At the same time, where necessary and appropriate the Commission would have the power to act.

In behalf of the members of The National Industrial Traffic League, I wish to state our appreciation for the opportunity to present the League's view on these important legislative proposals.

Senator PEARSON. The next witness is Mr. Peter T. Beardsley. Mr. Beardsley is the general counsel of the American Trucking Association with offices here in Washington.

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.

Mr. BEARDSLEY. Mr. Chairman, and members of the subcommittee, my name is Peter T. Beardsley and I am general counsel of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. You are probably familiar with our organization, but for the record let me say that ATA is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia.

We appreciate the opportunity to present our views respecting S. 2245 and S. 3626, both of which would authorize the Interstate Commerce Commission to require the establishment of through routes and joint rates between motor carriers of property, and between such carriers and rail, express, and water carriers.

Our executive committee has directed us to support legislation of the type you are considering, provided:

(a) That all the safeguards contained in S. 3626, but not in S. 2245, are included; and

(b) That the Commission is empowered to prescribe joint rates and through routes—not only between motor carriers—but between such carriers and other transport modes, as recommended by the Commission and provided in both bills.

The coordinated service which the bills before you would empower the Commission to require can presently be accomplished on a voluntary basis by the railroads, motor carriers, and water carriers. Such coordination is widespread between motor carriers, and quite common between motor and water carriers. Rail-motor coordination, once limited almost exclusively to piggyback operations, is now significant in the transportation of bulk commodities, such as cement, chemicals, et cetera. An example of the increase in rail-truck coordination in the handling of this type of traffic is found in a recent ICC decision, *Mutrie Motor Transportation, Inc., Ex. — Ex Rail*, 111 M.C.C. 251, 253; served March 30, 1970:

Flexi-Flo service was first inaugurated in 1964 for the cement industry, and in that year, the former New York Central handled 197,807 barrels of cement in Flexi-Flo operations. In 1965 the volume rose to 960,509 barrels. During the first 4 months of 1966, 436,000 barrels were handled, an increase of 360 percent over the first 4 months of 1965.

I might add that "Flexi-Flo" is the term the Penn Central Railroad uses to describe a rail-truck coordinated bulk commodity movement, with the traffic being originated in "jumbo" rail cars, and transferred en route and moved to final destinations in smaller quantities in tank trucks.

Since we last presented testimony—1967—on proposed legislation to enlarge the Commission's power to prescribe joint rates and through routes, the *Associated Truck Lines* case has been decided. That proceeding involved cancelation by a motor carrier of all joint rates and through routes on furniture shipments. The Commission held that the carrier could not refuse to interchange furniture traffic unless it canceled interchange arrangements on all other traffic, an alternative that would amount to economic suicide. Prior to the *Associated Truck*

Lines decision, it had been widely assumed that section 216(c) of the Interstate Commerce Act—which relates to joint rates between motor common carriers of property—was permissive only. The Commission's report acknowledged that it had consistently taken that position, and that it had previously held that "it has no authority to require the establishment or maintenance of through routes and joint rates." The Commission's decision was challenged in the courts. Plaintiffs' brief cited the testimony of then Chairman Tucker on S. 751 that:

At present the Commission does not have the authority to require motor carriers to establish the through routes and joint rates. As a result, motor carriers may restrict the establishment of through routes and joint rates to selected commodities. (113 Cong. Rec. 1983)

Nevertheless, the Commission's decision was upheld (*Associated Truck Lines, Inc v. United States*, 304 F. Supp. 1094, W. D. Mich. 1969, aff'd. mem. 90 S. Ct. 815 (1970)).

As a result of this decision, the Commission can now prevent the cancelation of any existing interchange arrangements between motor carriers. It would seem to follow, therefore, that the need for the legislation which the Commission seeks is not so great with respect to joint rates and through routes between motor carriers, as it is between motor carriers, on the one hand, and rail and water carriers, on the other.

Presumably, assuming enactment of this proposed legislation, the great bulk of coordinated service will be provided under voluntary agreements between carriers, and what the Commission seeks here is the right to require carriers to render such service in those cases where it believes it is needed, but is not being performed voluntarily. The motor carrier industry recognizes the need for coordinated service between and within the several transport modes. Moreover, we are prepared to support, in principle, the Commission's objective. However, we cannot support S. 2245 in its present form, because it lacks some of the safeguards which our industry believes must be written into such legislation to assure that it will be workable and fair to all parties involved, and because it contains "temporary" through route provisions which we strongly oppose.

The idea of empowering the Commission to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water is not new. The Commission has sought such power since 1961, stating, among other things, that "the failure or refusal of carriers to enter into such joint arrangements is contrary to the public interest in the establishment of a coordinated surface transportation system." (75th annual report, p. 186). Bills were introduced in the 87th Congress (S. 3510, H.R. 12362) to carry out the Commission's recommendation, but no hearings were held. The Commission made similar recommendations in 1962 (76th annual report, p. 201) and 1963 (77th annual report, p. 19). Proposed legislation was introduced in the 88th Congress (S. 676, H.R. 2088), but no hearings were held. However, hearings were held in that Congress on S. 1062 and H.R. 4701, omnibus-type bills intended to carry out the transportation recommendations of President Kennedy, including "proposals for inter-carrier services." In a statement which it submitted on the bills referred to, the Commission suggested that the better way to handle President

Kennedy's proposals for "intercarrier services" would be enactment of the bills which it had sponsored. No action was taken in the 88th Congress with respect to proposals relating to joint rates and through routes.

Again, in 1964 (78th annual report, p. 69), the Commission renewed its request for power to compel the establishment of joint rates and through routes between motor common carriers of property, and between such carriers and common carriers by rail, express, and water. And again, the basis for its request was the claim that "the failure or refusal of the carriers voluntarily to enter into joint-rate arrangements is contrary to the public interest in the establishment of a coordinated surface transportation system." Bills (S. 1785, H.R. 7166) were introduced in the 89th Congress to carry out the Commission's recommendations, but no action was taken. Similar bills were introduced in the 90th Congress (S. 751, S. 1768, and H.R. 6533) and hearings were held on the Senate bills, but no further action was taken.

In its legislative recommendations submitted on April 24, 1969, the Commission repeated its request for authority to compel the establishment of joint rates and through routes by the various surface carriers. Among other things, it stated :

As noted the fundamental purpose of this proposal is the advancement and promotion of a coordinated transportation system by common carriers of all modes subject to the Commission's jurisdiction on an intra and intermodal basis. Although the economic advantages of coordination have served to stimulate considerable voluntary action by the carriers, the full benefits of coordination have not been evenly distributed among the carriers or the shipping public. Indicative of the difficulties in this area is the major problem of adequate transportation for small shippers, particularly in the case of service to smaller communities.

The Commission, as it has before, expressed the belief that enactment of the legislation it proposes "would provide a significant contribution to the solution of the small shipment problem." It also stated that enactment of the legislation it proposed would "compel the establishment and maintenance of dependable joint-line service responsive to the needs of the shipping public, and, at the same time, protect the carriers from unfair or unreasonable demands to provide through service." We agree with the Commission that any legislation which would give it the power which these bills would confer should protect the carriers from unfair or unreasonable demands for service. Certainly S. 2245 does not specifically do this; S. 3626 does, we believe.

Frankly, we doubt that the bills under consideration offer the panacea for the "small shipment problem" that the Commission seems to believe they do—assuming that motor carriers are treated fairly if and when this legislation is enacted. We submit that the only proper justification for the proposed legislation is the need for greater coordination among the several modes of transport all along the line, and not just in the field of small shipments.

RAIL ATTITUDE TOWARD COORDINATION

From the very beginning of Federal regulation of motor carriers, railroads opposed coordinated service with independent motor carriers. Time after time, motor carriers attempted to provide the railroads with a truck service they claimed to need. They were continually

rebuffed. Instead of requiring railroads to use the services of existing motor carriers, the Commission authorized them to perform their own truck service, either directly or through wholly owned subsidiaries. As a result, the railroads have been allowed to parallel their lines, throughout the country, with motor-carrier operations, although most of them are of the so-called auxiliary and supplemental variety—service which the independent motor carriers would willingly have provided.

Over the last few years, there seems to be a slight break in the railroads' traditional reluctance to coordinate their service with that of independent motor carriers. This is not due to any new-found love for their competition, but to the fact that the railroads—powerful as they are—cannot dictate to most of the shipping public just what it will get in the way of transport service. This has, of course, been the fact all along, but it seems to have “sunk in” only rather recently. Railroads don't perform piggyback and bulk service, in coordination with independent motor carriers, in order to do us any favors. They do it because they can “make a buck,” and because in the pervasive intermodal competitive situation which exists in transportation today, they need the shippers far more than the shippers need them. I might add that this will continue to be the situation as long as the railroad dream of common ownership remains just that.

POSITION OF THE MOTOR CARRIER INDUSTRY

We thought the trucking industry and the Commission had, in effect, reached an agreement in the last session of Congress, as to the kind of intermodal joint-rate, through-route legislation which could be supported by both parties. S. 751, you will recall, was introduced in the last session at the Commission's request. S. 1768, which incorporated the safeguards we believed necessary, was introduced at our request. The Senate subcommittee reported out Print No. 1, which was, in essence, a composite of the two bills, and represented a compromise which we thought had been agreed to by the Commission and ourselves. We assumed that when the Commission caused a joint-rate, through-route bill to be introduced in this session of Congress, it would follow the lines of the subcommittee print. But for reasons which it knows best, the Commission chose to sponsor a bill which omits some of the important safeguards written into the subcommittee print, and contained in S. 3626. These are:

(a) A provision that the duty to establish through routes, et cetera, be predicated upon “reasonable request therefor;”

(b) A requirement that the Commission must predicate its prescription of a joint rate upon a finding that “the rate or charge is just and reasonable” in relation to the service to which it applies, subject to “provision for reasonable circuitry;”

(c) A requirement that the carriers involved must be “financially and otherwise fit;”

(d) An obligation imposed on carriers party to a through route or joint rate, whether voluntarily established or prescribed by the Commission, to promptly pay divisions and interline settlements, coupled with permission, in the event of “undue delinquency” in such settlement, for cancellation or suspension of the through route or joint rate “on short notice.”

In addition, the Commission's bill contains a new provision we find highly objectionable. It would allow the Commission to establish "temporary" through routes, and where a "formal proceeding" has been instituted within 60 days of such establishment, and the Commission finds that continuance is "necessary or desirable in the public interest," the "temporary" through route could be continued until completion of the formal proceeding.

Senator PEARSON. Mr. Beardsley, if the temporary authority is objectionable, what remedy would you suggest that we have or put in the bill in lieu thereof? Or do you think any remedy is even needed?

Mr. BEARDSLEY. I don't think anything is needed, Senator Pearson. There was nothing in the legislation in the last session of Congress of this nature.

This is something new that has been dreamed up by the Commission in recent years or subsequently at least to the time we last testified on this bill.

This provision would confer jurisdiction upon the Commission which parallels its present temporary authority powers.

The Interstate Commerce Act specifically limits grants of temporary motor-carrier operating authority to an aggregate of not more than 180 days. But the Administrative Procedure Act provides that where a "licensee has made timely and sufficient application for a renewal or a new license" an existing license remains in effect until the renewal application "has been finally determined by the agency." And the Supreme Court, in the *Pan-Atlantic* case, 353 U.S. 436, held that a temporary authority issued by the Commission—despite the specific limit on its duration in the Interstate Commerce Act—remains in effect until final determination by the Commission of a corresponding permanent-authority application. The result of this interpretation is that motor-carrier "temporary authority" grants, which we believe Congress intended to limit to 6 months' duration, are often stretched out year after year while a companion permanent authority application is being processed.

We have every reason to believe that "temporary" through routes established by the Commission under the powers conferred by S. 2245 would be anything but "temporary" as that word is commonly understood. The grant of the power would tend to slow, rather than hasten, "formal proceedings" to determine whether the "temporary" through route should be made permanent. All that is required to institute such a formal proceeding is the issuance of an order. Such an order—issued during the life of the 60-day "temporary" through route—would convert it into one of indeterminate duration, which could, as noted, run on for years even though the Commission might ultimately find that its establishment should not have been required in the first place. The inclusion of the "temporary" through route power in S. 2245 gives us still another strong reason to support S. 3626, rather than the Commission-sponsored bill.

While S. 3626 does not give the Commission the degree of discretion which S. 2245 does, we submit that it gives it all the power it needs, commensurate with fair treatment of both shippers and carriers, to bring about coordinated transport service where needed, and to assure adequate service at a fair price for all shipments, including small shipments. The safeguards which have been included in S. 3626 will carry

out the Commission's stated objective of "protect[ing] the carriers from unfair or unreasonable demands to provide through service." At the same time, they would in no way limit its ability, under proper standards, to "compel the establishment and maintenance of dependable joint line service responsive to the needs of the shipping public." We believe that if the Commission had the authority to require all transport modes to establish through routes and joint rates with each other, and that this authority carried with it the safeguards we propose, there would be little or no occasion for any legitimate complaint that any significant number of common carriers—of whatever mode—was failing to perform its obligation under the law.

THE "SMALL SHIPMENT PROBLEM"

I would next like to discuss the so-called small shipment problem about which so much has been said and written lately.

Most of the railroads have largely, if not entirely, embargoed the transportation of less-carload freight. Yet, while the Commission continually reminds the independent motor carriers that it is their "common carrier obligation" to transport small shipments to and from out-of-the-way points, even though such traffic rarely, if ever, pays its own way, it has never suggested that the railroads have a similar obligation. Frankly, we find this attitude on the part of the agency required by the National Transportation Policy to fairly and impartially regulate all modes of surface transportation hard to swallow. If the railroads are to be allowed to refuse with impunity to handle so-called small shipments, not because of any statutory difference in their respective common carrier obligations, but because the Commission, in its wisdom, has arbitrarily assigned "the primary burden for providing small shipment service" to the independent motor common carriers (83d annual report, 1969, p. 9), then we wonder why the Commission hasn't taken the further, equitable, step which would seem logical.

In the celebrated *Rock Island* case, the Commission awarded significant unrestricted trucking rights to a railroad subsidiary, despite its prior, long-continued interpretation, sustained by the Supreme Court, that Congress did not intend that the railroads be allowed to engage in such operations. This abrupt departure from precedent, the Commission held, was due to the "special circumstances" it found to exist in that particular case, namely, that the rail subsidiary was performing an expensive small shipment peddle service in a sparsely settled territory, which the independent motor carriers were unable or unwilling to perform. And the Commission held it would be unfair to expect the rail affiliate to perform this costly service, while allowing the independent motor carriers to pick and choose the traffic they would handle and the shippers and points they would serve. The Commission, therefore, granted the rail subsidiary authority to serve the larger points in the territory which generated better, more remunerative, traffic, even though little or no need was shown for such service.

Now the shoe is on the other foot, not just in one area, as in *Rock Island*, but, generally speaking, throughout the entire country. Now it is the independent motor carriers whom the Commission requires to shoulder the burden of performing an adequate service on small

shipments to and from the small towns and hamlets about the country, while the railroads are allowed to use an embargo technique to escape the same burden. And the independent motor carriers look in vain for any manifestation by the Commission that it intends to apply its *Rock Island* philosophy to the railroads which ignore their common-carrier obligations.

We are well aware, of course, of the heat generated by the claims that motor carriers often fail to provide adequate service on so-called small shipments. No doubt, numerous such complaints have been made to the Commission, although we have not, of course, seen them.

Senator PEARSON. I think the ICC contends that the small shipper problem has gotten a great deal more aggravated during the past year since the time we considered S. 751 and S. 1768.

I take it your testimony and your experience is it hasn't been aggravated, it hasn't worsened in the last year?

Mr. BEARDSLEY. No, I don't think it has. In fact, I think speeches of the Commissioners, particularly Commissioner Murphy, who seems to be the Commission spokesman in this area on most occasions, and the decision of the Commission itself which I am going to refer to in a minute would indicate that the situation is improving.

Senator PEARSON. Does the industry pay much attention to speeches by Commissioners?

Mr. BEARDSLEY. We read them.

Senator PEARSON. I thought they might be different from politicians.

Mr. BEARDSLEY. I wouldn't want to make a comparison, Senator. But I believe most of the complaints which the Commission receives tell only one side of the story.

"Adequate service" is, of course, a relative term. What might be adequate in one situation could well be entirely inadequate in another. While every shipper, naturally, wants the best service, it is unrealistic for shippers to expect carriers to render daily service on small lots of freight, to isolated communities, at rates which those same shippers would like to pay.

I do not suggest that the trucking industry is providing perfect service on small shipments; I do suggest that it is the only transport mode which is making a conscientious effort to provide any real service on small shipments to and from the small towns and villages throughout the country. And I believe that probably a large percentage of the criticism that has been directed against for-hire motor carriers comes from members of the shipping public who think they have the right to receive more service than they are willing to pay for; that for-hire motor carriers have an obligation to handle their freight at a loss, to be subsidized by other traffic consisting of larger shipments. The fact is, of course, that for-hire motor carriers are in such a tight competitive situation that there is no segment of their traffic which has enough "fat" in it to underwrite losses on any other segment. Another fact is that so-called small shipments, by their very nature, cost significantly more to handle, per pound, than do larger shipments. Yet when motor carriers try, as they often do of necessity, to obtain rate increases on this segment of their traffic to bring about returns more commensurate with their costs, the first to oppose such increases, you can be sure, are the very shipper and organization which now complain

that the motor carriers aren't doing a good job of handling such traffic. Over a long period of years, motor carriers have faced the problem of adjusting their rates to provide an adequate return on the various categories of traffic which they handle, including so-called small shipments. Time and again their efforts to obtain rates which adequately reflect the high cost of handling these shipments have been frustrated by the Commission. In the final analysis, there is no "small shipment problem" which cannot be solved by allowing the carriers handling such traffic a fair return for their efforts.

