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# THROUGH-ROUTES—JOINT RATES AND FREIGHT FORWARDERS LEGISLATION

GOVERNMENT DOCUMENTS

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## HEARING

BEFORE THE

### SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

### COMMITTEE ON COMMERCE

### UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

## S. 1896

TO AMEND SECTION 409 OF PART IV OF THE INTERSTATE  
COMMERCE ACT, AS AMENDED, TO AUTHORIZE CON-  
TRACTS BETWEEN FREIGHT FORWARDERS AND  
RAILROADS

## S. 2628

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

MAY 4, JUNE 8, AND 9, 1972

Serial No. 92-77

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## THROUGH-ROUTES—JOINT RATES AND FREIGHT FORWARDERS LEGISLATION

THURSDAY, MAY 4, 1972

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

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 5110, New Senate Office Building, Hon. Vance Hartke (chairman of the subcommittee) presiding.

Present: Senators Hartke and Beall.

### OPENING STATEMENT BY SENATOR BEALL

Senator BEALL. Ladies and gentlemen, Senator Hartke is going to be detained for a few minutes this morning, so, in his absence, I think we might proceed with the hearing.

The hearing this morning is on Senate bill S. 2628, a bill to permit the ICC to require establishment of through routes and joint rates between motor carriers and between such carriers and common carriers by rail, express, and water.

This proposal was introduced at the request of the ICC and has a long line of ancestors who have been well heard by this subcommittee.

We understand, however, that S. 2628 embodies the survivors of the fittest of these ancestors and as such is not subject to the same objections as before.

Our attention in the last few months has been devoted to the major reforms presented in the Surface Transportation Act and in the DOT bill, but nonetheless, we don't want to overlook the opportunity to act on an incremental measure that may somewhat improve the existing system in order to secure better service for shippers and especially for small shippers.

(The bills and agency comments follow:)

Staff member assigned to these hearings: John Cary.

92<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1896

---

## IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 18), 1971

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

---

## A BILL

To amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads.

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 409 of the Interstate Commerce Act (49 U.S.C.  
4       1009), as amended, is amended to read as follows:

5       “SEC. 409. (a) Nothing in this Act shall be construed  
6       to prevent freight forwarders subject to this part from enter-  
7       ing into or operating under contracts with common carriers  
8       by railroad subject to part I of this Act, or from entering into  
9       or continuing to operate under contracts with common car-  
10      rier by motor vehicle subject to part II of this Act, govern-

1 ing the utilization by such freight forwarders of the services  
2 and instrumentalities of such common carriers by railroad or  
3 motor vehicle and the compensation to be paid therefor: *Pro-*  
4 *vided*, That in the case of such contracts it shall be the duty of  
5 the parties thereto to establish just, reasonable, and equitable  
6 terms, conditions, and compensation which shall not unduly  
7 prefer or prejudice any of such participants or any other  
8 freight forwarder and shall be consistent with the national  
9 transportation policy declared in this Act: *And provided*  
10 *further*, That in the case of line-haul transportation by com-  
11 mon carriers by motor vehicle between concentration points  
12 and break-bulk points in truckload lots where such line-haul  
13 transportation is for a total distance of four hundred and fifty  
14 highway miles or more, such contracts shall not permit pay-  
15 ment to such common carriers by motor vehicle of compensa-  
16 tion which is lower than would be received under rates or  
17 charges established under part II of this Act: *And provided*  
18 *further*, That contracts between common carriers by railroad  
19 and freight forwarders shall not be deemed to be in con-  
20 formity with the provisions of this section unless the terms,  
21 conditions, and compensation thereof are arrived at under pro-  
22 cedures which have been filed with and approved by the  
23 Commission and which afford all interested railroads an op-  
24 portunity to participate in the establishment of and to become  
25 parties to such contracts. The agreements establishing the

1 procedures referred to herein shall be deemed to be agree  
2 ments within the meaning of section 5a of this Act.

3       “(b) Contracts entered into or continued pursuant to  
4 subsection (a) of this section shall be filed with the Commis-  
5 sion in accordance with such reasonable rules and regulations  
6 as the Commission shall prescribe. Whenever, after hearing,  
7 upon complaint or upon its own initiative, the Commission  
8 is of the opinion that any such contract, or its terms, condi-  
9 tions, or compensation is or will be inconsistent with the pro-  
10 visions and standards set forth in subsection (a) of this  
11 section, the Commission shall by order prescribe the terms,  
12 conditions, and compensation of such contracts which are  
13 consistent therewith.”

14       SEC. 2. The heading of section 409 is changed to read as  
15 follows: “UTILIZATION BY FREIGHT FORWARDERS OF SERV-  
16 ICES OF COMMON CARRIERS BY RAILROAD AND BY MOTOR  
17 VEHICLE”

---

**IN THE SENATE OF THE UNITED STATES**

SEPTEMBER 30, 1971

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) (1). Common carriers of property by motor  
6       vehicle may establish reasonable through routes and joint  
7       rates, charges, and classifications with other such carriers

1 or with common carriers by railroad and/or express and/or  
2 water; and common carriers of passengers by motor vehicle  
3 may establish reasonable through routes and joint rates,  
4 fares, or charges with common carriers by railroad and/or  
5 water. As used in this subsection the term 'common carriers  
6 by water' includes water common carriers subject to the  
7 Shipping Act, 1916, as amended, or the Intercoastal Ship-  
8 ping Act of 1933, as amended (including persons who  
9 hold themselves out to transport goods by water but who do  
10 not own or operate vessels) engaged in the transportation  
11 of property in interstate or foreign commerce between  
12 Alaska or Hawaii on the one hand, and, on the other, the  
13 other States of the Union, and through routes and joint  
14 rates so established and all classifications, regulations, and  
15 practices in connection therewith shall be subject to the  
16 provisions of this part.

17       “(2) The Commission may, and it shall whenever  
18 deemed by it to be necessary or desirable in the public in-  
19 terest, after full hearing upon complaint or upon its own  
20 initiative without complaint, establish through routes, joint  
21 classifications, and joint rates or charges applicable to the  
22 transportation of property by common carriers by motor ve-  
23 hicle and other such carriers and/or common carriers by  
24 railroad and/or express and/or common carriers by water  
25 subject to part III, and, when so ordered in such a pro-

1 ceeding, it shall be the duty of the affected common car-  
2 riers of property by motor vehicle, common carriers by  
3 railroad and/or express and/or common carriers by water  
4 subject to part III to establish and maintain reasonable  
5 through routes, joint classifications, and joint rates or charges  
6 applicable thereto. In establishing any such through routes  
7 the Commission shall not, except as provided in sections 3,  
8 216 (d), or 305 (e), require any carrier without its con-  
9 sent to embrace in such route substantially less than the  
10 entire length of its route and of any intermediate carrier  
11 operated in conjunction and under a common management or  
12 control therewith, which lies between the termini of such  
13 proposed through route (a) unless such inclusion of lines  
14 would make the through route unreasonably long as com-  
15 pared with another practicable through route which could  
16 otherwise be established or (b) unless the Commission finds  
17 that the through route proposed to be established is needed in  
18 order to provide adequate and more efficient or more eco-  
19 nomic transportation: *Provided*, That in prescribing through  
20 routes the Commission shall, so far as is consistent with the  
21 public interest, and subject to the foregoing limitations in  
22 clauses (a) and (b), give reasonable preference to the car-  
23 rier which originates the traffic. In the case of any through  
24 route established by the Commission between common car-  
25 riers of property by motor vehicle and other such carriers,

1 the limitations in this section on the Commission's power to  
2 establish through routes shall apply only to the carrier origi-  
3 nating the traffic. No through route and joint rate applicable  
4 thereto shall be established by the Commission for the pur-  
5 pose of assisting any carrier that would participate therein to  
6 meet its financial needs.

7 " (3) In case of such joint rates, fares, or charges it  
8 shall be the duty of the carriers parties thereto to establish  
9 just and reasonable regulations and practices in connection  
10 therewith, and just, reasonable, and equitable divisions thereof  
11 as between the carriers participating therein which shall not  
12 unduly prefer or prejudice any of such participating carriers."