You may be interested in some recent statistics relating to the movement of less-carload and less-truckload freight by class I railroads and class I motor carriers of general freight. For the year 1968, the motor carriers handled 75.2 million tons of less-truckload freight. By comparison, the class I railroads transported only 867,000 tons of less-carload traffic, 1.1 percent of the motor-carrier less-truckload tonnage. The motor carrier less-than-truckload tonnage consisted of 248 million shipments, which averaged 606 pounds, and returned gross revenue per shipment of \$14.63.¹ And it should be remembered that this is the traffic which, by its very nature, must pass over the motor carriers' docks and through their terminals, and be handled in their pickup and delivery trucks at both ends of its journey, which results in much greater handling cost per unit than is the case with volume or truckload shipments. By virtue of the fact that the railroads have largely ceased handling less-carload traffic and almost, if not entirely, handling small shipments, they are, generally speaking, spared these large costs which the motor carriers still incur. If the need for power to compel coordinated service is further justified by the so-called small shipment problem, then equity, as well as the provisions of the governing statute, demands that railroads share in the solution to that problem. I cannot stress too strongly the unfairness of singling out our industry as the sole transporter of unattractive traffic simply because nobody else wants it, while, at the same time, our chief competitors, the railroads, are allowed to concentrate on the more profitable traffic.

MOTOR CARRIERS HANDLE SMALL SHIPMENTS

A table showing figures compiled by our department of research and transport economics, from the 1963 Census of Transportation by the Bureau of Census, Department of Commerce, is appended. The Census figures understate motor carrier participation in the movement of small shipments, because they are limited to shipments made by manufacturing establishments and do not include those of wholesale and retail trade establishments. The latter establishments, which annually ship millions of packages, rarely have rail sidings, and depend on trucks much more heavily than do manufacturing concerns.

(The table follows:)

¹ Motor-carrier figures from the General Freight Analysis, ATA Department of Research and Transport Economics; rail figures from Statistics of Class I Railroads in the United States, Association of American Railroads. Less-carload shipment figures not reported by railroads.

TONS TRANSPORTED BY SIZE OF SHIPMENT BY ALL MODES OF TRANSPORTATION—1967¹

[In thousands of tons]

Shipments	Rail	Percent of total	For hire motor carriers	Percent of total	Private motor carriers	Percent of total	Total private and for hire	Percent of total	Other modes ²	Percent of total	Total all modes
Under 50 pounds	25	2.4	404	39.4	133	13.0	537	52.4	464	45.2	1,026
50 to 99	41	3.2	806	63.6	240	18.9	1,046	82.5	181	14.3	1,268
100 to 199	(66)	(2.9)	(1,210)	(52.7)	(373)	(16.3)	(1,583)	(69.0)	(645)	(28.1)	(2,294)
200 to 499	84	2.9	2,051	71.4	570	19.8	2,621	91.2	169	5.9	2,874
500 to 999	211	2.7	3,770	74.7	1,487	19.2	7,257	93.9	260	3.4	7,728
1,000 to 9,999	263	2.9	6,713	74.0	1,856	20.5	8,569	94.5	232	2.6	9,064
10,000 to 29,999	(626)	(2.9)	(15,744)	(71.7)	(4,281)	(19.4)	(20,025)	(91.1)	(1,309)	(6.0)	(21,960)
30,000 and over	7,984	10.7	45,199	61.4	19,464	26.4	64,663	87.8	1,083	1.5	73,730
	16,372	13.6	57,966	48.0	45,261	37.4	103,227	85.4	1,165	1.0	120,764
	377,946	55.2	184,240	26.9	85,924	12.5	270,164	39.4	35,735	5.4	684,846
Total	402,928	44.7	303,149	33.6	154,930	17.2	458,079	50.8	40,293	4.5	901,300

¹ Census of transportation; commodity transportation survey—shipper group 9 (petroleum and coal products) has been omitted because it is moved in bulk quantities predominantly.

² Other modes include: air, water, parcel post, railway express, freight forwarders, motor express carriers, etc. Movements by pipeline were not included in the survey.

Source: Bureau of the Census; 1967 census of transportation, commodity transportation survey, shipper groups.

Mr. BEARDSLEY. The table shows the number of tons transported, and the percentage of the total tonnage handled by the several transport modes, in various categories of traffic ranging from under 50 pounds to 30,000 pounds and over. The cumulative figures are shown in parentheses. Thus, the census study shows that of the total tonnage of shipments under 50 pounds, the railroads transported 2.4 percent, the for-hire motor carriers, 39.4 percent. For shipments between 50 and 99 pounds, the railroads handled 3.2 percent of the tonnage, the for-hire motor carriers 63.6 percent. And for all shipments under 100 pounds the study shows that railroads handled only 2.9 percent of the tonnage, while for-hire motor carriers accounted for 52.7 percent. Even when the weight bracket goes high enough to cover all shipments under 1,000 pounds, the rails handled only 2.9 percent of the tonnage, the for-hire motor carriers 71.7 percent. These figures show that—where truly “small shipments” are concerned—it is the motor carriers which largely shoulder the burden. Perhaps in recognition of this fact, the Commission has recently stated, and that was in February of this year, Senator Pearson:

“We firmly believe that by and large the regulated motor carrier industry is generally rendering a complete and comprehensive service in the transportation of all sizes of shipment from and to all points in the United States. Given the freight service requirements of this Nation, it is not surprising that some service failures occur and that there are instances in which a carrier or group of carriers attempt through tariff publications and other means to shirk their basic common carrier obligations and duties. It would, however, be a mistake to conclude that the entire motor common carrier industry is or has been derelict in the performance of the duty it owes to the general shipping public. (Restrictions on Service by Motor Common Carriers, 111 M.C.C. 151, 161, Feb. 18, 1967)

That sounds to me, Senator, as though things are improving. They were not saying things like that a couple of years ago.

Senator PEARSON. In these statistics under 50 pounds and under 100 pounds, does this include the short haul as well as the long haul loads?

Mr. BEARDSLEY. Yes, as far as I know there is no distinction made by the Census Bureau.

Senator PEARSON. What percentage of this 39.4 for under 50 or 52.7 for under 100 would that be short-haul?

Mr. BEARDSLEY. I cannot tell you that, Senator. I am not certain that anyone has ever specifically even attempted to classify the difference between short haul and long haul. All of us have our idea of what is short haul. I think probably at least in the motor carrier industry, with the length of hauls today it is significantly greater on the average than it was a decade ago.

RAIL RESTRICTIONS ON LESS-CARLOAD SERVICE

Our testimony in 1967 on S. 751 and S. 1768 went into some detail on railroad service limitations on less-carload service, including a virtual boycott of small shipments. We included a chart analyzing these restrictions, and showing that the railroads provide no less-carload service at all at 33 percent of their stations, and only a restricted service at another 41 percent. We noted that the greatest number of

weight restrictions specified that not less than 4,000, 6,000, or 10,000 pounds of freight must be tendered, and that, in addition, these restrictions are so worded as to allow the railroads to discriminate in their treatment of the shipping public. I won't go into the same detail today, although I'm certain that an updating of that information would show that rail-less-carload service—and particularly on small shipments—has deteriorated still further. I do, however, want to repeat one paragraph from that phase of our 1969 testimony. It is:

Strangely—or so it seems to us—this rail avoidance of less-carload tonnage, particularly that which falls in the "small shipment" category, seems to have caused no great clamor. Yet, as noted, the law imposes upon railroads the same obligation to handle all categories of traffic as it does upon the motor common carriers. The Commission's Eightieth Annual Report (1966) specifically refers, uncritically, to the "reduction or total abandonment of less-than-carload traffic by some railroads," at the same time it criticizes motor carriers for showing "a preference at times [for] higher paying freight." (pp. 20-21) What puzzles us is why an effort to concentrate upon the better paying traffic is perfectly all right when railroads are the carriers involved, but the same action becomes "reprehensible" only when it is the motor carriers which take it.

In closing, I would like to summarize our position with respect to the bills under consideration:

In the many prior instances in which the Commission has sought legislation similar to that now under consideration, a major basis for the claim that it was necessary was the need to insure coordinated service between the several transport modes. This fact tends to be obscured by reference to the so-called small shipments problem as added justification for the Commission's proposal. If all that is needed is to solve the "small shipment problem," then neither of the bills before you should be enacted. Instead, the Congress should memorialize the Commission to see to it that all categories of carrier traffic produce a fair and reasonable profit. If, on the other hand, there is real need for coordinated service between and within the various modes of transport, we submit that S. 3626 is the better bill to accomplish this aim.

We can support legislation which would empower the Commission to require the establishment of through routes and joint rates between the several modes of transport, and within such modes. Each of the bills before you would achieve this result. However, we cannot support S. 2245 because it does not contain some of the safeguards which we consider vital if such legislation is to be fair to all parties involved, and because it contains authorization for the prescription of "temporary" through routes. We can and do, however, support S. 3626.

Senator PEARSON. Mr. Beardsley, would you like to just itemize those safeguards in S. 3626, one, two, three, four?

Mr. BEARDSLEY. I have already listed them in my statement. There are four of them which are included in S. 3626 and which were included in the subcommittee print of this committee back in 1967.

Senator PEARSON. I see. Thank you very much. We appreciate your testimony.

The next witness is Mr. Harry J. Breithaupt. Mr. Breithaupt is the general solicitor of the Association of American Railroads and has appeared before this committee on a number of occasions. He has been very helpful in regard to our legislature, even at times when he does not prevail.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL SOLICITOR,
ASSOCIATION OF AMERICAN RAILROADS

Mr. BREITHAUPT. I am very happy to be here, Mr. Chairman. I always enjoy an opportunity to appear before this committee and subcommittee, and its members.

Mindful of the desirability and the need, really, to conserve the subcommittee's time, I shall with your permission ask that my statement in its entirety be incorporated in the record of this hearing and also with your permission ask merely to highlight it.

Senator PEARSON. That will be ordered.

Mr. BREITHAUPT. For the record my name is Harry J. Breithaupt, Jr., and I am general solicitor of the Association of American Railroads, with headquarters in this city. Our association, speaking for its member railroads, takes no position on those provisions of the two bills before you that have to do with the establishment of intra-mode through routes and joint rates applicable to transportation solely by motor carrier, nor does it take any position on those provisions of the bills having to do with through routes and joint rates as between motor carriers and water carriers.

We do, however, vigorously oppose both bills to the extent that they call for mandatory or compulsory through-route and joint-rate arrangements as between motor carriers and railroads.

In this regard, S. 2245 would (1) make it the statutory duty of every railroad to establish reasonable through routes with common carriers of property by motor vehicle and establish just and reasonable rates applicable thereto; and (2) also authorize the Interstate Commerce Commission, after hearing, to establish—really to compel the establishment of—through routes and joint rates applicable to the transportation of property by railroads and motor common carriers.

The bill that the American Trucking Association has supported through Mr. Beardsley differs in that it would impose upon the railroads this new statutory duty to establish through routes and joint rates with motor carriers only "upon reasonable request therefor"; but it would (like S. 2245) direct the Commission to establish through routes and joint rates between common carriers of property by motor vehicle and common carriers by railroad whenever deemed by it, after hearing, to be "necessary or desirable in the public interest."

There are other significant differences between the two bills. S. 3626, as the chairman has just recognized, contains a number of important provisions not found in S. 2245. These provisions obviously have been designed to qualify the Commission's proposal and, one might say, provide certain fundamental protections and partial safeguards in connection with it.

I would like to defer further mention of those additional features until I have given first the most important part of my statement, Mr. Chairman; that is, until I have explained the reasons underlying the railroads' opposition to that part of the proposal (whichever bill one looks at; it is common to both) that would work compulsion and coercion upon the railroads in respect of through routes and joint rates with motor carriers.

Our basic opposition to both S. 2245 and S. 3626 is that either of the bills would impose upon the already overregulated railroads additional regulation that is not only unwanted and objectionable but is also regulation for which, in my opinion after sitting through the hearings 3 years ago and these hearings, no necessity has been shown.

A lengthy and comprehensive record was made before this subcommittee just 3 years ago, in hearings then conducted on bills that were similar to and the predecessors of the bills now being heard. It has been printed and it was totally lacking in any demonstration of the need.

("Through Routes and Joint Rates, etc.," hearings before the Subcommittee on Surface Transportation of the Committee on Commerce, U.S. Senate, 90th Cong., 1st sess., on S. 751, S. 753, and S. 1768, May 16, 17, 18, and June 9, 1967, serial No. 90-37.)

As I said, the record was lengthy, yet it was totally lacking in any demonstration of the need for compelling railroads to enter into through routes and joint rates with particular motor carriers not of their own choosing; for forcing them to participate in such joint arrangements with trucking companies on a basis other than that of mutual selection, mutual trust, and common agreement; for coercing them into contractual relationships with partners, so to speak, who may be unacceptable to them and with whom they may be incompatible—all in circumstances, and on terms and conditions, that may not only be disagreeable to them but may well, in our opinion, be prejudicial to them as well and contrary to their interest.

All that we had by way of explanation from the Interstate Commerce Commission to justify this distasteful proposal were such broad statements of generalities by the then chairman of the Commission as I have set forth in my prepared statement. But the constant reference both in 1967 and in the hearings this morning and yesterday morning and afternoon by the ICC witnesses and other witnesses to rather serious problems—problems that they said were serious and I do not for a moment discount their seriousness—did not have anything at all to do with that part of the Commission's proposal for mandatory intermode through routes and/or joint rates between motor carriers and railroads.

All of the service breakdowns and inadequacies they cited—to a large extent with specific illustrations—had to do with the failure of motor carriers, between and among themselves; that is, intramode, to establish and maintain through service.

Nowhere in the Commission's 1967 presentation was there given any illustration or example of how it is that the present law on intermode through routes, with its provisions for voluntary as opposed to compulsory, arrangements between railroads and motor carriers, is deficient. Nor was there any such testimony in 1967 from shipper witnesses.

The same has been true in the hearings conducted yesterday and today. Commissioner Stafford, the Acting Chairman of the Commission, spoke in very general terms of the gap, what he saw as a gap, in the law that would result if motor carriers were required to join into intramode through routes and rates with each other, a gap that he said would result if there were failure on the part of the Congress

simultaneously to provide compulsion and coercion as between railroads and motor carriers.

Yesterday at the conclusion of Chairman Stafford's testimony, Senator Hartke, the chairman of the subcommittee, referring to a statement by the witnesses for the Commission that the past year had brought forth some 6,000 complaints to the Commission on this small shipment problem over the highways, said that he does not believe in "proof by assertion," and I quote him, and he called upon Chairman Stafford and Commissioner Murphy, who was present with the chairman, to supply the subcommittee with a month-by-month breakdown of those 6,000 complaints. Presumably this will be done for the record.

Going on, however, the chairman, Senator Hartke, yesterday called upon Commissioner Stafford and Commissioner Murphy to provide for the record at that time, if they could, a breakdown of the major areas of complaints that were encompassed by these 6,000 complaints received by the Commission. After some hesitation, as I understood the record that was made yesterday, these two principal areas of complaint came to the memory of the Commission's witnesses and were spread upon the record:

No. 1, the difficulty in getting shipments of furniture delivered to small outlying destinations, and, No. 2, those examples which would be typified, I take it, by the illustration given, a small hardware store in a small city, a small outlying city, with an order for one housewife's refrigerator would have to drive into a larger distribution center in order to pick up that one refrigerator that the housewife wanted.

Senator Hartke said: "How will this bill benefit the consumers?" Meaning, I take it, the consumers involved in these two illustrations. In response to these questions neither the chairman of the Commission nor Commissioner Murphy gave any indication, any example, any illustration showing or even suggesting that any of these matters would be remedied by having the Congress enact an amendment to the Interstate Commerce Act which would require the establishment of compulsory through routes and joint rates as between the railroads and the motor carriers.

How about the shippers who appeared before this subcommittee yesterday and in advance of Mr. Beardsley this morning? We had reference by the Commission to the problem of the furniture shippers and receivers, but there appeared before the committee yesterday a Mr. R. F. Bohman, Jr., in behalf of a number of furniture associations and the like, and in his prepared statement which was incorporated in the record Mr. Bohman said:

The immediate and the pressing need is for authority between two or more motor carriers, and should be separately dealt with at once. For the time being, let's get the railroads, water carriers and express companies out of the arena so that we can focus in on the real problem.

Also, appearing before the subcommittee yesterday and speaking for the American Retail Federation which would include, I take it, such people as the small hardware dealer in the outlying small city who seeks one refrigerator for his customer housewife, Mr. Washer, appearing in behalf of that federation said, and I quote from his prepared statement: "It is the prescription authority on through rates, joint rates for Part II carriers"—meaning the motor carriers—"in

which we are interested. While the future may hold promise of joint arrangements between and among different modes of transportation, our immediate needs are for motor carrier combinations.”

Also appearing before the subcommittee yesterday was a representative of the Brown Distributing Co., rather an officer of the Brown Distributing Co., representing the National Wholesale Furniture Association, of which he is the past president. He mentioned nothing in his testimony having to do with intermode difficulties but only problems having to do with highway interlining. Mr. Cleary, this morning appearing before the subcommittee in behalf of the National Industrial Traffic League, it is true, urged on principle that both aspects of the bill be enacted into law; but his basis for urging enactment of the intermode feature just as that of the ICC, had to do with closing what he envisions as a gap in the regulatory scheme. Certainly a fair assessment of his statement, Senator Pearson, which you heard him deliver, is that this problem has to do with the need of intramode through routes and joint rates as between motor carriers on the highways and very little if anything to do with intermode arrangements.