13 SEC. 2. Section 216 (e) of the Interstate Commerce Act  
14 (49 U.S.C. 316 (e) ) is amended to read as follows:

15 " (e) (1) Any person, State board, organization, or body  
16 politic may make complaint in writing to the Commission  
17 that any such rate, fare, charge, classification, rule, regula-  
18 tion, or practice, in effect, or proposed to be put into effect,  
19 is or will be in violation of this section or of section 217.  
20 Whenever, after hearing, upon complaint or in an investiga-  
21 tion on its own initiative, the Commission shall be of the opin-  
22 ion that any individual or joint rate, fare, or charge, de-  
23 manded, charged, or collected by any common carrier or car-  
24 riers by motor vehicle or by any common carrier or carriers  
25 by motor vehicle in conjunction with any common carrier or

1 carriers by railroad and/or express and/or water for trans-  
2 portation in interstate or foreign commerce, or any classifi-  
3 cation, rule, regulation, or practice whatsoever of such car-  
4 rier or carriers affecting such rate, fare, or charge or the value  
5 of the service thereunder, is or will be unjust and unreason-  
6 able, or unjustly discriminatory or unduly preferential or un-  
7 duly prejudicial, it shall determine and prescribe the lawful  
8 rate, fare, or charge or the maximum or minimum, or maxi-  
9 mum and minimum rate, fare, or charge thereafter to be ob-  
10 served, or the lawful classification, rule, regulation, or  
11 practice thereafter to be made effective.

12 “(2) All carriers party to a through route and joint  
13 rate, whether established by the carriers under section 216  
14 (c) (1) or prescribed by the Commission under section  
15 216 (c) (2), shall promptly pay divisions or make interline  
16 settlements as the case may be with other carriers party  
17 thereto. In the event of undue delinquency in the settlement  
18 of such divisions or interline settlements, such through routes  
19 and joint rates may be suspended or canceled by the Com-  
20 mission under rules to be prescribed by it.

21 “(3) In any proceeding involving a joint rate the Com-  
22 mission shall consider, among other things, any evidence chal-  
23 lenging the fitness of any carrier or carriers involved and any  
24 facts relating to special operational circumstances attending  
25 the service to which the rate is applicable.

1       “(4) If any tariff or schedule canceling any through  
2 route and joint rate, fare, charge, or classification, whether  
3 established by the carriers under section 216 (c) (1) or pre-  
4 scribed by the Commission under section 216 (c) (2), with-  
5 out the consent of all carriers parties thereto or authorization  
6 by the Commission, is suspended by the Commission for in-  
7 vestigation, the burden of proof shall be upon the carrier or  
8 carriers proposing such cancellation to show that it is con-  
9 sistent with the public interest.

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

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., August 26, 1971.*

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

DEAR MR. CHAIRMAN: This is in reply to your letter of May 26, 1971, asking for our comments on S. 1896, a bill to amend Section 409, Part IV of the Interstate Commerce Act, 49 U.S.C. 1009, which would permit contracts between freight forwarders and railroads concerning freight rates.

There have been several legislative proposals in the past, similar to S. 1896, to allow freight forwarders to contract with common carriers by rail in the same manner that they are presently allowed to contract with motor common carriers under Section 409, Part IV of the Act. We had no objection to these previous proposals, even though they would have allowed lower rates to forwarders than to the usual type of shipper, because it seemed that the legislation would promote uniformity of treatment of carriers as well as intermodal coordination and the improvement of service to the general public, particularly with reference to small shipments.

H.R. 10293 and S. 3803, introduced in the 91st Congress, were intended to accomplish the same purpose as S. 1896, but they would have amended Part I of the Act, rather than Part IV. During the hearings on H.R. 10293, the Interstate Commerce Commission agreed to undertake an investigation of the status of freight forwarders and furnish the results to the House Subcommittee on Transportation and Aeronautics so that more informed legislative action would result.

The Commission's investigation was completed in January 1971, and the report, entitled *Investigation into the Status of Freight Forwarders, Ex Parte*

No. 266, recommended the enactment of legislation such as H.R. 10293 and S. 3803 or legislation that would amend Part IV of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads, as S. 1896 proposes. We have no information as to which approach to establish the described contractual authority is more desirable, and the enactment of either form of legislation would be unlikely to materially affect our functions and operations. However, as we have stated previously regarding similar bills, since S. 1896 appears to be in the public interest, and since the Commission, after an exhaustive investigation, supports legislation of the same type, we have no objection to favorable consideration of the bill by your Committee.

Sincerely yours,

R. F. KELLER,  
*Acting Comptroller General of the United States.*

---

SENIOR ASSISTANT POSTMASTER GENERAL,  
AND GENERAL COUNSEL,  
*Washington, D.C., November 15, 1971.*

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 a report on S. 2628, 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.

Under existing law common carriers of property by motor vehicle are authorized to establish reasonable through routes and joint rates with such other carriers, or with common carriers by railroad, express, or water (49 U.S.C. 316(c)). The effect of the proposed legislation would be to require such arrangements whenever it is determined by the Interstate Commerce Commission that such arrangements are necessary or desirable in the public interest.

We have examined the provisions of S. 2628, and have determined that the bill would not affect the transportation of the mails. The Postal Service, therefore, has no comments to offer on the proposed legislation.

Sincerely,

DAVID A. NELSON  
By: ROGER P. CRAIG,  
*Associate General Counsel.*

---

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., December 8, 1971.*

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

DEAR MR. CHAIRMAN: We refer to your letter of October 13, 1971, in which you asked for our comments on S. 2628, among others.

This bill, which you introduced at the request of the Interstate Commerce Commission, proposes to vest in that Commission authority, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers via rail, water, and express. A companion bill H.R. 11031, has been introduced in the House of Representatives. Bills of this import have been introduced in the last several Congresses; the most recent was S. 3626, 91st Congress, 2nd Session, on which we reported to you in our letter of May 14, 1970, B-89746, B-142070.

S. 2628 would add to section 216(c) of the Interstate Commerce Act, 49 U.S.C. 316(c), a paragraph vesting in the Interstate Commerce Commission authority, after full hearing upon complaint or upon its own motion, to prescribe both intramodal and intermodal through routes, joint classifications and joint rates. The bill would also provide for prompt interline settlements, with authority in the Commission to suspend or cancel particular through routes and joint rates if the participants are unduly delinquent in making such settlements (section 2(2)).

Paragraph (3) of section 2 would require the Commission, in proceedings involving joint rates, to consider any evidence challenging carrier fitness and any facts concerning special operational problems in the particular transportation service; paragraph (4), in the event the Commission suspends for investigation a tariff which cancels any through route or joint rate without the consent of all carrier-participants or Commission authorizations, would impose upon the carriers proposing the cancellation the burden of proving it to be consistent with the public interest.

In the present state of the law, motor common carriers of property *may* establish reasonable through routes and joint rates with each other and with common carriers by rail, express and water; once having done so they are required to establish just and reasonable regulations, practices, and divisions of revenue between such carriers. 49 U.S.C. 316(c). Intermodal through route and joint rate arrangements which include motor common carriers subject to Part II probably are not widespread. But S. 2628 would retain the permissive aspect of section 216(c): intermodal arrangements and joint through service via motor common carriers would be voluntary unless the Commission, after full hearing, should require them as being necessary or desirable in the public interest.

Intermodal through routes and joint rates are indispensable to a coordinated national transportation system and to the full realization of the potentialities of modern transportation technology. Generally transportation rates via all the modes are initiated by the carriers themselves in order to develop and promote markets for their services and in response to shipper requests for service. The rates come under the Commission's scrutiny only if challenged by affected parties for unreasonableness or unlawfulness, or if the Commission upon its own motion determines to investigate. The same approach seems appropriate for the establishment of through routes and joint rates via motor common carriers of property. As for intermodal joint arrangements, the duty to establish them in response to a reasonable request might well be imposed upon common carriers by rail, motor, water and express.

This approach would preserve the carriers' initiative in rate making; it would also relieve the Commission of a potentially onerous burden resulting from complaints by shippers and other interested parties seeking investigation and prescription of joint arrangements. Therefore, it might be advantageous, as a basis for improvement of a coordinated transportation system, to substitute the word "shall" for the word "may" in line 6, page 1, of S. 2628, and to substitute the words "and, upon reasonable request therefor," for the word "or" at the beginning of line 1 on page 2 of the bill.

Subject to the foregoing suggestion, we have no objection to favorable consideration of S. 2628 by your Committee.

Sincerely yours,

ROBERT F. KELLER,  
*Deputy Comptroller General of the United States.*

CIVIL AERONAUTICS BOARD,  
*Washington, D.C., May 3, 1972.*

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 Board's views on S. 2628, 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. 2628 was introduced at the request of the Interstate Commerce Commission. The Commission states in the explanatory memorandum accompanying the draft bill which led to the introduction of S. 2628 that although common carriers of property by motor vehicle are permitted to enter into joint-rate arrangements with other such carriers or with common carriers of other modes, they may not be required, like common carriers by rail, express and water subject to the Commission's jurisdiction, to enter into such arrangements. Nor, may common carriers of other modes be required to establish through routes and joint rates with motor carriers. The Commission states that the legislation is designed to close this gap in existing law.

The bill does not affect the functions and activities of the Board. The Board does not, therefore, have any comments to offer with respect to S. 2628.

Sincerely,

SECOR D. BROWNE, *Chairman.*

Senator BEALL. So, Commissioner Stafford, we would like to hear from you and your advocacy of this legislation.

**STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY FRITZ R. KAHN, GENERAL COUNSEL**

Mr. STAFFORD. Mr. Chairman, I have with me this morning my general counsel, Fritz Kahn.

On behalf of the ICC, I wish to thank you for giving me this opportunity to appear before you to testify in support of S. 2628.

The bill, introduced by Chairman Magnuson at our request, would amend the Interstate Commerce Act to enable us to prescribe through routes and joint rates between motor common carriers of property and between such carriers and common carriers of other modes of transportation.

At the risk of oversimplifying the matter, I should like to offer an illustration of the limitations which presently confine our authority, the changes that would be accomplished by the enactment of the bill, and the benefits that would accrue to the shipping public.

Using points within this area, let us assume one trucker is authorized to operate between Baltimore, Md., and Washington, D.C., and another, between Washington and Richmond, Va.

Under the provisions of the Interstate Commerce Act, we presently are without power to require such motor common carriers to cooperate in rendering services to shippers having need of them both; we are without power to oblige such motor common carriers to establish through routes and to offer joint rates on shipments between Baltimore and Richmond.

As a result, shippers using these two truckers between Baltimore and Richmond would have to contact two companies, look up two rates, possibly in two tariffs, issue two shipping orders, make two requests for tracing the shipments in transit, pay two freight bills, and so on. The disadvantages of such dealings are many and obvious.

The bill we recommend for your favorable consideration would remedy this lack of jurisdiction. It would enable us, after hearing and determination that such action is necessary or desirable in the public interest, to order the establishment of through routes and joint rates.

In the illustration I have offered, we would be empowered to order the two truckers to offer a combined service between Baltimore and Richmond, upon a single just and reasonable charge to their shippers.

As a result, the shippers would need to deal with only one carrier, search only one tariff to find the single applicable rate, issue only one shipping order, make only one call to trace a shipment, pay only one freight bill and the like.

In short, the shippers would receive better service and, since joint rates normally are lower than the combination of separately established rates, possibly less expensive service.

I realize that the illustration that I have given may be considered

to be inappropriate. Baltimore and Richmond in fact have several motor common carriers rendering single-line service between them, and, because of the size of these cities and the great volume of traffic that they generate, additional carriers voluntarily have undertaken to offer joint-line operations, as they may under the act.

However, for every city in the United States the size of Baltimore and Richmond, there are hundreds that are only a fraction of their size and yield only a portion of their shipments, and the burden of our lack of jurisdiction falls most heavily upon these.

The smaller, out-of-the-way communities most frequently have been bypassed by the truckers and hence have been most disadvantaged by our inability to order through route and joint-rate service.

Indeed, we believe the authority that the enactment of S. 2628 would give us is essential if we are to cope effectively with what is often referred to as the small shipments problem.

It is the shippers which tender little freight or infrequent shipments who most often find themselves without single-line motor common carrier service or voluntarily offered joint-line service.

It is they, as a result, who most often find that, if they are served at all, the separate operations of connecting carriers are costly and slow.

We have sought to alleviate the small shipments problem by insisting that motor common carriers of freight render service to the full extent of their certificated authority, by prohibiting the cancellation of voluntarily established through routes and joint rates unless the surviving arrangements were shown to be just and reasonable, by granting additional rights to those motor common carriers of freight seeking to enlarge their operations and by authorizing the merger of connecting motor common carriers, but these measures have offered only partial solutions.

We firmly believe that we require the further power that the bill would vest in us if we are to deal adequately with the small shipments problem.

However, S. 2628 is not confined in its coverage to motor common carrier operations. The bill would enable us, after hearing and requisite determination, to order through routes and joint rates between motor common carriers of freight and common carriers of other modes of transportation.

At the present time, for example, we are without power to require railroads to participate with truckers in offering certain piggyback plans to the Nation's shippers; the bill would remedy that deficiency.

In an era of rapidly advancing transportation technology and the certainty that it will facilitate the intermodal movement of freight, it seems to us to be imperative that we have the power to require the establishment of motor-rail or motor-water through routes and joint rates.

In drafting this bill we have followed substantially the phrasing of the pertinent provisions of part I of the act under which we long have been empowered to prescribe through routes and joint rates between railroads and between railroads and water carriers, and that of part II enabling us to require such operations by bus lines.

Moreover, the bill, unlike versions which we offered in prior years, obliges us to consider the fitness of the carrier or carriers before we order the establishment of through routes and joint rates, enables us

to terminate through routes and joint rates if interline settlements of accounts are not timely made and restricts our authority to order through routes and joint rates if the originating motor carrier—or a participant other than a motor carrier—is thereby denied, without its consent, the opportunity to operate over substantially the entire length of its route.

The National Transportation Policy, which the Congress enacted as the preface to the Interstate Commerce Act, requires us to administer the act's provisions to the end of "developing, coordinating and preserving a national transportation system by water, highway, and rail."

That purpose will be better served, and, indeed, can only be effectively served, if we are vested with the power that enactment of S. 2628 would give us—to prescribe through routes and joint rates between motor common carriers of freight and between such carriers and common carriers of other modes of transportation.

There is one technical correction which should be made in the bill. At page 3 on line 8, change 305(e) to 305(c).

Again, I thank you for permitting me to appear on behalf of the ICC in support of this measure.

The general counsel and I will be happy to answer any questions you have.

Senator BEALL. Thank you, Mr. Stafford.

You indicated that shippers would receive lower rates and better service as a result of this legislation.

Mr. STAFFORD. I said normally they would, yes.

Senator BEALL. Why are joint rates lower? Isn't the distance covered the same?

Mr. STAFFORD. That is right. But quite frequently the single-line rates when put together add up to more because of the different charges for handling and things of this kind, but when a single-line rate is put together, these problems have been worked out ahead of time, and normally lower charges are put in for that kind of thing.

Senator BEALL. Why is the service better?

Mr. STAFFORD. Because the participating carriers have already worked out all their arrangements for the through shipment.

Senator BEALL. This relieves the shipper of a lot of paperwork?

Mr. STAFFORD. A great deal of paperwork.

In addition, claims are a big factor. We have been examining loss and damage claims, and just recently came out with some findings on that.

One thing this does, this makes it so that the shipper can go to the carrier, the originating carrier in this case, and he is then responsible for following through on the entire shipment, whereas before, on separate shipments, he had the responsibility only for his part.

Under this, he would have responsibility for any loss or damage.

Senator BEALL. What procedure would be used in establishing the joint rates and through routes?

Mr. STAFFORD. Hopefully, they would do it voluntarily, but if not, then the shipper would bring the case to us, bring it to our attention.

Senator BEALL. So, it is done on a case-by-case basis or a shipper-by-shipper basis?