Why is it, then, in the face of the record made in 1967 and in the face of the record which the Commission must have known would have been made before the subcommittee yesterday and today, that the Commission has recommended that this additional regulation be imposed upon the railroads and that its regulatory power and authority over the railroads be enlarged in this respect?

Why has it renewed this recommendation? One reason, as I have been at pains to point out, is the Commission's professed belief that gaps in the present law should be eliminated and that an incidental effect of closing these gaps would be the elimination of what it conceives to be certain inequalities in the economic regulation of the several modes.

I don't agree, we don't agree that there is any gap in the present law with respect to this matter of intermodal interlining that needs to be eliminated. Nor do I agree, nor do we agree that there is any inequality of regulation in this area sufficient to justify, especially as an incidental effect, the imposition of additional regulation upon those for whom I speak.

In addition, however, back in 1967—

Senator PEARSON. Let me ask you a question at this point because you are developing the concept of an additional regulation. With reference to the *Piggyback Service* case a couple of years ago, aren't the railroads required to establish through rates with all common carriers at the present time?

Mr. BREITHAUPT. Not with common carriers by motor vehicle, Senator. Under the provisions—as I understand that case, which did no more than translate into practical effect the provisions of the statute, the matter of the establishment of through routes and/or joint rates between the railroads and other common carriers (except for water, which is not here involved, if I may limit it to railroads and motor common carriers) is purely voluntary under either part I or part II of the statute.

Senator PEARSON. All right. Go ahead.

Mr. BREITHAUPT. I don't want to belabor the point of the record that was made so long ago as 1967, but I do feel justified in asking that

the record of this hearing include a brief excerpt from my prepared statement which may afford some clues to the Commission's thinking that is not otherwise upon the record and which, indeed, Senator, relates to the piggyback question you just asked.

I think there was a revealing disclosure of the Commission's thinking on the intermode feature of its proposal when on May 16, 1967, the then chairman of the Commission said in testimony:

Although [the] pattern of growth [in Plan V piggyback] suggests that the present strictly voluntary establishment of these joint arrangements is sufficiently adequate to obviate the need for the intermodal provisions of this bill, we believe that such a conclusion would be unwarranted.

And why was it that the Commission believed "such a conclusion would be unwarranted?" Here is the way the ICC chairman explained it:

While the amount of true joint intermodal service through the establishment of Plan V TOFC rates and similar arrangements has grown in recent years, the fact remains that motor common carriers have not participated in this growth to the extent that could be expected. Although the volume and number of TOFC shipments handled by motor carriers has increased, their relative share has to some extent declined.

What can this mean except that the spokesman for the Commission at that time intended to spread the traffic around a little bit to be sure that the motor common carriers enjoyed a greater ratio of the Plan V TOFC traffic of which he was speaking. It is difficult to escape the conclusion, at least for me it is, that that Commission then, if not now, views the intermode provisions of the present legislation as a means by which the railroads might be compelled to share business with the trucks, a means by which traffic may be allocated between the modes; a means by which the motor carriers' participation in the market may be fostered; a means by which the "relative share" of the motor carriers may be sustained and enlarged.

Senator, we have come full circle, indeed, on regulatory philosophy in a little more than a decade. We now appear to be faced with a new variation of the old "fair share of the traffic" theory, a concept that I and many others had thought the Congress had laid to rest and buried in 1958.

Further than all that, Mr. Chairman, I confess that I am unable to foretell exactly in what fashion these results would be brought about. I cannot predict just how the Commission would exercise the powers proposed by these bills to be vested in it.

I am speaking now, of course, of the powers relating to intermodal through routes and joint rates between railroads and motor carriers. I do not believe that anyone can safely say how these powers would be used, or to what effect.

That is a principal difficulty with the intermode feature of the two bills. No one knows just how it would work. No one can foresee, with any certainty, what the results might be. In the absence of examples of any ills to be cured, of any conditions to be improved, of specific objectives to be attained, one is asked, in the vernacular, to buy a pig in a poke.

Without any demonstration of need, and without any real explanation, the Congress is urged to enact legislation imposing substantial additional statutory obligations upon the railroads and endowing the

Interstate Commerce Commission with far-reaching additional regulatory authority over them.

I would like in the interest of the conservation of time, Mr. Chairman, to move on.

There are many uncertainties in these bills. That there should be such uncertainties appears to have been deliberate on the part of the Commission when it drafted the legislation. Senator Magnuson, introducing S. 2245 on May 26, 1969, inserted in the Congressional Record of that date the Commission's "State of Justification" for its recommendation. In that statement put in by the chairman of the full committee, the Commission said on page S5603:

The draft bill does not contain specific provisions specifying such matters as the conditions under which any through route would be operated, divisions of joint rates, or the settlement of interline balances.

It seems more desirable and appropriate that these and similar matters be handled, where necessary, through either a formal case-by-case determination or through the exercise of the Commission's rule-making power in which all interested parties could participate.

It may seem to the Commission "more desirable and appropriate" that these very important matters be left to its future determination and fiat. It seems to me this is a very cavalier approach to some very serious matters from our standpoint, and I assure you that it doesn't seem "desirable or appropriate" to those for whom I speak.

Here we are, faced with an ICC proposal for the imposition of added regulation on the railroads; regulation we consider distasteful and burdensome and quite possibly harmful to our interests; added regulation of which we are understandably suspicious; added regulation for which we believe neither need nor justification has been shown; and its principal proponents nevertheless say that nonspecificity with respect to vital elements of the proposed regulatory scheme is "more desirable and appropriate," if you will, then specificity.

Take also the provision of S. 2245 permitting the Commission, "in its discretion and without hearings or other proceedings," to require the establishment of temporary through routes for as long as 60 days and for longer and indefinite periods if a formal proceeding is instituted.

Of this the Commission said in its "Statement of Justification" inserted in the May 26, 1969, Congressional Record, by Senator Magnuson, at page S5603:

"The establishment of such temporary through routes by the Commission would be subject to the same limitations on the Commission's authority as are imposed by the draft bill in a case of through routes prescribed on a permanent basis in the course of a formal proceeding.

The limitations referred to are, I take it, those having to do with protection for carriers against being "short-hauled;" with giving preference to the originating carrier, etc.

As an example of the suspicion with which that must be regarded, I do not think it is at all clear, despite what the Commission has said, that these limitations on its authority to prescribe permanent through routes would likewise be applicable to it in its prescription of temporary through routes. So, in yet another respect the bill is unclear and uncertain.

The protections and the safeguards which have been outlined for the record and explained for the record by earlier witnesses, including

those for the Commission and Mr. Beardsley, and found in S. 3626, are in our estimation on the whole and as far as they go, salutary protections.

However, they do not alter the fact of our basic opposition to the concept of any compulsion at all in the establishment of through and joint rates between railroads and motor carriers. The permissive and voluntary arrangements between the two modes are working satisfactorily, and there, we feel the matter should be left until it can be shown—and until it is shown—that a change in the present law is called for in the sense of being needed.

The railroads take no position on the intramode feature of either bill; but they oppose the rail-truck intermode feature of both.

Senator PEARSON. Thank you very much. We appreciate your statement and your position on behalf of those you represent here.

(The statements follows:)

STATEMENT OF HARRY J. BREITHAUP, JR., GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am General Solicitor of the Association of American Railroads, with headquarters at Washington, D.C.

My appearance here today is by authority of the Association's Board of Directors and is for the purpose of expressing the views of the Association and its members on S. 2245 and S. 3626, both of which bear the caption "A bill to authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes".

S. 2245 was introduced on May 26, 1969, by the chairman of the Committee on Commerce (by request) to reflect and implement a legislative recommendation made by the Interstate Commerce Commission. S. 3626 was introduced on March 24, 1970, by Senator Moss.

The Association of American Railroads takes no position on those provisions of the two bills that have to do with the establishment of intramode through routes and joint rates applicable to transportation solely by motor carriers, nor does it take any position on those provisions of the bills having to do with through routes and joint rates as between motor carriers and water carriers. We do, however, vigorously oppose both bills to the extent that they call for mandatory or compulsory through route and joint rate arrangements as between motor carriers and railroads.

In this regard, S. 2245 (1) make it the statutory duty of every railroad to establish reasonable through routes with common carriers of property by motor vehicle and establish just and reasonable rates applicable thereto, and (2) also authorize the Interstate Commerce Commission, after hearing, to establish through routes and joint rates applicable to the transportation of property by railroads and motor common carriers.

S. 3626 differs in that it would impose upon the railroads this new statutory duty to establish through routes and joint rates with motor carriers only "upon reasonable request therefor"; but it would (like S. 2245) direct the Commission to establish through routes and joint rates between common carriers of property by motor vehicle and common carriers by railroad whenever deemed by it, after hearing, to be "necessary or desirable in the public interest".

There are other significant differences between the two bills. S. 3626 contains a number of important provisions not found in S. 2245. These provisions have been designed to qualify the Commission's proposal and, one might say, provide certain fundamental protections and partial safeguards in connection with it. With the Subcommittee's permission I shall defer mention of these additional features, however, until I have first given the reasons underlying the railroads' opposition to that part of the proposal (whichever bill one looks at; it is common to both) that would work compulsion and coercion upon the railroads in respect of through routes and joint rates with motor carriers.

Our basic opposition to both S. 2245 and S. 3626 is that either of the bills would impose upon the already over-regulated railroads additional regulation that is not only unwanted and objectionable but is also regulation for which no necessity has been shown.

A lengthy and comprehensive record was made before this Subcommittee just three years ago, in hearings then conducted on bills that were similar to and the predecessors of the bills now being heard ("Through Routes and Joint Rates [etc.]", Hearings Before the Subcommittee on Surface Transportation of the Committee on Commerce, United States Senate, Ninetieth Congress, First Session, on S. 751, S. 753, and S. 1768, May 16, 17, 18, and June 9, 1967, Serial No. 90-37.) As I said, the record was lengthy, yet it was totally lacking in any demonstration of the need for compelling railroads to enter into through routes and joint rates with particular motor carriers not of their own choosing; for forcing them to participate in such joint arrangements with trucking companies on a basis other than that of mutual selection, mutual trust and common agreements; for coercing them into contractual relationships with partners, so to speak, who may be unacceptable to them and with whom they may be incompatible—all in circumstances, and on terms and conditions, that may not only be disagreeable to them but may well be prejudicial to them as well and contrary to their interest.

All that we had by way of explanation from the Interstate Commerce Commission to justify this distasteful proposal were such broad statements of generalities by the spokesman for the Commission (in an appearance on May 16, 1967) as—

* * * the power to compel the establishment of joint rates and through routes, under certain circumstances, is an appropriate and essential regulatory tool. (Hearings, p. 33)

* * * an incidental effect of this legislation is the elimination of certain inequalities in economic regulation among the several modes of transportation. (*id.*, p. 35)

Under the present situation the establishment of joint rates and through routes is strictly voluntary and thus subject to termination at any time, a situation which is not conducive to the maintenance and expansion of dependable coordinated joint-line service. (*id.*, p. 36)

Although [the] pattern of growth [in Plan V* piggyback] suggests that

*In Plan V piggyback, the shipper's property is transported door-to-door by trailer under a joint rail-motor rate negotiated by the rail and motor carriers. The property moves on a rail or motor bill of lading, depending upon which carrier originates the shipment.

the present strictly voluntary establishment of these joint arrangements is sufficiently adequate to obviate the need for the intermodal provisions of this bill, we believe that such a conclusion would be unwarranted. (*id.*, p. 39)

Because it is recognized more than ever that adequate intra and intermodal coordination is clearly in the public interest and because the lack of this authority has brought about a number of serious problems, which I will mention subsequently, we believe that these gaps in the present law should be eliminated through the enactment of S. 751. (*id.*, p. 33)

But these "serious problems" which the ICC witnesses went on to mention—and I do not in any degree discount their seriousness—did not have anything at all to do with that part of the Commission's proposal for mandatory intermode through routes and/or joint rates between motor carriers and railroads. All of the service breakdowns and inadequacies they cited (to a large extent with specific illustrations) had to do with the failure of motor carriers, between and among themselves (intramode), to establish and maintain through service.

Nowhere in the Commission's 1967 presentation was there given any illustration or example of how it is that the present law on intermode through routes, with its provision for voluntary (as opposed to compulsory) arrangements between railroads and motor carriers, is deficient. Nor was there any such testimony from shipper witnesses.

Why, then, did the Commission recommend that this additional regulation be imposed upon the railroads and that its regulatory power and authority over the railroads be so enlarged? Why has it renewed its recommendation? One reason, I suppose, is the Commission's professed belief that "gaps in the present law should be eliminated", and the "an incidental effect" would be the elimination of what it conceives to be "certain inequalities in economic regulation among the several modes of transportation".

We do not agree that there is any gap in the present law with respect to through routes and joint rates between railroads and motor carriers that needs to be eliminated. Nor do we agree that there is any inequality of regulation in this area sufficient to justify, especially as an "incidental effect", the imposition of additional regulation upon the railroads.

In addition, however, there was a revealing disclosure of the Commission's further thinking on the intermode feature of its proposal. I have already quoted a member of the Commission (then its chairman) as having said to this Subcommittee on May 16, 1967, that—

Although [the] pattern of growth [in Plan V piggyback] suggests that the present strictly voluntary establishment of these joint arrangements is sufficiently adequate to obviate the need for the intermodal provisions of this bill, we believe that such a conclusion would be unwarranted. (page 39 of the Hearings, *supra*)

And why was it that the Commission believed "such a conclusion would be unwarranted"? Here is the way the ICC chairman explained it—

While the amount of true joint intermodal service through the establishment of Plan V TOFC rates and similar arrangements has grown in recent years, the fact remains that motor common carriers have not participated in this growth to the extent that could be expected. Although the volume and number of TOFC shipments handled by motor carriers has increased, their relative share has to some extent declined. (*id.*)

On the basis of the language I have just quoted, it is difficult to escape the conclusion that the Commission views the intermode provisions of the legislation it seeks as a means by which the railroads may be compelled to share business with the trucks; a means by which traffic may be allocated between the modes; a means by which the motor carriers' participation in the market may be fostered; a means by which the "relative share" of the motor carriers may be sustained.

We have indeed come full circle on regulatory philosophy in little more than a decade. We now appear to be faced with a new variation of the old "fair share of the traffic" theory, a concept that I and many others had thought the Congress laid to rest in 1958.

I confess that I am unable to foretell exactly in what fashion these results would be brought about. I cannot predict just how the Commission would exercise the powers proposed by these bills to be vested in it. (I am speaking now, of course, of the powers relating to intermodal through routes and joint rates between railroads and motor carriers.) I do not believe that anyone can safely say how these powers would be used, or to what effect.

That is a principal difficulty with the intermode feature of the two bills. No one knows just how it would work. No one can foresee, with any certainty, what the results would be. In the absence of examples of any ills to be cured, of any conditions to be improved, of specific objectives to be attained, one is asked to buy a pig in a poke. Without any demonstration of need, and without any real explanation, the Congress is urged to enact legislation imposing substantial additional statutory obligations upon the railroads and endowing the Interstate Commerce Commission with far-reaching additional regulatory authority over them.

Under the Commission's proposal (S. 2245) it would become the statutory duty of railroads "to establish reasonable through routes * * * with common carriers of property by motor vehicle". That, without else, is the measure of the duty imposed; no other guidance is provided. What are "reasonable" through routes? What are to be the standards and guidelines? The ICC witness in 1967 said, in his testimony, that "the failure to enter into such arrangements may constitute an unreasonable practice" (p. 39 of the Hearings, *supra*). That's all the guidance or explanation that was given on this basic feature of the bill.

Under both of the pending bills (S. 2245 and S. 3626) the Commission would also itself be empowered to establish (i.e., compel the establishment of) through routes and joint rates between railroads and motor common carriers of property. The language common to both bills in this regard is, in pertinent part—

The Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish reasonable through routes * * * applicable to the transportation of * * * property by common carriers by motor vehicle * * * and common carriers by railroad * * *

Thus, both bills would direct the Commission to compel the establishment of through routes and joint rates between railroads and motor carriers "whenever deemed by it to be necessary or desirable in the public interest". Not just whenever deemed *necessary*; whenever deemed "*necessary or desirable*". This points up the difficulty and uncertainty of knowing what the real effect of the measure—either measure—would be.

What is meant here by "desirable"? That is a word of great latitude, permitting great latitude. Why should the Commission's notion of what is "desirable" enable it to overrule and countermand managerial judgment? The minimum standard for the Commission's substitution of its judgment for that of the railroads' managers ought at least to be public necessity. In 1967 the ICC spokesman said (p. 40 of the Hearings, *supra*) that the Commission will require or compel the establishment of through routes and joint rates "only in case of a clear and convincing public need", but that was not then nor is it now the language of the bills. Furthermore, in his very next sentence the ICC witness said (*id.*) " * * * where it should be necessary or desirable in the public interest to require the establishment of either through routes or joint rates between carriers of the same or different modes * * *" etc. How this bill—these bills—would work is truly a matter for conjecture.

Let us look for a moment at the matter of divisions of joint rates (i.e., determining the respective revenue shares of the participating carriers). Under both bills the Commission would be empowered and directed to prescribe the divisions of joint rates established by it in the case of such through routes as it might compel between railroads and motor carriers "when the carriers involved cannot agree".

This does not mean, however, that divisions agreed upon by the carriers involved would be safe from Commission interference, for section 216(f) of the Interstate Commerce Act (not amended by the bills) would authorize the Commission to prescribe new and different divisions if it is of the opinion (after hearing, either upon complaint or upon its own initiative) that any divisions "are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carrier, or any of them, or otherwise established)."