Mr. STAFFORD. Yes. We prefer it on a case-by-case basis rather

than setting it up where everybody has to immediately agree to these joint rates and through route proposals.

Senator BEALL. Who bears the burden of proof in these cases? Is it up to the shipper to come to the ICC and prove it?

Mr. STAFFORD. Yes, but it is not too difficult a proposal. We have found of late, in the last few years, that we have been exercising a great deal of authority, and that by just following through informally on any matter of this kind, the shipper can get the service he needs. We are going to do that now.

Senator BEALL. How long do you think it would take to get action?

Mr. STAFFORD. A real contested case, under the Administrative Procedure Act, could be carried on for a while, but we feel through persuasion we will be able to hold the time to a minimum.

Senator BEALL. What kind of criteria would the Commission use in establishing whether it is necessary or desirable in the public interest to do something of this sort? Could you give an example of a case?

Mr. KAHN. Certainly the Commission would view similar operations being performed between adjacent communities or on related commodities; so that, if other carriers in the area were able to work out through-route, joint-rate arrangements between nearby communities, we would take that into account in determining whether such arrangements should not be worked out between the affected communities.

Senator BEALL. I notice that the railroads oppose the legislation and that the American Trucking Association particularly supports the intermodal features of the legislation.

As a matter of fact, I would like to insert in the record at this point a letter from the American Trucking Association relative to that matter.

(The letter follows:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
Washington, D.C., May 3, 1972.

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

DEAR MR. CHAIRMAN: This communication deals with S. 2628, the through route-joint rate bill introduced at the request of the Interstate Commerce Commission, on which hearings are to be held May 4 by the Subcommittee on Surface Transportation.

The American Trucking Associations supports enactment of this legislation in its present form.

For some years, ATA, on behalf of the organized trucking industry, has supported the objectives of this type of legislation in the interest of promoting and achieving greater coordination between carriers, particularly between carriers of the different modes.

Through route and joint rate arrangements among motor carriers are already in widespread use throughout the motor carrier industry. This coordination has been a fundamental factor in the ability of the trucking industry to provide reliable, efficient and economical service between all points in the country.

This development, in turn, we believe, has been a major contributing factor in the economic growth enjoyed by every section of the country and in providing the pervasive supply and distribution system which has turned the entire nation into a single market place.

There is every reason to believe the nation's shippers and consumers would be further benefited if the same degree of coordinated transportation service were developed between motor carriers, railroads and water carriers.

The proposed legislation not only would encourage greater coordinated service

by establishing workable ground rules for such arrangements but would authorize the Interstate Commerce Commission to require carriers to join in through route-joint rate operations when it determined such arrangements to be "necessary or desirable after full hearing upon complaint or upon its own initiative."

Although not in exactly the same language, S. 2628 seems to incorporate safeguards which we believe should be included in any through route-joint rate legislation. These are the safeguards which were incorporated in S. 3626 introduced by Senator Moss in the second session of the 91st Congress.

In addition, the present bill does not contain the highly objectionable proposal that the Interstate Commerce Commission be empowered to order temporary through route-joint rate arrangements.

We should like to take this opportunity to commend the Interstate Commerce Commission for modifying their proposal in such a manner to make the proposed legislation workable and fair. In addition, these changes protect the interest of the carriers, the shippers and the public.

S. 2628, as written, has the full support of the trucking industry and we urge its enactment. Our support is predicated on the changes which the Commission made remaining in the bill. We also believe that for the legislation to be effective, the intermodal provisions contained in S. 2628 should remain.

We would appreciate consideration of our views on this subject and ask that these comments be made a part of the official record.

Sincerely,

W. A. BRESNAHAN,  
*President.*

Mr. STAFFORD. As said in your first statement, there has been considerable history made.

Senator BEALL. What kind of problems are solved if you have this legislation affecting intermodal transportation? What need is there for intermodal joint rates and through routes?

Mr. STAFFORD. The Congress has asked us to see that we have an integrated system of transportation in this country. We feel, in order to make this an integrated system, that working out these intermodal arrangements, not only intramodal but intermodal is necessary and will bring about the congressional intent which we have been pursuing through the years.

Senator BEALL. The railroads, though, mainly transport carload shipments, don't they?

Mr. STAFFORD. That is true. They have pretty well cut out their less than carload shipments through their tariff publications.

Mr. KAHN. I would point out, Senator, that the greatest advantage would be in the handling of containerized shipments, the so-called piggyback plans. The authority we seek would permit us to order a greater use of plan V and perhaps plan I piggyback transportation, a matter that we cannot deal with now.

We are totally dependent upon the voluntary arrangements worked out between truckers and the railroads for those two particular piggyback plans.

Senator BEALL. What do you think of the railroad opposition? Do you have any comment to make on that?

Mr. KAHN. We think that the railroad's opposition may be overstated. Certainly, the railroads have been subject to having through routes and joint rates prescribed with water carriers for a number of years, and that authority which the Commission has had certainly has not been invoked frequently, and it certainly has not been invoked to the disadvantage of the railroads.

We suspect that their concerns about rail-motor through routes and joint rates may be somewhat overstated.

Senator BEALL. You mentioned plan V a minute ago.

Would you enlighten the committee as to what plan V is?

Mr. KAHN. Plan V piggyback is an arrangement whereby a railroad would take the freight, let us say, from Baltimore to Washington and then a trucker would take that same container beyond, as, for example, from Washington to Richmond, under a joint line arrangement—under a through route-joint rate arrangement.

Senator BEALL. You mentioned the small shipment problem. Is it the small shipper that really suffers generally as a result of the lack of through service?

Mr. STAFFORD. Not altogether. Actually, the small shipment is sometimes a bit of a misnomer. A small shipment can sometimes be a 5,000-pound article, for instance. Actually, this gets even broader than that. It encompasses a whole range of what is termed less than desirable traffic or totally undesirable traffic that the carriers may have, that they would rather not have.

It is hard-to-handle items, or things that do not fit in easily with their mechanized loading and unloading operations. These kinds of things are all involved in creating problems for joint line and through route business.

Senator BEALL. Our distinguished chairman is with us. I want to change the subject matter just briefly, if I might, Mr. Chairman, from this legislation, because the chairman and I had some correspondence the other day which eventually appeared in the newspapers relating to the Fruehauf Corp. and a loan that was made to the Admiral Trucking Corp., which eventually got into the hands of the Washington Senators.

I am wondering if you might want to comment a little bit about that correspondence that we had and how you react to the fact that a trucking company gets a loan for equipment and eventually the million dollars gets into the hands of a baseball company to run a baseball team.

Mr. STAFFORD. I will say it got the biggest headline we ever got.

However, in my judgment, and I base my reply to you on basically my judgment, this thing was through, finished, and the return payment made, and the likelihood that court action could not be taken on it, this was the basis for my determination to you.

Senator BEALL. I am not questioning that. I understand that the money was paid back. But what really disturbs me is the fact that someone who really operates under a franchise given through a regulatory commission of the Government—who is supposed to be operating in the public interest as a result of receiving this franchise—can go to a supplier and get almost \$2 million ostensibly to improve service to the public and rather than do this, can divert these funds to another part of the conglomerate activity for a purpose that is totally unrelated to the matter for which the loan was obtained.

I am not being critical. I am wondering what kind of action is necessary from the Congress to make sure that the intent of the law is followed in cases of this sort.

Mr. STAFFORD. I think you have hit the crux of it there when you talk about these conglomerates, the use of the moneys for purposes other than transportation.

This is basically the reason that we have filed or requested legislation from the Congress to give us authority in this area and hopefully we will get consideration on that.

Senator BEALL. In other words, in a situation such as this, you feel that you need more legislative authority before you can take action. Is that what you are saying?

Mr. STAFFORD. Yes, sir.

Senator BEALL. Even though it appears that it is a clear violation of the intent of the lending authority or the intent of serving the public interest?

Mr. STAFFORD. I had better let my general counsel talk about the intent.

Mr. KAHN. Certainly, the Commission has been gravely concerned that transportation properties and funds can be diverted by carriers to nontransportation activities. The Commission is powerless to do very much about that. We have recommended to the Congress the enactment of legislation, and we are hopeful that that legislation will be heard.

Senator BEALL. Do you think there is an obligation on the part of the Commission to make public that this is taking place? Even though you don't have any legal rack on which to hang your hat, do you think the Commission has an obligation to publicize proceedings of this sort so the public can react adversely, if necessary, in order to stop something from taking place even though there is no legal basis to prevent it?

Mr. STAFFORD. I guess it depends on what a man's philosophy is. If what he is doing is not illegal by law, then should the Government bring such matters to the attention of the public in order to try to bring pressure upon the Congress to do something?

Having been around here a while, I have never quite agreed with that philosophy, but we did bring several instances to the attention of the Congress of such mishandling—it is not mishandling by law, but of great concern to the Commission.

We have brought these to the attention of the Congress in some studies that we had in various railroad cases. There will be others. In some of our cases that we have going now, there will be a number of instances publicized.

As I say, I have been a little slow about publishing matters that were not illegal by law, merely to create what may be some public concern. Naturally, on the other side of it, all the stockholders out there are going to say maybe this is good, this is helping the stockholders' returns, took although we have no direct concern about stockholder interest.

Senator BEALL. You are concerned primarily with the public interest?

Mr. STAFFORD. That is right.

Mr. KAHN. I might add, Senator Beall, of course, these transactions do not come to the Commission's attention in any routine or formal way.

The Commission in those instances would be dependent upon reading of these transactions in the papers very much as you would be. To use an example, the investments that the Penn Central made did not come to the Commission's attention in any formal way at all. We learned about them through the press.

Senator BEALL. In this case, of course, I wrote the Commission last October about this matter, indicating that perhaps it was something you might want to look into, because a baseball team was leaving

Washington for various reasons and it appeared to me that there might be some reason to suspect that there had been some diversion of funds that would be of interest to the Commission. Maybe that is informal.

Mr. STAFFORD. Of course, I had no previous knowledge. It is possible that others may have. I didn't have any knowledge.

Senator BEALL. It wasn't a matter of published fact until this April. My letter was written last October.

I have no further questions.

Senator HARTKE. I have gone over most of your testimony.

One area which is not covered is joint rates with air. Is that coming? I am not saying in this legislation.

Mr. STAFFORD. Actually, we have granted some authorities to air freight forwarders which I think is pretty well going to solve the problems.

The biggest thing that the air needs is quick ground service to still give air the kind of inherent advantage that it has.

We gave certain blanket authorities in this area.

Mr. KAHN. There is another factor, Mr. Chairman. You will recall the Interstate Commerce Act exempts truck transportation that is incidental to air transportation. Normally, we would not entertain through route-joint rate arrangements between exempt truckers and certificated carriers, such as the air carriers would be.

We have had no problems brought to our attention.

Senator HARTKE. No problems?

Mr. KAHN. No, sir.

Senator HARTKE. If we have no problems, let's not create new ones. We have enough problems with the ones we have got without creating new problems.

Mr. STAFFORD. True.

Senator HARTKE. How does S. 2628 compare with other provisions of the Interstate Commerce Act on joint rates and through routes?

Mr. KAHN. The language of S. 2628 was drawn substantially from part I under which the Interstate Commerce Commission long has had the power to prescribe through routes and joint rates between railroads or between railroads and water carriers and also that part II which enables the Commission to establish through routes and joint rates for the bus lines.

The provisions are substantially similar, Mr. Chairman.

Senator HARTKE. But there is a difference.

What are you doing, reaching for a compromise?

Mr. KAHN. We attempted to allay some of the fears expressed by opponents in the years past.

Senator HARTKE. What I am trying to find out, what is the rationale for the compromise other than the fact that you want to get some legislation passed and the legislation didn't pass the last time?

Mr. KAHN. In years past, Mr. Chairman, the testimony of the Commission indicated that it was flexible on some of the provisions which now have been incorporated in the legislation.

For example, the Commission never had any doubt that it was desirable to consider the financial fitness of the participants before ordering through routes and joint rates.

We now have made that clear by including that as an express provision in the draft legislation.

Mr. STAFFORD. Too, doing it on a case-by-case basis, rather than just blanket, saying everybody has to do it.

Senator HARTKE. Senator Beall?

Senator BEALL. Back to the point of the timeliness of the decision to be rendered in these cases, you said there shouldn't be much time lag—I don't know your exact words, but all of this is relative, of course.

It has been pointed out to me just now that *Ex parte No. 261* was instituted on July 31, 1969, and it was not decided until September 4, 1970. Is this a normal proceeding?

Mr. STAFFORD. No; this is not a normal proceeding, Senator. By far, it is not.

In the first place, you are dealing between agencies.

But what we are talking about in our legislation, this is all within our own control, not only will we be able to expedite it, I think that once we have the authority or the right to say you have to do it, that there will be a lot of willingness to do it without ever coming to us to thrash out a problem.

Senator BEALL. But once the problem comes, it won't take a year, it won't take 6 months?

Mr. STAFFORD. Oh, no.

Senator BEALL. It will be a matter of weeks?

Mr. STAFFORD. Well, we have got to try to meet that if we can.

Mr. KAHN. We anticipate that many of these can be resolved on the submission of written statements, which we term modified procedure, and we should be able to dispose of these within about 3 months' time.

Senator BEALL. Three months?

Mr. KAHN. Yes, sir.

Mr. STAFFORD. My lawyer understands things better than I, not being a lawyer.

Senator BEALL. I have the same difficulty with lawyers.

Mr. KAHN. *Ex parte No. 261* affords a very poor example of our procedures, because that involved the most delicate questions of accommodation between ourselves and the Federal Maritime Commission.

Senator BEALL. Thank you.

Senator HARTKE. Mr. Chairman, do you think this will solve the problem of the small shipper?

Mr. STAFFORD. I don't think it will solve all the problems of the small shipper but I think it will solve a major part of them, yes, sir.

Senator HARTKE. How much of a reduction in complaints do you anticipate as a result of this legislation?

Mr. STAFFORD. That is a little hard to say how much to expect.

Senator HARTKE. It may be hard to say, but—

Mr. STAFFORD. I think it is not beyond the realm of hope that it will be at least cut in half.

Senator HARTKE. Isn't that the primary purpose of the bill?

Mr. STAFFORD. Yes, sir. That is the primary purpose of the bill, to see that we get better service, more expedited and hopefully cheaper service.

Senator HARTKE. And not to have excessive rates for the small shipper?

Mr. STAFFORD. That is true.

Senator HARTKE. All right. Thank you.

Mr. Cline Mundy, president, and A. J. Abernathy, legislative com-

mittee chairman, the Local & Short Haul Carriers National Conference of the American Trucking Associations, Inc.

**STATEMENT OF CLINE MUNDY, PRESIDENT, LOCAL AND SHORT HAUL CARRIERS NATIONAL CONFERENCE; ACCOMPANIED BY A. J. ABERNATHY, LEGISLATIVE COMMITTEE CHAIRMAN**

Mr. MUNDY. My name is Cline Mundy. I am president of the Local & Short Haul Carriers National Conference of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. I am also president of General Motor Lines, Roanoke, Va. My trucking industry experience spans some 36 years and my involvement with this conference dates from 1960.

The gentleman with me today—who is also representing the conference and whose statement will follow mine—is Andrew J. Abernathy of Atlanta, Ga., Andy will provide more detailed information about himself and the other carriers with which he is familiar.

The conference is extremely pleased to have this opportunity to present orally, our views in support of the subject legislation proposed by the ICC. We are appreciative that hearings have been scheduled and the conference extended an invitation to testify.

The Local & Short Haul Carriers National Conference is a trade association, an official affiliate of American Trucking Associations, Inc. The conference represents the national interests of for-hire local cartage and short-haul motor common carriers of property that operate by authority of certificates of public convenience and necessity issued either by the ICC or by the proper State public utility commission, which certificates have been registered with the ICC.

The conference also represents motor carriers of property which operate solely intrastate or within commercial zones of a municipality and which do not come under Federal economic regulation by the ICC. The conference is the only national organization dedicated solely to the interests of the local and short haul carrier.