What the standards would be for prescription of rail-motor carrier joint rate divisions by the Commission under these bills, whether prescribed in the first instance or prescribed by way of substitution for divisions theretofore agreed upon by the carriers, is not clear. I do not know whether the Commission could and would prescribe or substitute merely what it conceived to be "just, reasonable, and equitable" divisions (section 216(f) of the Act), or whether it also could and would consider—or, since rail carriers would be involved, might indeed be required to consider—the various factors spelled out in section 15(6) of the Act. That section provides that in prescribing and determining the divisions of joint rates—

the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, . . . and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

If there is any chance that these would be the rules, then I would point out that they are not desirable or even appropriate guidelines for the prescription of divisions of joint rates between railroads and motor carriers, especially when the joint rates so divided and the through routes to which they apply are the result of Commission compulsion instead of voluntary arrangement. Why, for example, should a strong carrier be compelled to give up to a weak one a greater share of the joint revenues derived from their provision of through service than their respective contributions to that service would justify, particularly if the joinder of the two carriers should be unwilling and forced?

Then, there is also confusion in the bills with regard to the proposed power of the Commission to fix the "terms and conditions under which such [prescribed]

through routes shall be operated". It is unclear whether the Commission's power in this respect would be plenary and untrammled or would come into play, at least in the first instance, only "when the carriers involved cannot agree."

And what would the standards and criteria be to guide the Commission in its prescription of the "terms and conditions" for operating a rail-truck through route? I don't know.

There are many uncertainties in these bills. That there should be such uncertainties appears to have been deliberate on the part of the Commission when it drafted the legislation. Senator Magnuson, introducing S. 2245 on May 26, 1969, inserted in the *Congressional Record* of that date the Commission's "Statement of Justification" for its recommendation. In that statement the Commission said (p. S5603)—

The draft bill does not contain specific provisions specifying such matters as the conditions under which any through route would be operated, divisions of joint rates, or the settlement of interline balances. It seems more desirable and appropriate that these and similar matters be handled, where necessary, through either a formal case-by-case determination or through the exercise of the Commission's rulemaking power in which all interested parties could participate.

It may seem to the Commission "more desirable and appropriate" that these very important matters be left to its future determination and fiat. I assure you that it doesn't seem "desirable or appropriate" to those for whom I speak.

Here we are, faced with an ICC proposal for the imposition of added regulation on the railroads; regulation we consider distasteful and burdensome and quite possibly harmful to our interests; added regulation of which we are understandably suspicious; added regulation for which we believe neither need nor justification has been shown; and its principal proponents nevertheless say that non-specificity with respect to vital elements of the proposed regulatory scheme is "more desirable and appropriate", if you will, then specificity.

Take also the provision of S. 2245 permitting the Commission, "in its discretion and without hearings or other proceedings", to require the establishment of temporary through routes for as long as 60 days and for longer and indefinite periods if a formal proceeding is instituted. Of this the Commission said in its "Statement of Justification" inserted in the May 26, 1969 *Congressional Record* by Senator Magnuson (p. S5603)—

The establishment of such temporary through routes by the Commission would be subject to the same limitations on the Commission's authority as are imposed by the draft bill in a case of through routes prescribed on a permanent basis in the course of a formal proceeding.

The limitations referred to are, I take it, those having to do with protection for carriers against being "short-hauled"; with giving preference to the originating carrier, etc. (S. 2245: p. 4, line 18, to p. 5, line 22).

I do not think it is at all clear, despite what the Commission has said, that these limitations on its authority to prescribe permanent through routes would likewise be applicable to it in its prescription of temporary through routes. So, in yet another respect the bill is unclear and uncertain.

S. 3626 includes certain provisions, not found in S. 2245, that obviously are intended to afford carriers certain basic protections when they are compelled by the Commission to enter into through routes and joint rate arrangements with other carriers. Thus in introducing S. 3626, Senator Moss stated that his bill "contains certain standards or safeguards to prevent undue burdens upon the carriers who may be required by the ICC to establish through routes and joint rates." (*Congressional Record*, March 24, 1970, p. S. 4289) These features include—

(1) Requirement that no joint rate shall be prescribed by the Commission except upon findings—

(a) That the rate is just and reasonable with reference to the facts and circumstances attending the service to which it is applicable, "subject to provision for reasonable circuitry" [I am not sure I understand the "circuitry" provision];

(b) That the carriers involved are financially and otherwise fit (if that issue is raised).

(2) Provision for cancellation or suspension of a through route or joint rate on short notice in the event of any participating carrier's undue delinquency in the payment of divisions or the making of interline settlements.

These protections and safeguards are, on the whole and as far as they go, salutary. However, they do not alter the fact of our basic opposition to the con-

cept of any compulsion at all in the establishment of through routes and joint rates between railroads and motor carriers.

The present permissive and voluntary arrangements between the two modes are working satisfactorily; and there, we feel, the matter should be left until it can be shown—and until it is shown—that a change in present law is called for in the sense of being needed. The railroads take no position on the intramode feature of either bill; but they oppose the rail-truck intermode feature of both.

Senator PEARSON. Our next witness this morning will be Mr. William C. McCamant, director of public affairs, National Association of Wholesaler-Distributors, who is accompanied by Mr. Pieratt and Mr. Palmer.

STATEMENT OF WILLIAM C. McCAMANT, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, WASHINGTON, D.C.; ACCOMPANIED BY THOMAS S. PIERATT, JR., EXECUTIVE SECRETARY, TRUCK EQUIPMENT & BODY DISTRIBUTORS ASSOCIATION, INC., AND H. EARL PALMER, NATIONAL CANDY WHOLESALERS ASSOCIATION, BELLE PLAINS, IOWA

Mr. McCAMANT. Mr. Chairman, my name is William C. McCamant, and I appear here today as the director of public affairs for the National Association of Wholesaler-Distributors. NAW is composed of 67 national commodity line wholesaler-distributor organizations which are comprised of 18,000 member firms.

We appear in support of S. 2245, which would grant to the Interstate Commerce Commission the authority to require motor carriers of property to establish agreements on through routes and joint rates with other motor carriers, and with carriers in other modes of transportation.

In 1969, sales by wholesaler-distributors totalled \$235 billion. It is the task of the wholesaler-distributor to purchase in quantity from hundreds of sources located in every State and in many foreign countries. The flow of products—the yield from our farms, the output of our factories—is continuous, as wholesaler-distributors, in serving their market area, anticipate demand, order in advance, and stock in their warehouse so that these products are available where needed—when needed.

To meet the daily requirements of our citizens in every community we need not only a vast network of warehousing, but also of transportation. Let me state it in one simple term—there is a need for a through route and a joint rate for all products from the source of supply to the point of need.

In a very recent survey questionnaire mailed to over 7,000 wholesaler-distributors, the members of NAW and of our member associations, ranked “lengthening lead times” on merchandise ordered from suppliers as the third most important problem our industry faced in 1969.

Only the problems of finding and retaining competent personnel and the tight money situation, resulting in the aging of accounts receivable, had greater impact on our industry's operation.

The point was made again and again that lengthening leadtime was a problem for every commodity line reporting. This results in larger, more costly inventories, maintained with more and more expensive

borrowing, unsatisfied customers when delivery dates are missed, and, ultimately, decreased profits.

One member made the cogent observation that erratic lead times are strongly affecting the more sophisticated purchase scheduling systems coming into use within the industry.

Other members reported "Long leadtimes on major sales have distorted the profit picture" * * * "lengthening leadtime on purchases requires us to carry an increasingly heavier inventory" * * * "unpredictable leadtime on purchases was our biggest problem in 1969" * * * "purchase leadtimes are lengthening unreasonably in many cases" * * * "inventories increased 15 percent due to lengthening leadtimes" * * * "manufacturers' deliveries lagging 30-45 days" * * * "in some cases, orders require 3 to 6 months' leadtime" * * * "leadtime on purchases had doubled in many cases."

One of our member groups, the American Supply Association, composed of plumbing-heating-piping wholesalers, conducted a survey of its members in January of this year. Of those participating in the survey, 93 percent reported that truck deliveries are taking longer than a year ago.

As to the increased delay in receiving less-than-truckload shipments, 63 percent indicated the delays average 1 week longer, 31 percent reported an average of 2 weeks longer, and 6 percent reported an average of 3 weeks longer.

The survey also asked the wholesaler to list in 1-2-3 order the major causes for delay. The number one reason was "transfer," meaning the transfer from one motor carrier to another. The second major cause listed was "indifference" of the carrier, and the third reason was the mishandling of less-than-truckload shipments. The statistical results of this survey are attached for entry into the record.

Much of the increase in leadtime on purchases is due to the trucking industry's growing neglect of small shipments, LTL shipments, and shipments to less populated areas of the Nation, and the lack of ICC authority over through routes and joint rates.

When a wholesaler-distributor is unsure of delivery schedules, and leadtimes on purchases become longer and longer, he must either carry a larger inventory or suffer the risk of losing customers due to stock-outs.

Increasing inventory can price a wholesaler-distributor out of the market because it costs between 20 and 35 percent of the dollar value of the goods in the warehouse just to carry that amount of merchandise for 1 year.

I have some statistics here which follow, but basically they state this, Senator, that if we turn our inventory over six times a year and we have to increase our leadtime by 30 days, we have to increase our inventory by approximately 50 percent, which is a tremendous increase in the costs, all of which must eventually be paid for by the consumer, or else come out of a thin profit margin.

Authorizing the ICC—

Senator PEARSON. You indicate in your testimony that 63 percent indicated delays are averaging 1 week longer. What is the effect of a week's delay? The example that you just gave was a month's delay.

Mr. McCAMANT. That is correct. A 1-week delay would be one-fourth of that, so they would have to increase their inventories 12½ percent at a minimum.

With the average wholesaler realizing about 2 percent profit on gross sales after taxes (according to the IRS statistics for 1967), he must keep his inventory turning—or go bankrupt. The average wholesaler-distributor turns his inventory about six times per year or every 60 days. Using 30 percent as an illustration of the dollar value of carrying inventory, 5 percent can be applied against each turn of the inventory (six times per year or 30 percent).

If however, leadtimes increase by 30 days, as reported in our survey, the wholesaler-distributor must order smaller fill-in quantities at higher prices, with greater added costs throughout his business—in the purchasing, accounting, receiving, inventory control, and warehousing departments—or he must purchase more than the economic order quantity of products and increase his stock level. Costs of increased warehouse space and increased capital investments, to accommodate inability to receive goods promptly, are crucial considerations, since nearly 45 percent of the wholesaler-distributor's assets are represented by his inventory.

The wholesaler-distributor faces a very hard choice. If he turns his inventory every 60 days, experiences a 30-day increase in delivery time, and increases his inventory by 50 percent to cover the delay and be able to fill his customers' orders—his costs of carrying inventory will increase by 50 percent. Thus a firm with a \$500,000 inventory, paying 30 percent or \$75,000 a year to carry that inventory, would have to carry a \$750,000 inventory and pay \$112,000 a year to carry it, just to maintain the same yearly volume.

Authorizing the ICC to establish through routes and joint rates would do much to speed delivery of merchandise and reduce wholesaler-distributor's inventories, thereby reducing his expenses and capital requirements, and would improve availability of products to his customers at lower prices.

From reports received from across the Nation, the greatest delays are encountered when a shipment must transit two or more common carriers to reach its destination. There is not an area of the country that does not provide products to the electronic wholesaler in Atlanta, the frozen food wholesaler in South Bend, or the drug wholesaler in Santa Fe.

Let's look at this network in another way. In Indianapolis there is a drug manufacturer whose products are prescribed by virtually every physician in the country. These products are shipped to wholesale druggists who in turn service retail pharmacies, hospitals, and clinics. The citizens of all communities, small and large, in all areas of the country need these products.

Because of the failure to establish through routes and joint rates, these valuable commodities often rest in terminal warehouses awaiting pickup by the second or third common carrier to carry them to the city or town of need.

Also, we believe neither the shipper nor the consignee should be required to deal with more than one carrier to arrange for the entire delivery, and he should not be required to ascertain the rate charge from more than one carrier.

The same conditions should prevail if goods are damaged in transit. One claim and only one claim should have to be filed even though several carriers participated in the delivery of the shipment.

The granting of authority to the ICC to establish through routes and joint rates would be a forward step in the development of a coordinated national transportation system capable of serving the needs of all communities.

We fully support the need for legislation which will set forth the responsibility of motor carriers to enter into agreements for through routes and joint rates, and to authorize the Interstate Commerce Commission to establish through routes and joint rates between motor carriers, and between motor carriers and other modes of transportation.

Again, we affirm the needs for through routes and joint rates for all products from the source of supply to the point of need.

We appreciate the opportunity to express these views to the subcommittee.

Senator PEARSON. Thank you, sir.

If the subcommittee should report, and the Congress pass, a proposal for through routes and joint rates, really what effect is that going to have on your major problem of transfer time?

Mr. McCAMANT. We are certainly hoping it will reduce transfer time.

Senator PEARSON. In what way?

Mr. McCAMANT. Too often a post card is sent to a wholesaler telling him that goods are in a certain warehouse and he has to go and pick them up. You see, Congress had never laid an obligation on the carriers to pick up these materials.

We feel that they would, if that obligation were laid on them by legislation.

Senator PEARSON. Do you think this bill does that?

Mr. McCAMANT. We are hopeful that it does. It is our understanding that it does, Mr. Chairman.

Senator PEARSON. Thank you very much, sir.

(The survey referred to follows:)

RESULTS, MEMBERSHIP SURVEY, LTL TRUCK SHIPMENTS, JANUARY 1970

Question	Response	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
1. Are truck deliveries taking longer today than a year ago?	Yes.....	17	71	35	23	7	23
	No.....	1	7	2	1	1	1
2. Average increase in shipping delays (LTL).	1 week.....	11	53	33	19	7	20
	2 weeks.....	6	22	19	11	3	8
	3 weeks.....		6	3	2		2
	4 weeks.....	15	66	40	20	8	21
3. Are deliveries from certain parts of the country particularly slow?	Yes.....	2	8	2	1		1
	No (Note: The eastern region was specified most often).						
4. Are you losing discounts because the discount period is over before delivery?	Yes.....	8	24	16	12	5	6
	No.....	7	48	25	17	4	17
5. In 1-2-3 order, what are the major causes for these delays?	Indifference.....	14	46	31	18	5	15
	Transfer.....	17	68	39	20	7	21
	LTL mishandled.....	10	44	28	15	6	11
	Labor strikes.....	3	9	5	3		
	Manufacturer production delay.....	9	38	20	8	1	11
	Other.....						
6. Do you exercise the option of selecting your own carriers?	Yes.....	16	58	36	19	7	13
	No.....	4	23	14	10	3	15
7. Have you noticed a corresponding increase in damaged merchandise being delivered?	Yes.....	16	56	35	21	7	14
	No.....	4	20	7	3	1	10

Note: Key—Number of replies, 195; 37-percent return. Zone breakdown: No. 1—Kentucky, Tennessee, Virginia, Pennsylvania, Florida, New York (20); No. 2—Michigan, Ohio, Indiana, Illinois, eastern and southern Wisconsin (77); No. 3—Minnesota, western Wisconsin, Nebraska, Iowa, North and South Dakota (42); No. 4—Kansas, Missouri, Oklahoma, Arkansas, Louisiana (24); No. 5—Arizona, Colorado, Utah (8); No. 6—Metropolitan area (24).

Senator PEARSON. Mr. Palmer, do you want to be next?

STATEMENT OF H. EARL PALMER, REPRESENTATIVE OF THE
NATIONAL CANDY WHOLESALERS ASSOCIATION

Mr. PALMER. Yes, Mr. Chairman.

Mr. Chairman, my name is H. Earl Palmer. I appear before you today as representative of the National Candy Wholesalers Association. I am owner of Town & Country Wholesale.

Town & Country Wholesale is a small candy and tobacco jobber with eight employees. We are located in Belle Plaine, Iowa, a town of 3,000 people. We have been in business 21 years.

We are located 37 miles west of Cedar Rapids, Iowa, 40 miles south of Waterloo, 40 miles east of Marshalltown, and 90 miles northeast of Des Moines. All the above points have overnight freight service out of Chicago and serve our competitors in each of these towns.

We receive freight from all parts of the country, and it may come to any one of the above-mentioned points. In any event it must move from any one of these points to Des Moines where it is given to All American, who delivers it to Pals Transfer, who delivers it to Shayer Transfer in Toledo, Iowa, who then delivers it to Town & Country. It has taken as long as 8 days to move from Cedar Rapids to Belle Plaine, a distance of 37 miles.

In one instance a shipment from Slim Jim, Inc., Cynwyd, Pa., dated June 18, 1969, moved to Cedar Rapids, arriving at Bos Freight Lines. Without notification to us, Bos returned this to Philadelphia. It was reshipped, lost in Omaha, and finally arrived at our warehouse three cases short and two cases damaged on July 14, 1969. The same company shipped on August 23, 1969, via Strickland to Chicago, All American to Des Moines, and so forth. The shipment arrived at our warehouse on October 3, 1969.

A shipment from Williamson Candy Co., Chicago, moved forward on November 4, 1969, via Takin Bros. Burlington Motor notified us by registered mail the shipment was in Burlington and that we should pick it up at once as storage charges were in effect. Williamson Candy intervened, and we received our shipment on December 12, 1969.