The size and composition of this segment of the trucking industry are difficult to set forth because of the lack of any definitive study on the subject.

The conference is, however, presently undertaking a research project which we hope, will provide more detailed information about the local cartage short-haul carrier role in motor transportation.

So far we have current data on number of trucks and miles traveled. These reveal that of the estimated 817,000 for-hire trucks registered in 1971, local and short-haul vehicles accounted for 77 percent of the total—or about 632,000 vehicles. They also account for a majority—52.8 percent—of all for-hire truck miles traveled.

The number of motor carriers regulated by the ICC totals approximately 15,100. ICC classifications of motor vehicle operations are limited to class I, class II, and class III motor carriers: common carrier, contract carrier, unclassified, intercity or local cartage. The reporting standards do not differentiate between short haul and long haul intercity carrier operations. Hence, at this time we do not know how many of the 15,100 are short haul carriers.

Statistics prepared by American Trucking Associations, Inc., show there are about 432 local cartage carriers (class I and II) under the ICC's regulation as of the first quarter of 1971. There is no way,

using published Commission reports, feasibly to determine the number of class III local carriers. If class III carriers can be represented in the same proportion as classes I and II carriers, then it can be argued that there are about 1,900 local cartage carriers. This figure, as unrealistically low as it may be, indicates that the great volume of regulated local cartagemen have gross annual revenues of less than \$300,000.

The Statistical Abstract of the United States, 1969, notes that in 1963 (the most recent year for which figures are available) there were nearly 43,000 local and non-ICC-regulated carriers with average annual operating revenues of \$53,000. These carriers represented 74 percent of all for-hire motor carriers.

The conference's current research project is bringing to light some rather significant data. For example, in 1967 almost 27 percent of the 1.4 billion tons of goods shipped by U.S. manufacturers was carried on for-hire trucks. Over 40 percent of this tonnage was shipped less than 200 miles, and here, for-hire carriage represented three-eighths of the total.

A little quick mathematics indicates that these local and short haul movements of manufactured goods accounted for almost 18 million loads in that year or about 69,000 loads per working day. Actually, two-thirds of these movements covered less than 100 miles. Now this is just movements from point of manufacture. When movements of food products and transportation in and out of wholesale and retail distribution centers are added—not to mention retail deliveries—these figures should be at least tripled.

Mr. Chairman, by presentation of these brief statistics, I hope I have given the subcommittee an idea of the size of the local and short haul segment of the trucking industry.

The overwhelming majority of these carriers are small family-owned businesses with annual revenues under \$4 million. Most derive all or a significant part of their revenues from inter-lining freight with long haul motor carriers, railroads, freight forwarders, private carriers, airlines, and water carriers.

Local and short haul carriers serve an extremely vital transportation function in the pickup and delivery of freight not only in the densely populated urban areas but also in the small communities and towns in rural areas.

There are many rural areas that are served by only one small interstate carrier, because of a lack of freight volume. Where the one interstate carrier is unable to obtain through routes and joint rates with carriers beyond his line (which may be the long line or a short line carrier), these small communities are handicapped—because of higher combination rates due to lack of through rates—in attracting and holding economy-building industry.

Assembly and distribution of freight, which we tout as "the first and final phase of all transportation," is essential to the well being of any given urban or rural community.

To the local and short haul carrier, it is his life's blood.

For years local and short haul motor carriage has been more or less taken for granted by both shippers and by the general public. Like milk delivery and trash collection, it has usually been there when needed. And like these other essential public services, it has grown with our economy and with our demands for an ever-increasing

standard of living. Seven out of 10 persons in this country live in an urban area. They depend almost exclusively upon truck service for their food and clothing, and in fact for all the amenities of modern life. Survival of the local and short haul carrier is therefore in their, the public's, interest.

Mr. Chairman, as you well know, this is not the first time this subcommittee has held hearings on through routes-joint rates legislation. The matter has seriously been considered by Congress since at least 1967. The previous record of hearings has, I believe, amply documented both the vital need for through routes and joint rates and the "pick and choose" tactics—skimming off only the more lucrative freight and leaving the less or unprofitable freight for others—of some motor common carriers. The latter was a primary factor which brought about the need for remedial legislation.

The means by which this discriminatory selection of freight, flying in the face of ICC certificate requirements, is accomplished by certain carriers are numerous: refusal to concur with interlining carriers, inequitable revenue divisions, reduction of interline receiving hours, two line restrictions, and tariff restrictions, to name a few.

This subcommittee has heard so much about the "small shipments problem" in recent years that by now the words must be exactly synonymous with "headache." Yet it is an undeniable fact that the pick and choose trend in the trucking industry to which I have referred and the lack of statutory authority by the ICC to require through routes and joint rates have been the primary causes of the problem.

When the short line railroads years ago, had difficulty in receiving adequate revenues from their long line railroad connection, the ICC, which had authority to set equitable divisions between railroads and which had authority to require through routes and joint rates between them where needed, acted to do so.

Even though under motor carrier section of the Interstate Commerce Act, the ICC has authority to set revenue divisions between motor carriers, it is unable to enforce them as it did in the case of the railroads because of a lack of authority to require through routes and joint rates where needed.

Local and short haul carriers are far too frequently suffering from inequitable divisions of interline revenues with their connecting motor carriers. The local and short haul carrier needs protected divisions and S. 2628 would give him that.

This conference participated in hearings on similar bills during the 90th and 91st Congresses. I invite the subcommittee to review, where pertinent, our previous statements.

What is different about the hearings this time, I understand, is that unlike the previous proposals, S. 2628 has the substantial approval and support of both the long haul and the local cartage-short haul carriers, as well as the trucking industry in general. They are in agreement on this bill.

Mr. Chairman, the local and short haul carrier, in spite of the mammoth transportation function he performs, is not an economic giant. His existence is precarious and particularly vulnerable to changes in the transportation regulatory structure and the national economic trends. He does not have vast reserves of capital to keep him in business while he finds new customers after his interline business has been cut off or curtailed.

The highest costs of performing truck transportation services—involving pickup and delivery of freight—are in his type of operation. Labor costs are the cost for him, because of multiple handlings of freight. His revenues must cover full costs.

And, Mr. Chairman, we know from recent history that local and short haul carriers can indeed cease to exist. In a February 1971 article, for example, the Wall Street Journal estimated that over 700 companies had folded or merged. This must have had a significant impact on the areas they had been serving.

The existence of short line motor carriers is essential to the well-being of thousands of small communities throughout the Nation dependent entirely upon them for adequate service. This is the public interest aspect of this legislation.

The ICC has long sought this legislation as one way of providing immediate relief for some of the Nation's transportation ills. Now that the trucking industry is behind one bill, we hope for its favorable consideration.

Enactment of S. 2628 would go a long way toward alleviating some of the difficulties which currently exist in the Nation's transportation system, certainly in our view a great deal more than the Department of Transportation's comprehensive transportation reform legislation this committee is currently considering. The DOT bill, S. 2842, would worsen our situation and the small shipments problem in that, under the free entry provisions of the proposal, carriers would be unrestricted in selecting not only the most profitable freight but also the most profitable communities to serve. Also, without collective rate-making there would make a great difference between single line and joint line rates.

Enactment of this legislation will go far toward: lending economic stability to a significant segment of the trucking industry; insuring the inherent right of all communities to adequate distribution services; removing an existing penalty to small shippers and communities.

I will be glad to answer any questions now, or after Mr. Abernathy finishes his statement.

MR. ABERNATHY. My name is Andrew J. Abernathy. I am a member and director of the Local & Short Haul Carriers National Conference of the American Trucking Associations, Washington, D.C., I am also chairman of the conference's legislative committee, and president of Perkins Freight Lines, Inc., 140 Milton Avenue SE., Atlanta, Ga. I am testifying today in support of S. 2628, because enactment of this bill is necessary for the survival of the short haul carrier.

First, I would like to point out the definition of a short haul motor carrier. Some companies prefer to be called distribution carriers or feeder lines. It is my opinion that short haul carriers are those who operate under authority of the ICC, having absolutely no tariff restrictions at all, offering a complete service to all customers and shippers alike.

They connect with all connecting long line interstate carriers. They work with all surface freight forwarders by rail or truck. Also, they do business with air freight carriers, the regular and nonscheduled airlines, and also with piggyback carriers.

It is most important and vital that Members of Congress understand that the short haul carrier must have a share of the long haul or through revenue on both the less than truck-load shipments and the trailer load or volume shipments. We cannot survive on combination rates that we are unable to collect, or unable to get approved, as all combination of rates now must move on a freight prepaid basis.

Although the short haul carrier moves the freight a relatively short distance, he must by virtue of the multiple freight handling nature of his operations secure a fair division of the entire revenue from origin to destination. At this point, I would like to invoke the findings of the ICC's report of the Ad Hoc Committee of the ICC Small Shipments Problem, dated November 30, 1967; also, Statement No. 67-2 of the ICC Bureau of Economics entitled, "The Role of Regulated Motor Carriers in the Handling of Small Shipments."

Since these two studies were published by the Commission, much sincere and diligent effort has gone into the solution of the problems as outlined *but the problems are still with us*. We believe the real reasons for the two line restrictions are:

(1) The short haul traffic and minimum shipments do not pay their fair share of the cost of the service.

(2) Percentage increases, when granted through the rate bureaus by the ICC, reflect added revenues for long haul carriers and do not help the short haul carriers, particularly on two- and three-line traffic where two or more carriers have to share in the through movement.

(3) The tendency of the ICC and the Price Commission not to allow rate increases to offset inflated labor costs and increases in other inflationary cost items tends to keep rates below the cost of the service.

(4) The common carriers are fighting among themselves over the division of the revenue and the shorter the haul, the rougher the fight. The large carriers refuse to handle the freight or even participate in the fight. They are refusing to handle the freight through tariff restrictions.

In these two reports, the Commission said that if it had the authority to regulate through routes and joint rates, it could alleviate many of the difficulties being experienced by short haul carriers and little shippers and isolated communities.

Although the Commission has admitted to limited powers with respect to through routes and joint rates, it has tried to bring relief in No. 34815, *National Furniture Traffic Conference v. Associated Truck*, 332 ICC 802. This relieved unlawful restrictions on furniture while interchanging and maintaining through routes and joint rates on other commodities.

The rulemaking procedure *Ex parte No. MC-77*, Restrictions on Service by Motor Common Carriers, 111 MCC 151, was an effort to alleviate the situation whereby carriers were limiting their services to less than that outlined in their certificates of public convenience and necessity.

The Commission, through various reporting standards, suspensions and investigations, has attempted with little or no success, to prevent and slow down the long haul carriers from publishing two line restrictions. The motor carriers are still able to close through routes and joint rates as long as such restrictions do not apply to selected commodities. The Commission has attempted to prevent carriers from picking and choosing their freight, or selectively soliciting freight

while discouraging other light and cheaper rated freight by conditioning the grant of new authority.

For example, see *Campbell Sixty-Six Express, Ext. Atlanta*, 108 MCC 80. This carrier was required to make periodic performance reports for up to 3 years to prove that it was serving all its customers indiscriminately. This same carrier, after getting its authority into Atlanta, canceled its participation in practically all commodity column rates in the South and put in two line restrictions in the South and Southwest.

The various Commissioners have conducted meetings with the carriers in different sections of the country, and have used their good offices to persuade carriers to cooperate and maintain through routes and joint rates. These meetings, while beneficial, have brought only temporary relief.

I have outlined only a few, not all, of the sincere attempts the Commission has made to help the small shipper, small community and small carrier. The Commission has done its part and now needs the support of Congress by passage of this much needed legislation.

The situation has grown worse day by day since 2 years ago, May 7, 1970, when this conference testified before this Senate subcommittee. Many additional two line restrictions have gone into effect. The short haul carriers from Atlanta, Ga., have only one line left that will protect through routes and joint rates on three line traffic into the southwest territory and that line has now been sold to another long line carrier and is awaiting approval by the ICC.

The Georgia Chapter of the Local and Short Haul Carriers National Conference, and others, have sought through ICC procedure and legal process, to preserve through routes and joint rates within southern territory. I can refer specifically to the case of *T.I.M.E.-DC, Inc. v. United States of America and ICC*, Civil Action No. CA-5-942, U.S. District Court for the Northern District of Texas, Lubbock Division.

While we have been participating in this proceeding, the long line carriers have been getting their houses in order by publishing two line restrictions into other territories; viz, Midwest, Southeast, Southwest, and other territories. It is impossible for small carriers, with their limited resources and talent, to oppose and protest every rate restriction forced upon them, even if they know they should.

The short haul carrier has a place in our transportation system and offers a complete service to its customers and territory by all modes who will do business with him. The short haul carrier must be able to tender freight to some long haul carrier to every point in the United States without restriction. His rates must be competitive with the long haul carrier if he is to survive in the marketplace.

If Congress will enact this legislation, the small feeder lines will continue to serve without penalty the little shipper and the small rural communities that are not located on the Interstate Highway System. This will help prevent the rapid migration of people to the large metropolitan areas, and help keep industry and small factories decentralized.

The lack of through routes and joint rates is forcing a terrific growth in private carriage, contract carriage and leasing arrangements. All of these are putting many more unnecessary trucks onto our already congested highways, thus compounding the Nation's many environmental and ecological problems.

These mentioned private, contract and lease carriers come to the local and short haul carrier to do their assembly and distribution work in the large metropolitan areas, thus promoting and encouraging an even more fragmented motor carrier industry. If this trend is not slowed, it will become even more difficult to price a through transportation service.

In conclusion—we urge this subcommittee to support the ICC and favorably report out S. 2628 as soon as possible.

Thank you.

Senator HARTKE. Are you satisfied with the provisions of this bill?

Mr. ABERNATHY. Not 100 percent, sir, really.

Senator HARTKE. Ninety-nine percent, 96, or 38?

Mr. ABERNATHY. I would say 75 percent.

Senator HARTKE. What is it that you object to?

Mr. ABERNATHY. Really, we have no objection to working with the railroads and the water carriers. We look forward to the opportunity. Our trouble is with the motor carriers. It is that simple.

Senator HARTKE. The railroads sort of object to the bill. Do you want to take the railroads out?

Mr. ABERNATHY. It will suit me. I will support it as it is. But I would support it if it is just between the trucks.

Mr. MUNDY. I might say this, as far as I know, we have had no complaints from our members about concurrence with railroads. Our main problem at present is, I think, motor carrier connections.

Also, some short haul carriers are guilty too, in not concurring with long haul carriers. It is not entirely a short haul carrier problem. It is the long haul carrier's problem, too.

Senator HARTKE. What is a two line restriction?

Mr. MUNDY. A two line restriction could involve a shipment going from Atlanta to California. A carrier picks it up in Georgia, checks it in Atlanta; another carrier takes it to Indiana; and another to California. It is a three-line shipment. The restricting carrier refuses to participate in any three line shipment.

So the carrier in some small town in Virginia or Georgia would not be able to reach a California town with through rates.

Senator BEALL. Somewhere in your statement, you indicated there was substantial agreement among your members as to this legislation. Does that indicate there is some disagreement among your members also?

Mr. MUNDY. I would say this. Naturally, we must have some agreement; we cannot fight each other the rest of our lives. It is a bill that we feel all of us can live with.

Senator BEALL. So, you are about 75 percent, too?

Mr. MUNDY. I am 100 percent for it right now if it will go through.

Mr. ABERNATHY. I am 100 percent for the bill. But it certainly would not answer all the problems.

Mr. MUNDY. It will be a start.

Mr. ABERNATHY. The Commission has said they are helpless without it.

Senator HARTKE. They cannot help you now. Are you losing out to the private carriers now and the contract carriers?

Mr. ABERNATHY. Some; yes, sir.

Senator HARTKE. Is that a serious problem?

Mr. ABERNATHY. It is a serious problem.

Senator HARTKE. I thank you.

Mr. John Cleary, representing the National Industrial Traffic League.