A Mrs. J. G. McDonald shipment of Valentine fancy heart boxed chocolates left Salt Lake City, Utah, on December 30, 1969, via I.M.L. Missouri Pacific RR. notified us at Omaha to pick the shipment up as storage charges were in effect. Mrs. McDonald intervened and we received our shipment on January 24, 1970. Fancy Valentine boxed chocolates are seasonal, and this shortened our selling time considerably. This type of candy after Valentine's Day is dead.

Ours is a competitive business. To survive today we must have a wide variety of items and have rapid turnover to insure freshness. If we can serve our customers promptly with fresh merchandise and fill orders completely, we will survive. However, we all sell the same Hershey bar, Wrigley gum, Camel cigarettes, etc. If we are out of stock due to delayed delivery, or have damaged merchandise or stale merchandise, we are at a big disadvantage with our competitor who has a terminal in his neighborhood.

In order to compete in the tobacco business, we must handle moist snuff. This is a dated item. The people that use this item feel it un-

saleable in 3 to 4 days. The jobbers in terminal cities are able to receive two or three shipments each week—overnight service. They have no problem with the date. Our snuff shipment comes out of Chicago to Cedar Rapids, Iowa, overnight. We are forced to send our truck to Cedar Rapids to pick this shipment up each week. We have been doing this for 12 years. If we waited for the freight lines to get it to our warehouse, it would be outdated on arrival.

On our semiperishable goods we try to carry backup stock to protect ourselves from delays and damage. Again this takes capital, capital that comes hard these days.

We also need joint rates. For example, in one event a 15-case shipment of pickles from New London, Wis., carried a rate of \$4.33 per 100 with an arbitrary charge of \$2.34 for a total of \$36.11 or \$2.41 per case. It seemed to me the last carrier added a complete new rate charge to the bill. I checked with a freight bill auditing service who informed me the correct rate was \$2.90 per 100, or a total of \$24.96, for a difference of \$11.16 total, or 74 cents a case. If I had been forced to add this cost to my price, both myself, the retailer, and the consumer would have been at a cost disadvantage. The carrier settled for the correct amount.

When it was suggested that I come to Washington to attend this hearing, I had mixed emotions. After all, I'm a small jobber in a small town in Iowa. However, eight families depend on this business for their livelihood. Our tax bill contributes much to our county and State. And our sized towns are losing too many of their young men and women to the large cities.

As I attend our candy convention and tobacco convention meetings, you can be sure the subject of delayed freight will be aired, which makes me realize that hundreds of jobbers in every State feel that delays and damaged freight is a major problem.

A manufacturer, when introducing a new item, plans to open our market on a certain day. He plans his television promotion, newspaper ads, et cetera, to break on a certain day. Then he ships all accounts at the same time so that everyone will be able to sell at the same time. If our shipment is delayed it could put us as far as a week behind our competitors in placing this new item with our accounts.

Several months ago the National Candy Wholesalers Association conducted a survey among its members concerning the delays in receipt of shipments. With the subcommittee's permission, I would like to include in the record an article entitled, "Delays in Candy Deliveries Emerge as Major Problem for the Nation's Wholesalers," which appeared in the November 1969 issue of National Candy Wholesaler. The article gives the results of the survey.

I would also like to include, with the chairman's permission, an editorial which appeared in the same issue, entitled, "What Can Be Done To Cure the Deplorable Delivery Conditions?"

Mr. Chairman, we candy wholesalers are very much concerned about the shipping problem. We believe that this bill under consideration, S. 2245, to give the Interstate Commerce Commission authority to establish through routes and joint rates for motor and other common carriers would be a great step forward. The smaller communities have their needs which should be met. We are hopeful the Congress can help us.

I thank you, Mr. Chairman, for this opportunity to present some of the problems encountered with delayed shipments.

Senator PEARSON. Thank you, Mr. Palmer.

Is the reason that you have the roundabout routings that you described earlier in your testimony brought about because certain carriers just refuse to handle small shipments?

Mr. PALMER. This hasn't always been the case, Senator. At one time I had three carriers delivering freight to our warehouse out of Cedar Rapids.

First, it was Bos Freight Lines that elected to discontinue their service and give their freight to Pals Transfer, Inc., and later Takin Bros. decided to do the same thing. So, this left only Pals Transfer coming into Belle Plaine out of Cedar Rapids, and this was a good arrangement; we could depend on second- or third-day delivery out of Chicago, which is the gateway for all of our merchandise out of the East.

However, Pals Transfer changed hands, another company bought them out, and they elected to run our peddle run out of Des Moines. This didn't stop our freight from coming into Cedar Rapids. It still comes into Cedar Rapids and then whoever the original carrier was transfers the freight to Pals in Cedar Rapids and Pals delivers it to All American in Des Moines, All American delivers it to Van Wyk Service, who is a lessee of another line, who then delivers it to Share Transfer in the town of Toledo, and then they deliver it to us.

Senator PEARSON. Given your problem, one common to all small towns I am sure, businesswise, how will the provisions of this bill help you?

Mr. PALMER. Well, I feel that this bill would direct the Cedar Rapids people that have rights in our town to exercise them. You see, they have the rights but they don't bring the merchandise in.

At one time years ago they were in our office begging for freight so that they could establish these routes, and it seems to me that after they got them—everyone wanted them—my reasoning on this perhaps is that they wanted the terminal city of Cedar Rapids. At that time, if I understand the situation right, in order to receive the terminal town they had to include the neighborhood, so that we could expect the same service as their terminal town.

Once they have the rights, it seems to me that they are interested in the terminal point town and not the neighborhood that they elected to take with the terminal town.

Senator PEARSON. Thank you very much, sir.

(The article referred to follows:)

DELAYS IN CANDY DELIVERIES EMERGE AS MAJOR PROBLEM FOR THE NATION'S WHOLESALERS

The state of deliveries of candy from the manufacturer to the wholesaler has slowed to such a point where the problem becomes one of top concern. A recent survey conducted by the NCWA among its members reveals that indifference of truck line employees and deficiencies in management and planning of most manufacturers are seen as chief cause for the delay.

Candy deliveries from manufacturers to wholesalers today can take anywhere from ten days to eight weeks, while deliveries within one week have become the rare exception.

This fact was brought out in a recent survey conducted by the NCWA among its wholesaler, manufacturer and traveling members.

Of the first 93 responding, all but one said that deliveries today take longer than they did a year ago. About 70 percent of them replied that merchandise takes from ten days to three weeks longer to reach the distributor's warehouse than it did six to twelve months ago. In some instances merchandise was on the road from eight to ten weeks.

"In our area, any merchandise coming from the West, through Buffalo from the Chicago area and beyond takes anywhere from three to four weeks," writes Arnold Gordon of Jack Gordon Tobacco Co., Syracuse, N.Y. "These shipments used to take around two weeks as early as six months ago."

Says a De Soto, Mo., wholesaler, Mrs. Chas. Clark of the A. E. Wease Co.: "A shipment from a firm in Carbondale, Ill., 140 miles from here, took 18 days. Candy out of Chicago doesn't arrive in ten days, but used to take three or four days."

A Muncie, Ind., wholesaler, who prefers not to be named, notes that many shipments from the East, New England, New York, New Jersey, Philadelphia and Buffalo take from ten to 20 days, while merchandise from the South, Florida, Georgia and Tennessee and from the Middle-West, St. Louis, Wisconsin, Minnesota and suburban Chicago takes from six to ten days.

"Not long ago an invoice and a shipment would arrive at the same approximate time," notes Gordon Emerson, manager of Nodak Candy & Tobacco Co., Minot, N.D. "Now often the discount period is up before arrival of merchandise. We try to order every two weeks from major companies. In the past an order would be in the warehouse before the next ordering time. Now we often come around to the second order time before a shipment arrives . . . So it is nearly taking a month."

Indifference of truckers and the labor shortage in most manufacturing plants take the biggest slice of the blame for late deliveries. Fourteen replies state that most delays occur when merchandise has to be transferred from a major shipping line to a small or local carrier. Twelve respondents blame the labor shortage in manufacturing plants and another twelve the manufacturers' out-of-stock conditions.

The indifference of the trucking industry and its unionized employees ranks next with ten replies each. Other runner-ups are poor production forecasts for seasonal items; a lack of communication between the sales, manufacturing and traffic departments; truckers' refusal of handling small shipments; poor computer set-ups, and paperwork snafu in the manufacturers' offices.

"These delays actually started when the major freight companies were on strike a little better than two years ago," reports M. G. Westfall, manager of the Bolivar Candy & Tobacco Co., Bolivar, Mo. "Deliveries have gone from bad to worse since then. When we call freight companies concerning late deliveries, we run into a don't care attitude."

This complaint is repeated by Alexander V. Sabo, president of Conrad Wholesale Co., Johnstown, Pa. "Truckers are not too interested in candy shipments," he writes. "Some of them, especially pool carriers who break down shipments at their warehouses, are waiting until they get complete loads before they will deliver. Rather than give to a common carrier and then have to split the revenue, they hold up shipments at their warehouse."

Some situations are excusable, others are not, the replies indicate. "If people don't show up for work or if there is a breakdown in equipment, o.k.," says John Burke of Eillien's Candies, Inc., Green Bay, Wis. "But if a manufacturer gets into an oversold condition when production is normal that's pure inefficiency. Let's say we place an order for Halloween merchandise in March for delivery on September 1 and are told on September 8 that we won't get it after we have labels printed, bags ordered and pre-sold much of the merchandise, then I would say that is inexcusable. Being a small wholesaler, we are at a disadvantage since we can't squeek as loud as some of the big wheels, but it would seem good business practice on behalf of the manufacturer to give us some notice of late or partial shipments."

"Not letting buyers choose carriers has a lot to do with it," believes G. E. Harrison, manager of Crim Tobacco Co., Longview, Texas. "Another thing is factory office personnel who do not seem to care if a shipment is made or not."

"The carriers don't want LTL shipments," says J. R. Anderson of Anderson-Hayes Wholesale Co., Havre, Mont., and this seemed to be the consensus among all those who responded to the reply. More than half of them noted that delays are predominant in LTL shipments.

Thirteen replies indicated that common carriers offer as poor a service as do the manufacturers who make their own deliveries.

The Eastern states and Pennsylvania and the cities of New York and Chicago show the poorest delivery patterns in the survey.

Sixteen respondents felt that just about all carriers and all manufacturing plants were declining in service and delivery speeds. Of the 28 manufacturing companies singled out in the survey for their slow delivery policies, the nine companies showing the poorest average in service are among the biggest producers of confectionery in the country.

What can be done to improve the problem? The survey offered as many answers as it did replies. "Mechanize, containerize, computerize and put about 3 million willing and able workers into the labor force," quips Wayne Schafer of Schafer Tobacco & Candy Co., Flint, Mich.

On the more serious side, a Louisville, Ky., wholesaler feels there is only one way to go. "We must sit down with manufacturers, with sales, with traffic departments and bring in the unions and the carriers. We must tell them what our problems are, explain the problem and try to find a solution."

Others feel that the Interstate Commerce Commission should be told of the difficulties and should be urged to control more closely the truckers and their deliveries. "These carriers operate under permits from the U.S. Government," writes a Montana wholesaler. "Private carriers are not allowed to compete with them on the open market. I feel it is the obligation of the ICC to insist that they either give adequate service or let the competition come in and take over this business. It was the LTL shipments that put the truck lines in business in the first place and now that they have operating rights across the country and are merging into fewer and fewer lines, their service has become poorer and poorer. You can complain to their sales representatives, but always the same thing happens—nothing."

Whenever possible, wholesalers should forego minimum shipments and order as much per shipment as they can handle within a reasonable time, a Kenmore, N.Y., broker suggests. He feels that the larger the LTL shipment, on the truck or on the dock, the more anxious the carrier is to get it out of his way. Reports a Ft. Wayne, Ind., wholesaler: "Larger shipments would satisfy the carrier, but what about the jobber?"

Many wholesalers felt that the manufacturer should ship via freight companies specified by the recipient of the merchandise. "Ship via requested carriers," urges A. F. Blessing of Maryland Candy Co., Westminster, Md., "We know the carrier that gives us service—the manufacturer does not." "Have the manufacturer make sure the merchandise is shipped via the truck line they specify," says C. H. Eddy of Marysville Candy Co., Marysville, Kans. "We have merchandise come in on truck lines different from those specified on the bill of lading. Sometimes this makes for a delay of a week."

Specialized LTL truck lines and a chain of public candy warehouses would considerably improve deliveries, feels a Salt Lake City manufacturer. A similar idea comes from a Maryland wholesaler: "Consideration of super distributors as used by some food manufacturers. The manufacturer ships to one distributor in truck loads. The super distributor resells, delivers and invoices other wholesalers and vendors at cost, receiving extra discount for this service. Heinz and Campbell presently give 8 percent."

The low wages paid by the candy manufacturers were given as another cause for the delay in shipments. Says Pierre Chagnon of Meriden Candy and Tobacco Co., Meriden, Conn.: "Since lack of labor seems to be the main cause, the candy business should do something to attract more help their way. This will take increases in wages."

Poor management and planning are seen as another cause. "We need better production control planning by the manufacturers, not excuses," says Pat Le Vair, a buyer for Caps Distributing Co. of Tomah, Wis. "Also, management should constantly be checking that their traffic managers are shipping by the best means possible." Recommends Leon P. Gideon, president of Barentsen Candy Co., Benton Harbor, Mich.: "Better planning so ample stocks are maintained by manufacturers. Follow-through by their traffic departments on deliveries. Most manufacturers seem to care little or not at all about the amount of time shipments are in transit." "Manufacturers should run a study on which carriers offer the fastest service to a particular area. Shipments should be released daily. Manufacturers should then specify routing of shipments on freight bills so that customers can easily trace the shipment if necessary." "We need two to three months notice by manufacturers of their promotions so that coordination of sales and production can take place," writes Art Grossman, secretary-treasurer of

Linker Distributing Co., Louisville, Ky. "There also should be extra incentives for truckloads—not two or three percent." And a quote from Michael Stout, partner in Carrollton Wholesale Tobaccos, Carrollton, Ky.: "I believe management is going to have to spend more time supervising order filling and traffic departments and less time trying to sell us on all these new items which they can't get to us anyway."

Correction of invoicing abuses was another item on most wholesalers' minds as they answered the questionnaire. "We must persuade manufacturers to date invoices when the merchandise is shipped, not when the order is received, says Arnold Gordon of Jack Gordon Tobacco Co., Syracuse, N.Y. "The bill of lading date and the invoice date should be the same." "We need a change in terms to allow for heavier inventory," urges M. A. Polep, president of Polep Brothers Industries, Holyoke, Mass.

Besides late deliveries, wholesalers also complain about broken cartons and pilferage. "Freight is handled in a deplorable fashion," writes Blanche Miller, president of Post Sales & Service, Washington, D.C., "Too many times we receive merchandise with cases that have been opened and pilfered. If we stand on the dock and unload ourselves, we normally catch this. Too many times it gets by us and then we take the loss. The time involved trying to prove claims is almost not worth it." Mrs. Miller's concerns are echoed by Charles B. Cullen, president of Eby-Cullen, Streator, Ill., who notes: "Something that alarms us more than slow shipments is the growing amount of shortages in shipments, pilferage included. We can adjust our buying to three-or-four week deliveries, but shortages and claims involved are very costly. We believe manufacturers should assume responsibility for filing claims and adjustments."

Sam P. Joseph, partner in Joseph Brothers, Monroe, Mich., suggests that manufacturers should operate their own trucks and make weekly or bi-weekly deliveries into major markets, thereby improving service and preventing loss from petty thefts. "Many shipments arrive with cases opened and four or five candy bars stolen for which we do not file claim because of the nuisance," Mr. Joseph says, "Many cases of candy arrive in a crushed condition because of careless handling by the freight line personnel."

While the replies in general indicate anger or frustration about the delivery conditions, some members keep a cheerful outlook. Says a Seattle broker, O. B. Dance: "I prefer the situation where the candy business is so good that manufacturers have trouble filling the orders over the situation of where the candy manufacturers are wondering why you are not sending more and larger orders." Then there is the Maryland wholesaler who suggests that the NCWA present "The Lousy Shipper of the Month Award" as an incentive.

WHAT CAN BE DONE TO CURE THE DEPLORABLE DELIVERY CONDITIONS?

It appears now that the problem of delivery from manufacturer to wholesaler is even worse than was reflected in discussions at the recent NCWA convention, as referred to in our September issue.

A survey of NCWA members, reported at length in this issue, reveals that deliveries are running from one to eight weeks behind the schedules of a few months ago. Many of these replies came from towns and cities that must depend upon forwarding freight lines who apparently hold shipments till they "get a load" for the particular area.

Most of the blame for slow deliveries is placed upon the truck lines, but nearly as much is laid at the door of the manufacturers, these replies reveal. But when asked whether certain lines or firms were to blame many said "all of them." And the names given do appear to be a broad indictment of the shippers and carriers.

It would certainly appear, therefore, that every supplier should read all these complaints and make a careful analysis of its deliveries to try to find out where the fault really lies. It may require a change in carriers or reporting the shortcomings to the ICC, especially in connection with the forwarding companies who apparently do not want the small shipments.

An analysis is being made by the NCWA staff to see if there are any patterns running through the replies. If so, meetings with the manufacturers and truck lines may be helpful. An effort is being made by NCWA to see if other industries are similarly affected and what steps they are taking.

In the meantime, wholesalers' inventories are climbing and out-of-stock conditions are robbing the wholesaler, broker and manufacturer of a large volume of sales. Advertising expenditures are being wasted as well as distributor salesmen's time. The sales volume of the whole confectionery industry suffers.

Likewise, the capital requirements of the wholesaler are being expanded at a time when interest rates are at their highest. Yet, some manufacturers continue to expect discounted payment for the merchandise in the customary ten days from date of invoice which is often far in advance of the receipt of the merchandise at the wholesaler's warehouse, not to mention when he receives his money from the retailer.

It is hoped that whatever can be done by manufacturers individually or collectively will be done—and soon. It is hoped that wholesalers will cooperate fully with their suppliers in their efforts to find out what is happening to the shipments. And it is the duty of every broker and salesman to take a personal interest in what is going on in his area in connection with this problem.

NCWA will continue to strive to pinpoint the causes and publicize suggestions for corrective action. All members are urged to keep NCWA fully informed on the problem of slow deliveries in their areas of business.

Senator PEARSON. Our next witness is Thomas S. Pierrat, Jr.

**STATEMENT OF THOMAS S. PIERRAT, JR., EXECUTIVE SECRETARY,
TRUCK EQUIPMENT & BODY DISTRIBUTORS ASSOCIATION**

Mr. PIERRAT. Mr. Chairman, my name is Thomas S. Pieratt, Jr., of Cincinnati, Ohio. I am appearing here today as the executive secretary of the Truck Equipment & Body Distributors Association, a 6-year-old national trade group for truck equipment distributors, who comprise over 80 percent of our membership.

The average truck equipment distributor is a small businessman in a very small, yet most vital industry to our Nation's economy, for it is he who installs just about every truck body you see on the road today. As a point of reference, after a truck dealer obtains a chassis cab for his customer, the unit is taken to the truck equipment distributor to install the body, be it garbage packer, farm, dump, or van body, as well as the associated items such as hydraulic lifting devices, rollup doors, refrigeration units, et cetera.

The average truck equipment distributor maintains an inventory worth approximately \$100,000, yet this would not begin to be adequate to fill the broad range of orders he receives for truck equipment. Were he to fill this range of orders out of his own inventory for the various configurations and capacities for each type of body and associated equipment, he would need several million dollars worth of stock, as well as several hundred thousand square feet of storage space under roof in a location convenient to his customers.

In a sense, the truck equipment distributor is an agent for the manufacturer: He sells items from the manufacturers' inventories, rather than his own. When the equipment is delivered, he is required to install it and then certify that the complete vehicle complies with all of the safety standards set forth by the Department of Transportation.

It is because almost each order must be drawn from the manufacturers' stock that the truck equipment distributor is so heavily dependent upon the common carriers to get these items to him in the shortest possible time, so that he can serve his customers' needs—be they bringing in the harvest, excavating a building site, or collecting a city's waste.

I would like to cite some specific examples that have been provided me by our members, in an effort to show this subcommittee why legislation is so badly needed to authorize the Interstate Commerce Commission to open up additional through routes across the country:

Leland Trailer & Equipment Co., Spokane, Wash., had eight pieces of freight weighing 3,795 pounds picked up on December 23, 1969, in Omaha, Nebr., by United Buckingham. Delivery was made by Garrett Truck Lines in Spokane on January 16. Thermo King units from Louisville, Ga., were delivered to Spokane in 6 to 8 days a few years ago. Now it takes 3 weeks for a three-line haul.

Truck Supply Co., Bloomington, Ill. Shipments of truck bumpers picked up in Bloomfield, Iowa, by Burlington Freight Lines must be transferred in either Peoria or Galesburg, Ill. Three shipments during the past 3 months have averaged 24 days to cover a distance of 250 miles.

Rowe Truck Equipment, Otterbein, Ind., had three lift gates totaling 2,100 pounds picked up by Associated Truck Lines in Cincinnati on about February 5, 1970. Two weeks later Rowe picked up the freight at Associated's Indianapolis dock. At the time they were told that the shipment had been sent back to Cincinnati twice, because they could not get a carrier into Otterbein. The usual time required for a shipment from Cincinnati, 165 miles away, is 2 weeks.

One midwestern truck equipment manufacturer told me that they use a direct route whenever they can, but in the event that they must use two, they automatically add a week to their shipping schedule.

McHenry Metal Products, St. Louis, Mo., and Bus Andrews Equipment, Springfield, Mo., pooled an entire trailer load of bodies and equipment from Buffalo, N.Y., that was picked up by Trans-American on September 4, 1968. They delivered to McHenry on September 10, but transferred the balance of the trailer to Campbell "66." Delivery was refused by Bus Andrews on September 23, and the damaged merchandise was subsequently scrapped. A claim for \$1,300 is still unsettled.

Amthor Welding, Walden, N.Y., had two truck bodies, weighing 2,000 pounds, picked up in Hinesburgh, Vt., by H. P. Welch on January 28, 1970. On April 10, the manufacturer delivered two additional bodies to Amthor Welding with his own vehicle, and on his return home picked up the first two bodies from the dock of Red Star in Springfield, Mass. On January 23, 1970, Pacific Inter-Mountain Express picked up 2,500 pounds of snowplow parts and accessories in Milwaukee. The shipment was delivered after February 15 by Falk Transfer.

Lambert Truck Equipment, San Diego, Calif., reported that of their last four shipments of wrecker bodies from Chattanooga, Tenn., the two that came direct arrived 7 days faster than the two shipments that were transferred in Los Angeles to a second carrier. Bodies from Durant, Okla., that formerly arrived in 7 days, now require 14, due to the required transfer in Los Angeles.

Diamond Equipment, Dickinson, N. Dak., had a shipment of 450 pounds picked up in Omaha, Nebr., by Graves Truck Lines on February 1, 1970. After transfers in Kansas City and St. Paul, United Buckingham delivered it on February 18—17 days to go 850 miles. Yellow Freight picked up four tandem axle mounting frame in Marshfield, Mo., on December 16, 1969, but delivery was made on January 8, 1970—two carriers, 1,200 miles and 23 days later.

A. L. Petit & Sons, Ballston Spa, N.Y., had an 1,800-pound snow blower picked up in Milwaukee by Wilson Freight Lines on January 29, 1970. The unit was delivered by Bently on February 25.

Southern Tier Truck Equipment Co., Binghamton, N.Y., had 13 snowplows, weighing 8,400 pounds picked up in Milwaukee by Wilson Freight Lines on November 10, 1969. Cleveland Truck Lines made the delivery on December 9, 1969.

Canfield Tow Bar Co., Detroit, Mich., averaged their last five shipments of wrecker slings and tow bars from Pocahontas, Iowa. The average time for this two-line haul was 18 days.

Our association has been told of a number of examples where the lack of joint rates delayed shipments. If the shipper cannot determine the cost of the shipment he will send it "f.o.b. factory," and let the consignee pay the freight—he cannot hold his own invoice for a week or so until the freight invoice is received from the carrier. If joint rates were available, most manufacturers would probably prepay the freight and add it to the consignee's invoice, thus avoiding the many problems which are inherent in a system where freight bills are "f.o.b. factory."

In view of these examples, Mr. Chairman, it should be evident that a bill to require the establishment of through routes and joint rates is badly needed. Therefore, our association wishes to support the provisions of S. 2245, which would authorize the Interstate Commerce Commission to establish through routes and joint rates. Our industry, as well as many others, needs a comprehensive network of through routing, and we believe that those who use common motor carriers should be able to obtain reliable shipping rates from the initial carrier, regardless of the number of carriers subsequently involved.

On behalf of the membership of the Truck Equipment & Body Distributors Association, as well as the members of the entire truck equipment industry, I would like to thank this subcommittee for this opportunity to appear before you today and to present this testimony.

Senator PEARSON. Thank you very much, Mr. Pieratt. I think the precise examples that you have included in your statement are very helpful to the committee.

Mr. McCAMANT. Senator, may I state that we are pleased to give these examples from two commodity lines. We have similar examples for many different commodity lines. We have 67 national associations associated with us.

The same is true in the area of electronics, is true of food, and frozen food. I have been with the wholesalers since 1962. Two or three years ago we had no complaints or maybe a half dozen complaints a year on freight service. The complaints have been mounting and mounting, and we certainly share the statement that Chairman Stafford presented to the committee yesterday when he indicated that the situation has worsened in the past year. It has definitely worsened from the reports that we have received from the many different commodity lines.

Senator PEARSON. Thank you very much.

Thank you, gentlemen.

Mr. Kenneth P. Ketcham, the executive director of the Local and Short Haul Carriers Conference of ATA, and with him are Mr. Andrew J. Abernathy, president of the Perkins Freight Lines of Atlanta, Ga., and Mr. Ralph A. Niedert, who is president of Niedert Motor Service, Inc., Des Plaines, Ill.

Gentlemen, you may proceed.

STATEMENT OF KENNETH R. KETCHAM, EXECUTIVE DIRECTOR,
THE LOCAL AND SHORTHHAUL CARRIERS CONFERENCE OF ATA,
WASHINGTON, D.C.; ACCOMPANIED BY ANDREW J. ABERNATHY,
PRESIDENT, PERKINS FREIGHT LINES, ATLANTA, GA., AND
RALPH A. NIEDERT, PRESIDENT, NIEDERT MOTOR SERVICE,
INC., DES PLAINES, ILL.

Mr. KETCHAM. Mr. Chairman and members of the committee, my name is Kenneth R. Ketcham. I am executive director of the Local and Shorthaul Carriers Conference of the American Trucking Associations, Inc. As such, I represent specifically the interests of the urban and regional motor common carriers of property for hire. As such I am not an employee of the American Trucking Association.

As such my membership directly finances the functions of my conference specifically. We think for ourselves basically in our own interest, but we counsel and support the family position against threats from outside interests when that is necessary. We only mention this to clarify our status before you today and to illustrate that our position is somewhat different than the expressed by the spokesman of the American Trucking Associations, which represents all segments of the trucking industry.

Our conference membership is made up generally of small, family-owned enterprises most of whom have annual revenues of less than \$1-\$4 million. We are not the huge, nationally-oriented motor carrier corporations, but rather average homestate businesses. Most of us derive all or a significant part of our revenues from exchanging or interlining freight with longhaul motor carriers, railroads, freight forwarders, private carriers, airlines and water carriers. We are—because we are relatively small economic units—extremely sensitive to changes in the Interstate Commerce Act which would affect the flow of traffic in the nation and the rates and charges under which it flows.

Over the years we have built our businesses by moving freight throughout the territory we serve. We bring that freight which is destined beyond our certificated authority to the terminals of the longhaul multistate motor carriers which either deliver it to the consignee itself, or give it to still a third truckline for final delivery. Usually this third carrier also is a shorthaul or regional motor carrier. When the rate or charge for this total move is profitable, it normally is divided up between the carriers by one of several formulas, such as proportionate to the miles hauled by each participating carrier. When the through charge is not profitable, all kinds of strange and technical things happen.

In recent years, the ICC-regulated rate increases have not been permitted to keep pace with rapidly rising costs. Consequently, the large system motor carriers' computers have determined for them what kind of interlined freight and which freight movements are more profitable to them and which is not. Then they simply have resorted to several means available to them to avoid this freight. The law permits this, because under the act, the ICC cannot force them to interline. We fear that many current rate proposals, especially percentage increases, are predicated by linehaul carriers on the knowledge that if certain freight becomes unprofitable, it can be ignored and

dumped on someone else. Therefore, rather than come to grips with the problems of infrequent and small shipments, which can be highly unprofitable, many of these large carriers have incorporated various operating practices and rate and tariff restrictions to avoid these shipments altogether.

For instance, small shippers in many small towns across the Nation will tell you that many big system carriers pass their towns regularly on the interstate highway systems and do not serve the town. Yet you can make a safe bet that these same carriers will face any inconvenience to serve a major new manufacturing facility many miles off the beaten path. One only needs to examine the applications to serve new plant-sites to verify this.

But one of the most insidious tariff restrictions is the refusal of linehaul motor carriers to accept at his terminals unprofitable or inconvenient interline freight from the shorthaul carrier who has picked up in good faith out in his territory. This leaves the shorthaul carrier with a dilemma. He has performed his service to his customer in the outlying region under the terms of his certificate by accepting freight destined beyond his line. When it is refused by the linehaul carrier, he finds he must return it to his customer, who in turn is frustrated and faced with much higher charges to move it. Moreover, the shorthaul carrier has performed these expensive freight handlings with no possible way to recover his costs.

This is a major, nationwide practice which is growing each day. We have listened with interest to the discussion here as to whether the small shipment problem is increasing or decreasing. Would time permit, we could quote many letters outlining such practices from New England to the west coast.

On the other end of the line, when the traffic does move, the linehaul motor carrier delivers the profitable traffic himself, because his computer has shown him which traffic pays. The small and infrequent shipments, however, are offered to the shorthaul carrier, usually at a division of the through revenue that is insufficient to cover the cost of performing the service. In other words, the linehaul carrier insists on revenue proportionate to the length of his haul. Yet anyone in the business will tell you that the high cost is in the pickup and delivery of freight.

Now the linehaul carrier will tell you quite honestly that he picks up and delivers hundreds of unprofitable shipments daily, which is, after all, his public obligation under his certificate. But he may neglect to tell you that because most published rates and charges are predicated on mileage factors that he is in a much better position to subsidize some unprofitable shipments out of his more profitable longhaul revenues. All one has to do to confirm this is to compare the low operating ratios of the longhaul system motor carriers as a group against high operating ratios of the shorthaul motor carriers as a group. Costly small shipments, short mileages, heavy congestion, and long delays at loading docks and piers are the ingredients of the shorthaul carriers' operations and he dies quickly if the linehaul carrier practices selectivity in his territory.

Therefore, the shorthaul carrier must be protected in his territory from ICC-approved extensions of longhaul authority and/or mergers

and purchases of failing shorthaul carriers which are used by the big carrier only to skim the profitable freight in the area and kill off the remaining small carriers.

I was very interested in Chairman Stafford's comments yesterday that it was indeed the policy of the Commission right now; they can do nothing else, to provide the type of service the shippers need. These practices need an airing before the Commission, Mr. Chairman, and this legislation would permit the small motor carrier to have his day in court. This will enable him and force his longline brother to illustrate before the Commission that the root of the whole problem is inadequate rates. As long as one carrier can continue to ignore certain kinds of interlined freight he finds inconvenient or unprofitable, an unnatural kind of war between motor carriers—who should be partners—will continue.

The Interstate Commerce Commission needs some limited authority to impose these through routes and joint rates in order to bring to light practices which are not only hurting the motor carrier industry, but is seriously hampering the flow of freight and creating problems for the shipper and consumer that they should not have.

The business lives of literally hundreds of small family trucking companies are at stake. And, while most of them dread finding it necessary to give government more power in the name of "protecting them," they have come to the painful conclusion that this legislation offers them their only avenue of relief.

Therefore we ask you to favorably consider either or a combination of the bills now before you. We wholeheartedly prefer the elements contained in S. 3626, advanced by Senator Moss. We have tried to make clear that our essential problem rests with the breakdown of interchange practices between trucking companies, which is more vital to us than the intermodal provisions of either bill. In other words, our main purpose of appearing before you today is to plead with you to help us with our essential problem now. Beyond that, we go the additional step to support also the intermodal provisions desired by the ICC. Thank you.

Senator PEARSON. Thank you, sir. In your endorsement of S. 3626, I am reminded that the Chairman of the ICC has indicated that this bill would impose significant limitations on their ability to deal effectively with the problem of protecting short haul local carriers from their interchange. That seems to be an inconsistency to me.

Could you comment on that?

Mr. KETCHAM. We have an inconsistency as such within our own membership. Some would prefer the absolute safeguards that are advanced by Senator Moss, where others feel that they have had enough experience with line haul carriers, they would prefer to let the Commission wrestle this out. We, too, have that feeling in our group. However, as I mentioned before, we are part of the trucking industry family, and we want to support them when we can.

Senator PEARSON. You have a very good statement. I thank you, sir.

Mr. ABERNATHY. Mr. Chairman, my name is Andrew J. Abernathy. I am an active member, officer, and board member of the Local and Short Haul Carriers Conference of the American Trucking Association, Washington, D.C. I also am president of Perkins Freight Lines, Inc., 140 Milton Avenue SE., Atlanta, Ga.

I am testifying on behalf of Senator Moss' bill S. 3626 because I feel it is necessary for the survival of the short haul motor carrier industry of which I am a part. To save time, I would like to call your attention to the findings of the ad hoc committee of the Interstate Commerce Commission on the so-called small shipments problem, dated November 30, 1967. Also, I urge your review of statement No. 67-2 of the Interstate Commerce Commission Bureau of Economics entitled "The Role of Regulated Motor Carriers in the Handling of Small Shipments." These two statements outline in great detail the vital need for the legislation under consideration today.

I would like to give you my definition of a short haul motor carrier. Some people in our business prefer to be called distribution carriers, while others prefer to be called a feeder line. It is my own opinion that a short haul carrier is one who operates under authority granted by Interstate Commerce Commission with absolutely no restrictions on the handling of freight at all; offering a complete service to all customers, whether they are carriers or shippers. We cooperate with all connecting long-line interstate carriers. We cooperate with all surface freight forwarders by rail or truck, as we do with air freight carriers, the regular and nonscheduled airlines and with piggyback carriers. It is most important and vital that Congress understands that the short haul carriers and long haul carriers alike must share the lower, through revenue on both the costly less-than-truckload small shipments as well as the more profitable trailer-load or truckload shipments. The short haul carrier cannot survive if he is forced to charge the higher combinations of on-line rates which he is unable to collect from the shipper or unable to get approved by the shipper if they are proposed on a prepaid basis. Also, although the short haul carrier moves freight a relatively short distance, he must obtain a fair division of the entire revenue from origin to destination for the important and costly work he performs.

I quite agree with the two studies by the Interstate Commerce Commission mentioned earlier, which characterize the real reasons for the many restrictions imposed by the line haul carriers as:

(1) The short haul distribution traffic and minimum shipments do not pay their fair share of the cost of the service.

(2) Percentage increases, when requested by trucking industry Rate Bureaus, and approved by the Interstate Commerce Commission, bring added revenues for long haul carriers, but do not help the short haul carriers, particularly on two and three-line traffic, where two or more carriers have to divide through movement revenue.

(3) The tendency of the Interstate Commerce Commission to disallow quick rate increases, which would offset labor increases and increases in other inflationary costs, actually tend to keep rates below the costs of the service.

(4) The common motor carriers large and small are fighting among themselves over the division of the revenue and the shorter the haul on one end, the rougher the fight. The large carriers refuse to handle the freight or even participate in the fight if they can avoid it. They are refusing to handle the traffic through restrictions in their tariffs and other schemes.

Our conference has an active committee studying the problems of through rates and routes. Although we have mixed emotions concern-

ing the authority granted the ICC by this bill for various reasons, the vast majority support it and support it vigorously. We all agree that this legislation is not the entire answer, but at the present time we feel we must have mandatory through rates and routes in order to enable us to stay in business until the Commission finds a better and more equitable solution.

At the present time in Atlanta, Ga., where my company operates, there are 68 common carriers of motor freight. Out of these 68 carriers, 40 of them have two-line restrictions and even single-line restrictions in many cases. I hope at the end of my testimony that you will ask me to explain what these terms mean, if you do not understand them.

Senator PEARSON. That will be fine, Mr. Abernathy.

Mr. ABERNATHY. One long-line carrier to the west coast has just recently put in an additional two-line restriction against all interline freight through the Atlanta gateway. Another line-haul carrier has cut my company completely out of the tariffs on all freight except that moving on Rocky Mountain or west coast traffic. This means I cannot interline my freight with him heading anywhere else, even though he serves many points in the East. As additional information for the record, I am attaching a copy of a resolution passed by the Local and Short Haul Carriers Conference of American Trucking Associations at its recent convention commending the Interstate Commerce Commission on their attempt even through this limited authority to correct a lot of these practices.

Senator, we urge upon you and your committee to recommend this bill out of committee, and we sincerely have to have it in order to stay in business.

I am not going to read this resolution, but —

Senator PEARSON. It will be a part of your statement and incorporated in the record.

(The resolution follows:)

RESOLUTION

Whereas it is recognized by the members of this Conference that the problems involved in handling certain sizes and types of commodities has prompted some members of the motor carrier industry to resort to restrictive practices in accepting this freight for carriage, and

Whereas these practices have resulted in a general deterioration of service to certain members of the shipping public with regard to this traffic, and

Whereas it is the desire of the membership of this Conference to convey to members of the Interstate Commerce Commission their willingness to cooperate in every way toward the solution of these problems, Now, therefore, be it

Resolved in this 27th Annual Convention of the Local and Short Haul Carriers National Conference that the members of the Interstate Commerce Commission be commended for their sincere efforts to correct these practices despite their limited authority through the rulemaking policy outlined in Ex Parte 77.

Adopted: -----

Secretary.

Senator PEARSON. Before you amplify your comment, Mr. Abernathy, I wonder if you would give us your views as to the distinction you make between the two bills before us today. Why, as a matter of fact, your preference for the so-called Moss version or S. 3626 over that proposed by the ICC?

Mr. ABERNATHY. Senator, as Mr. Ketcham pointed out, we do not have a 100 percent opinion of our conference.

Senator PEARSON. Anybody in the Congress could understand that.

Mr. ABERNATHY. Actually, we feel that we have a chance to get this bill through and we don't feel we have a chance to get the other one through. A half loaf is better than none, and we have got to have it to stay in business.

Senator PEARSON. Do you agree with the statement made by a witness here this morning to the effect that there is really no great need for this legislation as between motor carriers?

Mr. ABERNATHY. No, sir, I don't. We have got to have this legislation.

Senator PEARSON. That is the gist of your whole testimony?

Mr. ABERNATHY. That is right.

Our company is 40 years old. We are a feeder line, and we have been able over the years to back into a shipper's dock and handle anything he has got—good freight, bad freight. If there is a rule in the book and a rate on it, and it is going somewhere, we have always hauled it and have been able to interline.

Now the big computerized carriers are picking and choosing the freight, and we just can't do it. We are having to take freight back to the shippers.

Senator PEARSON. I think I understand the implication of your comment, Mr. Abernathy.

Do you want to amplify that?

Mr. ABERNATHY. No, sir.

Senator PEARSON. I appreciate your testimony very much.

Mr. Niedert.

Mr. NIEDERT. Mr. Chairman and Counsel, my name is Ralph A. Niedert and I am past president and am now serving on the board of directors of the Suburban Motor Carriers Association of Chicago whose membership consists of some 50 short haul carriers. I am presently serving as chairman of the board of the Central Motor Freight Association and am a member of the board of directors of the local and short haul carriers conference of the American Trucking Association. I am also president of my own company, Niedert Motor Service, Inc., located in Des Plaines, Ill., a suburb of Chicago.

I would like to direct my remarks specifically to my own company and the problems that I am having. My father started this company in 1925, and I joined the company after graduating from high school in 1936. Our terminal is located adjacent to O'Hare Field on a 6-acre site. The terminal building can handle 64 loads at one time. The equipment fleet consists of over 300 semitrailers and over 100 power units. We employ 200 people and our gross revenue in 1969 was \$3 million with an operating ratio of 96.1. The entire operation is family owned.

We provide a pickup and delivery service for shippers and consignees in a 50-mile area of Des Plaines. Our average shipment weighs 550 pounds and it may be coming or going from, and to, any place in the United States.

I would like to add here that as a shorthaul carrier, we welcome these small shipments, just the opposite way that many of our big brothers are trying to get rid of them. We can provide any large or small shipper with a service that will permit them to use a single carrier at their shipping dock even though their shipments are moving to hundreds of destination points.

We can, with a single pickup, handle a multiplicity of shipments that would require a large shipper to call in 30 or 40 carriers in one afternoon to make individual pickups. This results in a tremendous expense to the carriers and to the shipper who must provide a large shipping room area capable of holding these many shipments in a segregated manner so that they will be available to the carriers at the time of pickup.

In addition to a large shipping area the shipper must provide many dock positions so that he can handle many carriers simultaneously, usually late in the afternoon when most pickups are made. Under the shorthaul carrier's service the shipper started packing his shipments early in the morning and throughout the day and immediately loads them into a single trailer placed in a single dock position. When the first trailer is filled it is removed and another empty trailer is placed into position to continue the loading.

This type of service eliminates double handling of each shipment by the shipper and it eliminates the confusion that exists when many carriers converge on the shipper's dock for their individual pickups at the same time. We feel that this type of consolidated pickup results in a much lower pickup cost for each shipment. This same type of consolidated pickup service works equally well for the small shipper as well as the large shipper.

Each loaded trailer is now moved into our terminal and placed into position at the dock for unloading. During the evening and night the shipments are unloaded from the trailers and segregated on our dock according to the routings via the line haul carriers in Chicago. Each trailer is now reloaded with 50 to 75 1-t-1 shipments which we will deliver to from one to four other carriers located in close proximity to each other in Chicago. The shipments in each trailer could have originated with 50 shippers, yet each load of less-than-truck-load freight represents one pickup and from one to four deliveries. To accomplish the same thing the line haul carriers would have to make 50 pickups and an equal number of deliveries. We feel that this is one of the answers to the small shipment problem.

Our firm is a member of many tariff bureaus which publish the rates and charges that our rate department uses to assess the freight charges on each shipment handled by our company. Theoretically, a large shipper might use a hundred line-haul carriers in a single week in order to move his shipments to his many customers located in all parts of the United States through the Chicago gateway.

This means that his accounting department would have to write 100 checks payable to each carrier that handled prepaid shipments for him during the previous week. Under our system the shipper prepares one check for all of his prepaid freight charges and we handle the distribution of freight charges to the line-haul carriers.

We have provided this type of service to shippers and consignees from the period before motor carrier regulations were enacted and given to the Interstate Commerce Commission to enforce. Thousands of small, family-owned trucking companies, located throughout the entire United States, have been providing this same type of service for their shippers and consignees these many years.

We have signed concurrences with each line-haul carrier operating in and out of Chicago, which, in effect, says that we have formed a

partnership to move a shipment from origin to destination using one, two, or even three carriers to give the small shipper and consignee the service they are entitled to regardless of where they are located.

Some years ago motor carriers started to merge under a plan to link the large industrial centers of the Nation under a single carrier authority. It was reasoned correctly that this was the way to develop large trucking complexes capable of doing hundreds of millions of dollars in revenue each year and earning millions of dollars in profits for the owners. The name of the game was to create profits even if it was at the expense of restricting services.

Each time a merger was consummated there was one less carrier to serve a given area. At hearings before the Interstate Commerce Commission the surviving carrier promised to continue to provide the same service that the merged carrier had provided. While operating under temporary authority the promise was kept. As soon as permanent authority was granted terminals were closed down, many services were discontinued, and concurrences that had been in effect between the short-haul carriers and the line-haul carrier were canceled without any reason or consultation. Apparently the computer has indicated that this type of traffic was not as profitable as the shipments moving between the large industrial areas so the service available to the shippers through the short-haul carrier was canceled without any concern for the consequences.

Our own company has had 20 cancellations of concurrences, which probably represents 50 or more carriers which we had done business with at some time in the past. At one time we had a choice of a dozen carriers who operated out of the Chicago gateway and serviced all or part of the State of Michigan. Today we only have a choice of three substantial carriers who are willing to accept our freight for Michigan points. Some carriers, who has not canceled concurrences are using other tactics to decrease the amount of off-line traffic they will handle. They will only handle or accept shipments during limited hours during the daytime; for example, between 9 a.m. and 3 p.m. Two dock doors and one or two dockmen are assigned to receive the interline shipments being delivered to them by other carriers. These tactics serve to reduce the amount of off-line traffic they handle and it results in long lines of trucks and drivers waiting to get in to be unloaded. They hope that the increased costs to the short-haul carrier will force him to divert the traffic to other carriers. In some cases there are no other carriers left to divert to. Many of our small carriers have been forced out of business leaving many towns and areas with very limited service or no service at all.

We feel that this is what Senate bills S. 2245 and S. 3626 are all about. We plead for your support of these bills so that the Interstate Commerce Commission will be granted the power and authority to stop the deterioration of service that is taking place. We believe that every shipper, regardless of his location, is entitled to dependable and regular service. This is what the short-haul carrier has done in the past and needs the help of the Interstate Commerce Commission to be able to continue it in the future. We also feel that the cost of providing this service should be profitable for both the line-haul and the short-haul carriers.

Thank you for the courtesy of permitting me to bring the concerns of a small part of the economy to your attention. Your help and assistance is greatly appreciated by all of the short-haul carriers and myself.

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

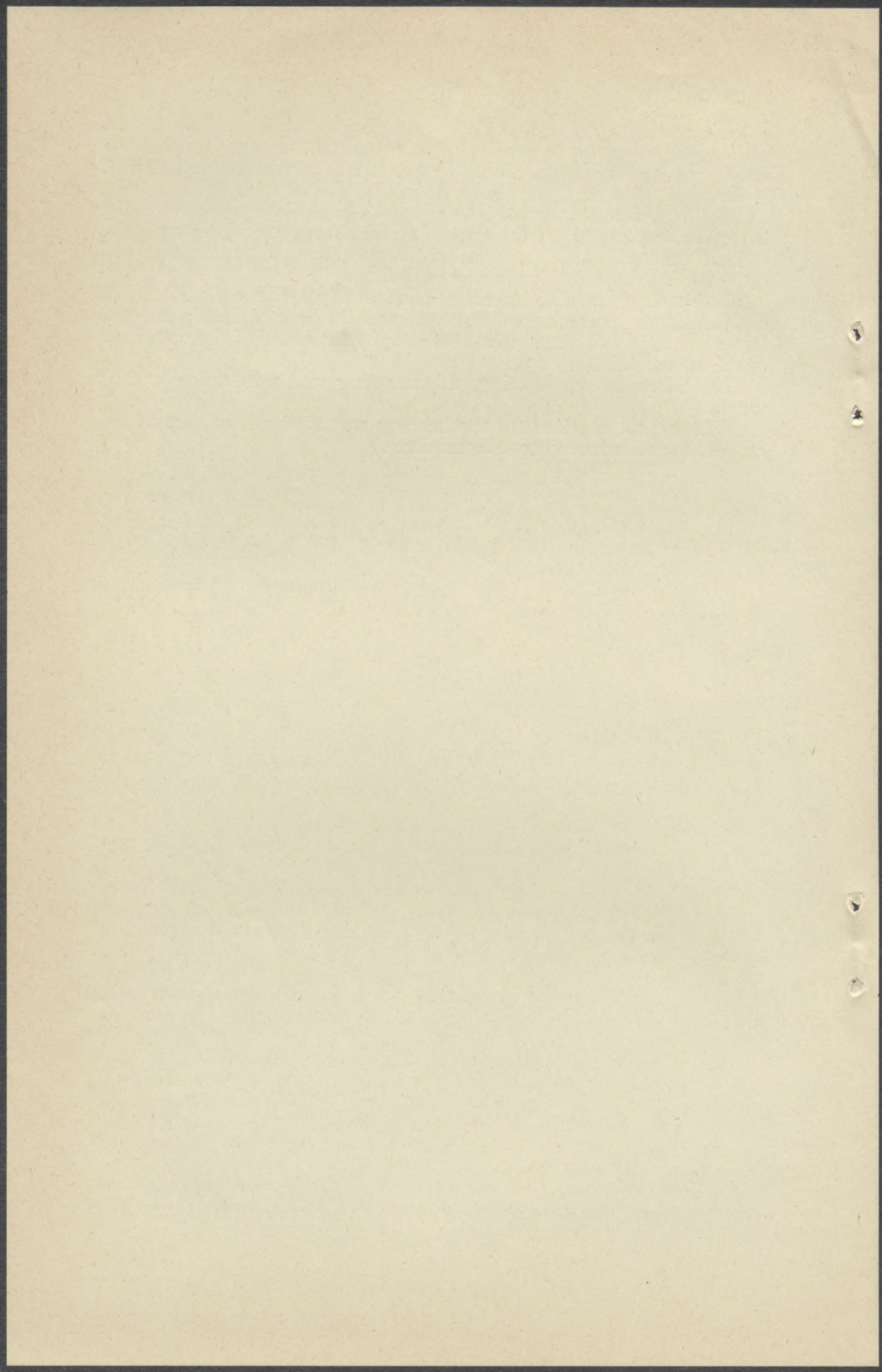
That is an excellent statement and a good contribution to our record here. We thank you all for appearing and for your testimony here.

That concludes the witnesses we have scheduled pursuant to the order for hearings on these particular bills.

There will be further hearings, particularly I think the Maritime Commissioner wants to come forward, and the date of that hearing or those hearings will be set at a later date by the order of the chairman of the subcommittee.

That concludes our hearings this morning, and we thank you very much.

(Whereupon, at 12 noon, the hearing was recessed, subject to the call of the chairman of the subcommittee.)



**THROUGH ROUTES AND JOINT RATES BETWEEN
MOTOR COMMON CARRIERS OF PROPERTY, AND BE-
TWEEN SUCH CARRIERS AND COMMON CARRIERS BY
RAIL, EXPRESS, AND WATER, AND FOR OTHER
PURPOSES**

WEDNESDAY, JUNE 11, 1970

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

The subcommittee met, pursuant to notice, at 10:45 a.m., in room 457, Old Senate Office Building, Hon. Howard H. Baker, Jr., presiding.
Present: Senator Baker.

Senator BAKER. May I, for the record, apologize to the witness and all those present for being late in arriving. I was detained.

Our witness today is Helen Delich Bentley, Chairman of the Federal Maritime Commission, who, I understand, has a statement to make.

You may proceed.

**STATEMENT OF HON. HELEN DELICH BENTLEY, CHAIRMAN,
FEDERAL MARITIME COMMISSION; ACCOMPANIED BY JAMES
PIMPER, GENERAL COUNSEL, FEDERAL MARITIME COMMISSION**

Mrs. BENTLEY. Mr. Chairman, I appreciate the invitation to appear before your subcommittee to offer the comments of the Federal Maritime Commission on S. 2245 and S. 3626, both of which have the stated purpose to authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express and water.

I particularly wish to thank you Mr. Chairman for holding open these proceedings to afford me the opportunity to make a personal appearance.

As you know, the Federal Maritime Commission, of which I am chairman, is the agency responsible for regulation of rates and practices of common carriers by water in the U.S. foreign commerce and in the domestic offshore trades, that is, between the continental United States, Hawaii, Alaska, Puerto Rico, Guam, the Virgin Islands, and American Samoa.

Common carriers by water serving the U.S. foreign commerce include not only U.S. carriers, but also the carriers of many maritime nations.

In fact, as you know, the preponderance of our foreign commerce is unfortunately now carried in foreign bottoms. Because of the international nature of this commerce, the Congress has very carefully chosen the tools by which the carriers serving these trades are to be regulated. These tools are embodied in the Shipping Act, 1916, as amended from time to time.

The primary purpose of this statute is to assure equitable and fair treatment for all engaged in the waterborne foreign commerce of the United States. Discriminatory and preferential treatment between persons engaged in this commerce and other malpractices are prohibited.

Carriers are required to file with this Commission and to keep open to public inspection, tariffs setting forth rates and charges for transportation to and from United States ports and foreign ports.

However, the Commission's jurisdiction over rates in these foreign trades is limited. The Commission does not have authority to suspend such rates—however under section 17 of the Shipping Act, 1916, when the Commission finds that a common carrier by water in the foreign commerce demands, charges, or collects a rate, fare or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors, it may order such rate, fare, or charge discontinued and alter it as necessary to correct the unjust discrimination or prejudiced.

The Commission also is authorized to disapprove a rate in the foreign commerce, after hearing, if it finds that rate to be so unreasonably high or low as to be detrimental to our commerce.

The philosophy of regulation in our foreign commerce is quite different from that envisioned over domestic carriers under the Interstate Commerce Act. For these reasons we think it important that any legislation intended to affect domestic carriers subject to the Interstate Commerce Act not infringe in any manner upon the carriers serving our waterborne foreign commerce.

As we understand it, the type of legislation here proposed is needed to provide the Interstate Commerce Commission with authority to prevent abuses which are injurious to the shipping public seeking transportation of cargo by domestic carriers.

Thus, the failure of carriers subject to the Interstate Commerce Act to provide through service and rates or the failure to maintain such routes and rates often results in either delays or possibly even a complete breakdown in deliveries to and from small shippers and communities. We are in full accord with legislation which would enable the Interstate Commerce Commission to correct such abuses.

S. 2245, which was introduced at the request of the Interstate Commerce Commission, would give that Commission authority to require the establishment of through routes and joint rates between carriers subject to its own jurisdiction, and would continue to permit, but not require such arrangements between motor carriers and common carriers by water subject to the shipping statutes in the Alaska and Hawaii domestic offshore trade.

In addition this bill would permit on a voluntary basis through routes and joint rates between a motor common carrier and any other common carrier by water subject to the shipping statutes by the fol-

lowing language: "Common carriers of property by motor vehicle may establish through routes and joint rates with common carriers by water other than those subject to part III."

The Interstate Commerce Act, section 216(c), presently permits common carriers of property by motor vehicle to establish through routes and joint rates with other such motor carriers or with common carriers by railroad and/or express and/or water.

Since 1962 the term common carriers by water in that section has included common carriers by water subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1833, engaged in the transportation of property in interstate or foreign commerce between Alaska or Hawaii on the one hand, and on the other, the other States of the Union. When such voluntary arrangements are entered into between a motor carrier and a common carrier by water in the Alaska or Hawaii offshore trade, they are subject to part II of the Interstate Commerce Act.

Although these arrangements are permitted on a voluntary basis, the Interstate Commerce Commission cannot require that motor carriers establish through routes and joint rates with other motor carriers or with any other carrier, whether subject to the Interstate Commerce Act or not.

Neither can the Commission require that such arrangements be maintained when they have been entered into on a voluntary basis.

However, part I of the Interstate Commerce Act makes it mandatory for a part I carrier (rail, pipeline, and express) to establish through routes and rates with other part I carriers and for a rail carrier to establish such routes and rates with common carriers by water subject to part III of the Interstate Commerce Act.

Upon complaint or on its own initiative, if it deems it necessary or desirable in the public interest, the Commission may compel common carriers by rail to establish through routes and joint rates with other such rail carriers, or with part III water carriers. Likewise, the Interstate Commerce Commission can compel the part III water carrier to enter into such arrangements with other part III water carriers and with common carriers by railroads.

We understand that the basic purpose of the bills before your committee is to provide the Interstate Commerce Commission with authority which would enable it to compel motor carriers, now subject to its jurisdiction, to establish through routes and joint rates with other motor carriers and with other common carriers, all of whom are already subject to Interstate Commerce Commission jurisdiction.

In other words, it is intended to give the Commission the same authority as to through route arrangements involving motor carriers with other motor carriers and with other carriers subject to the Interstate Commerce Act, as it now has with respect to such arrangements involving such other carriers subject to the Interstate Commerce Commission's jurisdiction.

In this respect, Chairman Stafford of the Interstate Commerce Commission, in testifying before the Subcommittee on Surface Transportation on May 6, 1970, made the following comment:

* * * Our main purpose is recommending this legislation is the advancement and promotion of a coordinated transportation system by common carriers of all modes subject to the Commission's jurisdiction on an intra and intermodal basis.

Consistent with that purpose, we note that although S. 2245 would impose a duty on the motor carrier to establish reasonable through routes and just and reasonable rates with common carriers by railroad, and/or express and/or common carriers by water subject to part III of the Interstate Commerce Act, and a reciprocal duty on those carriers to establish such through routes and rates with the motor carrier, no such requirement is imposed on a common carrier by water other than on a part III water carrier.

The arrangements between the motor carrier and a water carrier other than one subject to part III, are permissive under this bill—they are not mandatory. Under the provisions of the bill, if a common carrier subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, enters into a through route and joint rate arrangement with a motor carrier for the transportation of property between Alaska or Hawaii and the other States, that arrangement becomes subject to the jurisdiction of the Interstate Commerce Commission.

However, the Interstate Commerce Commission cannot compel such an arrangement, nor would this bill give it such authority. In this respect S. 2245 would make no change in existing law.

The bill would also permit common carriers by water subject to the shipping statutes, in other than the domestic offshore trades, to establish through routes and joint rates with part II motor carriers.

However, we understand that the present jurisdiction of the Federal Maritime Commission over such water carrier remains with the Federal Maritime Commission and that no jurisdiction over the water carrier is intended to be conferred in the Interstate Commerce Commission.

Further, we understand that such water carrier could not be compelled to remain party to such an arrangement against its will. In line with these understandings, our proposed substitute for the bills now before you includes a section which would expressly retain its existing jurisdiction to the Federal Maritime Commission and at the same time would satisfy the needs of the Interstate Commerce Commission.

If our understanding in this respect is correct, as indeed we have been assured by responsible people at the Interstate Commerce Commission—I might add in also that I have shown this to Chairman Stafford—then it would appear necessary to make some changes in S. 2245 to make this clear and to avoid any possible future controversy as to the intent and over possible conflicting interpretations.

Section 216 (e) (2) which is added by section 2 of the bill, would authorize the Commission to require the establishment of through routes and joint rates between the various carriers, but expressly limits such authority as to water carriers to common carriers by water subject to part III.

Thus, the establishment of through routes and joint rates between motor carriers and common carriers by water other than those subject to part III could not be required by the Interstate Commerce Commission, but would be permissive only.

Section 216(e)(1), providing for the filing of complaints with the Commission, refers to any such rate which under section 1 of the bill includes common carriers by water other than those subject to part III. This section further authorizes the Commission to determine and prescribe the lawful rate, classification, practice, et cetera, if it should find the existing joint rate to be unjust or unreasonable

or unjustly discriminatory or unduly preferential or unduly prejudicial.

This subsection would seem to include a joint rate with common carriers by water other than those subject to part III, since no language is included which would limit the application of this subsection, as to a water carrier, to only a part III water carrier.

I offer to the committee a proposed revision of S. 2245, which we believe will accomplish the pronounced intentions of the Interstate Commerce Commission.

This would be accomplished by rewriting section 1 of the bill so as to divide proposed section 216(e) of the Interstate Commerce Commission into three subsection, one of which would provide for permissive arrangements between motor carriers and other than part III water carriers, but clearly would confer no additional authority in the Interstate Commerce Commission over the water carrier.

Subsection (1) of section 216(e) would be revised by adding at the end thereof the following:

“As used in this paragraph common carrier by water means a common carrier by water subject to part III and a common carrier by water subject to the Shipping Act, 1916, or the Intercoastal Shipping Act of 1933, between Alaska or Hawaii on the one hand, and, on the other, the other States of the Union.”

It is our view that there presently exist no legal barriers which would prohibit such contractual arrangements between the Interstate Commerce Commission motor carrier and a Federal Maritime Commission water carrier. In fact, the Federal Maritime Commission has recently promulgated a rule establishing procedures for filing with this Commission through routes and joint rates between water carriers subject to its jurisdiction and carriers of other modes.

This view would seem to be shared by the Interstate Commerce Commission which has pending a proceeding for establishing procedures for the filing with it of joint rates between Interstate Commerce Commission and Federal Maritime Commission carriers. Under these circumstances, the need for legislation to authorize through routes and joint rates between a motor carrier and a common carrier by water subject to the shipping statutes is not apparent.

As to S. 3626, this bill would require water carriers subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, transporting property between Alaska or Hawaii and the contiguous States, to establish through routes and joint rates, whether they wanted to or not.

A similar provision was included in S. 751, considered by your committee in the first session of the 90th Congress. That bill (S. 751) also would have made through routes and joint rates between motor common carriers subject to the Interstate Commerce Act and water carriers in the Alaska and Hawaii offshore trades mandatory and subjected them to the jurisdiction of the Interstate Commerce Commission.

In submitting that proposal to the Congress, the Interstate Commerce Commission stated:

Although no serious problems appear to have arisen in connection with the establishment of through routes and joint rates between common carriers by water and motor common carriers of property, the fear of collapse of such arrangements because of their permissive and voluntary nature is of course always present.

Not only did the record before you in connection with S. 751 fail to demonstrate a need for authorizing the Interstate Commerce Commission to force unwanted relationships on water carriers, but the Interstate Commerce Commission denied the existence of any such need.

The identical statement is contained in the Interstate Commerce Commission's submission to the Congress of its most recent proposed legislation now before you as S. 2245.

Again, the record already made before your committee in connection with S. 2245 and S. 3626 is completely devoid of any evidence that further legislation is necessary or desirable with respect to making mandatory through route and joint rate arrangements involving motor carriers and water carriers.

In fact, most of the statements to date would indicate that the pressing need for legislation is limited to arrangements between motor carriers and other such carriers, and between motor carriers and rail carriers.

Accordingly, we oppose S. 3626 as now written. As to S. 2245, as I have already pointed out, the Federal Maritime Commission believes that legislation is not necessary to authorize the establishment of through routes and joint rates between motor common carriers and water carriers.

However, if our understanding that S. 2245 would not subject the water carrier to the Interstate Commerce Act is correct, we would support this bill provided that our recommended amendments are approved by your committee.

Again, I want to thank you, Mr. Chairman for this opportunity to present the Federal Maritime Commission's views on these bills and to offer you the full cooperation of the Commission and its staff in an effort to provide the Interstate Commerce Commission with effective tools to accommodate its needs.

May I interject, I would like the record to show that my general counsel, Mr. James Pimper is accompanying me.

Senator BAKER. Thank you very much.

We appreciate your testimony, which I find most thorough and exhaustive.

I find, as anticipated, most of what occurred to me was whether you made a presentation of the bill or the proposal. I understand your testimony to be that you have discussed this with the Chairman of the Interstate Commerce Commission.

Mrs. BENTLEY. Yes.

Senator BAKER. I am not quite clear as to whether they have reacted or not.

Mrs. BENTLEY. I showed it to him. He has read it. He read it in my office. I told him that if he had any remarks on it or anything he didn't like to please let me know. I haven't heard from him.

Mr. Pimper has been in touch with Mr. Kahn, and he had no comments from him on it; that is, the General Counsel's office of the Interstate Commerce Commission.

Senator BAKER. I don't mean to be unduly proprietary, but you may know that I have introduced a bill that proposes to provide consolidation of functions of the transportation regulatory agencies which is

designated as S. 3760. I wonder if you are familiar with this bill and prepared to give any appraisal of it at this time.

Mrs. BENTLEY. Yes. I have read it and I think I would like to commend you for taking this step at this time because the demand for a study in this area is very critical in view of the rapidly changing modes of transportation.

I have just returned from Europe where they pointed out to me that so many of our own regulations are hurting our trade and commerce in the transportation field.

Our regulation in the transportation field is hurting our trade and commerce.

I am now in the process of preparing a report on that subject, which I want to bring forth to you. I do not think we can afford to lose any more time in pursuing possible changes if they are necessary in our system.

Senator BAKER. I take it, then, that the Federal Maritime Commission would be cooperative with any commission that was created pursuant to this bill to undertake an examination?

Mrs. BENTLEY. Very definitely.

Senator BAKER. In your testimony you brought to our attention the rule promulgated by the Federal Maritime Commission providing for the filing with the Commission of through routes and joint rates between water carriers subject to its jurisdiction, and pointed out that there was a proceeding now before the Interstate Commerce Commission leading to a similar end.

Has there been any degree of coordination between FMC and ICC on the evolution of these rules or proposed rules?

Mrs. BENTLEY. Yes. We work very closely. When we were preparing ours, we consulted with them regularly. Mr. Pimper and his people consulted with them regularly.

They have shown what they have to us. They are now in the process of making major changes in their own. Mr. Stafford told me the other day—that is the reason it is not out. We have been exchanging views on it.

Senator BAKER. Has there been any substantial conflict between these two agencies in this respect?

Mrs. BENTLEY. This whole proceeding began in sort of an area of conflict, Mr. Chairman, last summer. But that has been ironed out and we have been working together.

Senator BAKER. My staff suggests that we ask for the record, whether or not the two sets of rules, these that the FMC had promulgated and those under consideration by ICC are going to be complementary? Will they require the same type of filing, or will they be sufficiently similar so that there won't be, in effect two different things.

Mr. PIMPER. The latter in my opinion.

Senator BAKER. That there will be two separate undertakings?

Mr. PIMPER. That they are sufficiently similar so that one will probably meet the requirements of both.

Senator BAKER. Very good. Thank you very much.

We thank you both very much, and again, I apologize for being late.

(Whereupon, at 11:10 a.m., the hearing was recessed.)

ADDITIONAL STATEMENTS, LETTERS, AND ARTICLES

[Telegram]

NASHVILLE, TENN.

Senator VANCE HARTKE,

Chairman, Subcommittee on Surface Transportation of the Senate Committee on Commerce, Washington, D.C.

The membership of the middle Tennessee Motor Carrier Association voted unanimously last night, May 6th to vigorously support Senate bill 2245 conferring jurisdiction on Interstate Commerce Commission to require common carriers for hire to handle traffic on through routes and rates. Our association is composed of 25 short-line carriers all of which operate into and out of Nashville, Tenn. All but three of said carriers are confined to this single gateway for the interchange of through interstate traffic. Except for these three, who also serve Memphis, Knoxville, Chattanooga, and Birmingham, the operations of all of said carriers are confined to serving points within 100 miles of Nashville.

Said carriers have been experiencing extreme difficulties in their efforts to interline interstate traffic freely on through routes and rates. Being small, short-line carriers they are wholly dependent upon interchange connections to handle through movements of interstate freight. They have taken all steps they know to correct the situation but to no avail. More than 3 years ago they complained to the Commission for assistance and as a result committees were set up representing the large, long-haul carriers and the small, short-haul carriers and efforts made to resolve the problems. Conditions improved for a short time, but for the past year and a half conditions have become deplorable. Most of the large carriers serving Nashville have completely departed from their common carrier obligations to serve the shipping public indiscriminately and have embarked on practices which have substantially impeded the free flow of interstate commerce. Such practices include the imposition of line haul restrictions, reducing the hours during which interline traffic will be received, applying arbitrary standards or tests on the acceptability of traffic where the revenue or weight must meet their own arbitrary standards, reducing the number of trailers at their Nashville terminals so as to avoid handling traffic, the refusal to accept traffic although there are no tariff provisions against doing so, and other steps designed to discourage the receipt and handling of what they consider to be unprofitable or undesirable traffic.

As a result of all this we again complained to the Commission recently and through the efforts of Commissioner Murphy the two committees referred to above were reactivated and efforts made to acquaint top management of the large carriers serving Nashville aware of said problems and to procure affirmative action to resolve the difficulties. Representatives of both the large carriers and the small carriers met with Division 1 of the Commission on two occasions. In spite of the efforts of Commissioner Murphy and in spite of the efforts of the representatives of the large carriers themselves, the problems have not been corrected and no satisfactory assurance have been presented that they will ever be corrected in the future on a voluntary basis. The members of our association respectfully submit that the Commission needs proper authority and jurisdiction to compel all carriers, large and small alike, to provide service to the full extent of their certificated authority and to freely handle any and all traffic indiscriminately. These small carriers are faced with critical conditions and must have relief or else they face financial disaster, and the shippers and receivers served by them in the small towns and communities in which they

operate will be vitally affected. As an example, one of our member carriers was faced today with the situation where it had 12 loads of freight to move, destined to points west of Memphis, Tenn., and could not find a single carrier that would accept and handle them on through routes and rates.

Our association earnestly implores your committee to report favorably on Senate bill 2245.

L. E. McCLUSKY, *President.*

SOUTHERN NURSERYMEN'S ASSOCIATION,
McMinnville, Tenn., May 14, 1970.

HON. JOE L. EVINS,
House of Representatives,
Washington, D.C.

DEAR JOE: Thank you for your letter of the 11th, concerning the possibility of filing a statement with the subcommittee regarding hearings on bill S. 2245 dealing with joint rates through routes by surface carriers.

As a Trade Association with members throughout 14 Southern States we are not shippers. Our knowledge of the subject is from the experiences of our members. Some of our members advise us that they have experienced considerable difficulty in trying to make shipments to points that require more than two carriers. Further it seems the Interstate Commerce Committee has little or no jurisdiction over freight carriers, particularly the motor freight lines.

To us it seems the entire transportation system is not performing their duties properly and in the best interest of shippers and the public.

When shipments properly prepared are submitted to licensed carriers they should be required to accept the shipment and move it promptly to destination regardless of the number of carriers involved.

When shippers or consignees have problems with the carriers there should be some committee or agency with authority which they could go to for clarification or adjustment. The transportation system, according to the information we receive, should be revitalized with the interest of the shippers who pay the freight, and the general public in mind rather than too much attention to a profitable operation for the carrier.

Sincerely,

PORTER HENEGAR,
Executive Secretary.