**STATEMENT OF JOHN CLEARY, REPRESENTING THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY JAMES E. BARTLEY, ASSISTANT GENERAL MANAGER**

Mr. CLEARY. Mr. Chairman, I have with me today Mr. James Bartley, the assistant general manager of the National Industrial Traffic League. I would like to first state that on behalf of the National Industrial Traffic League, I wish to thank you for the opportunity to present our position in support of S. 2628.

The National Industrial Traffic 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 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.

This bill is specifically described as a bill: "To authorize the ICC 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 S. 2628.

I might interject here: Our statement in supporting this bill is very similar to our statement supporting a similar bill back in 1970 and a statement supporting a bill that was back in 1967. So, the league has strongly supported the ICC's efforts to obtain this type of legislation which they feel they need and we agree they need to help meet the problems of the small shipments and the small shipper, particularly in out-of-the-way points.

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 ICC 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 ICC to require the establishment of through routes and joint rates between various modes of transportation."

I would like to state that at the annual meeting of the league in November, the membership voted—I think it was unanimously—to support this specific legislation. Our transportation system has reached a stage in its evolution where, in appropriate cases, the ICC 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 ICC.

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 ICC 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 ICC control withdraw 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.

I here refer to the Commission's power to prevent the termination of joint rates once established where the Commission found that to do so would cause discrimination and therefore would be an unreasonable practice. I would like to advert to the case that was mentioned in the previous testimony. It was the National Furniture Traffic Association case that was cited by the previous witness. I would like to inject at this point that that case in my opinion is an example of what the Commission can do with some of its existing legislation when it sees a problem and looks through its laws and tries to find a solution. They found it in that case. Many people had said they had reached beyond the power of the law, beyond the clear language of the law, but their position was upheld in the courts, including the Supreme Court. It shows what a little creative use of their laws can do.

But I think again on this legislation, this is needed legislation. Continuing with my prepared statement, 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 carriers 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 the bill 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, or lest they be required to short-haul themselves such problems are met and specifically dealt with in S. 2628.

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.

I will be glad to try to answer any questions you might have.

Senator HARTKE. You state you support the principles of the bill. Are you for the bill itself?

Mr. CLEARY. We are for the bill itself. The membership voted for the bill at its annual meeting.

Senator HARTKE. Do you have any suggestions for strengthening it?

Mr. CLEARY. The previous legislation had the power for the Commission to act in an emergency situation pending completion of investigation. That is not in this bill. But the membership recognized the practical element that was an aspect of the bill that engendered substantial opposition. We can understand why perhaps they would be opposed. We think that this bill is a good bill and if it is passed it should go a very long way to assisting one of the solutions to the small shipment problem, particularly the problem faced by the shipper who is in the area not served by a number of different carriers, the out-of-the-way community.

Therefore, we fully support this legislation.

Senator HARTKE. The burden of proof under the bill is put on the individual or the group seeking the joint rate, isn't that true?

Mr. CLEARY. I presume that this legislative history may be quoted against me someday. I would assume that he would have the obligation to go forward and show, number one, he does not have the joint rates and he has a need for them. At that point, I would think it should be the burden of the carriers who resist. The burden should shift to them to demonstrate why they have refused to grant joint rates and through routes which should not be not abnormal conditions.

In other words, the burden of the shipper or the commission seeking to impose—the bill contemplates action by the Commission on its own motion also—once they show that there is a need for a joint rate and through route, that there is traffic that needs to move under it and there are benefits and there are definitely inherent benefits in the economy of the operation as well as the simplification of the paper work, which is lessening the burden on the public, but there are efficiencies and economies we believe to the carriers themselves in having these interline arrangements, once the need for this arrange-

ment is demonstrated, I would think that the burden would shift to the carriers to demonstrate and prove why they should not enter it.

I would say, for example, any defenses that they would have against joining with a particular carrier at that point should be their defenses and affirmatively burdened on them.

Senator HARTKE. Senator Beall?

Senator BEALL. Mr. Cleary, you indicated in your testimony and Chairman Stafford indicated in his that the mere existence of this legislation on the books would be a strong inducement to bring about the establishment of these through routes and joint rates. Is this wishful thinking?

Mr. CLEARY. I think that is helpful. I always hope for the idea of getting one precedent case. Then reasonable men will come to agreement. While being a lawyer, the objective is not litigation. People don't like to litigate and I don't like to encourage it. I would hope once this statute is there and you have people who have a need for it, for the relief contemplated, that reasonable men would recognize the power and they would become more amenable to settling it.

Senator BEALL. On another subject, you heard me question Mr. Stafford earlier about the loan that was given to the Admiral Corp. by the Fruehauf Trailer Co., and your name was mentioned in the Evening Star article. I appreciate your interest in this matter and I am going to take advantage of your presence and expertise in this area. Would you like to comment on the previous answers to my questions? Would you like to comment also on the possibility that maybe there was a violation of the antitrust laws in this situation?

Mr. CLEARY. I would welcome the opportunity but I think I had better say right off the bat at this point, I am on my own, so to speak. I have had a long and very happy relationship with the National Industrial Traffic League, which I presume will continue. But this certainly is not to be attributed to the league, my attitude in this area.

As to my interest in the problem, although I am a baseball fan—the letter I wrote to Commissioner Kuhn back on September 24 indicated that; I sent copies of that letter to the ICC on September 24—my concern goes to basically the problem of regulated carriers and the use of their assets, and secondarily, what law do we have, what laws do we need. I saw in the situation—as a matter of fact, going back through some files, I found notes that I had made on Admiral Merchants Motor Freight back in 1968 and prior because they were a carrier in one of the regions where we get involved with some general increases. It had been a concern of mine since 1965 when I first got into motor carrier rate cases, the effect of transactions between the regulated carriers and affiliated companies in the acquisition of property, the leasing of property, payments back and forth.

We have seen many examples. Commissioner Stafford referred to the fact that there are reports that started—when they started looking at the railroad situation, they uncovered a number and they are still uncovering them. I have been asking for this type of information in motor carrier cases starting in 1965. I started asking for it in railroad cases in 1968.

I still say that had the information been developed and looked at and looked at in view of laws that I think can be used to reach some of the problems, we would have headed off a lot of the problems we have today. I feel this personally, and I think there is statutory authority.

I have asked—I am sorry that Mr. Fritz Kahn is not here at the moment, no, he hasn't come back—I have asked the Commission for a number of years had there been any legal opinion within the ICC or had they made an attempt to deal with these transactions between carriers and related companies, particularly where there is an interlocking officer or director, had they attempted such suits and been told by a court or had they come to a legal conclusion on a legal memorandum that they had no authority to act under section 10 of the Clayton Act.

This was a section of the law that was passed back in 1914, took effect in 1920. The language, I can almost quote it verbatim because I have looked at it so much, prohibits any dealings—a very broad phrase, the word “dealings”—it prohibits any dealings between common carriers and other persons where there are interlocking officers or directors or other substantial interests. There have been a very few cases ever brought under this section.

There was a case that went to the Supreme Court involving Boston and Maine dealing with the activities of Mr. McGinnis. Mr. McGinnis was ultimately convicted under section 660 of the criminal code, which is another section that can be used. It deals with the misappropriation of funds of carriers.

Specifically, section 10 prohibits dealings in securities, supplies, or other articles of commerce, again a very broad phrase.

I was concerned when I heard about the Senator's move as a baseball fan. While watching a television show the night of the move approval or perhaps it was the next night, Mr. Danzansky and other people were on that show, and Mr. Danzansky mentioned Mr. Short's basic problem was a lack of financing. He demonstrated that. He said he had to get a loan from his trucking company. I didn't believe that Mr. Short would do that. I went to the ICC the very next morning. I made a copy of their 1970 annual report which did indeed reflect a loan from Admiral Merchants to the Washington Senators. The report shows Mr. Short as president of Admiral Merchants. He is also a director of Admiral Merchants. Mr. Short himself could be and has been—he is by definition a carrier himself because through his ownership of all of the stock of a corporation known as 2625 Territory Road, that company in turn owns all of the stock of Admiral Merchants. It also owns all the stock of a second carrier, Jack Haul Dixie Highway Express.

As a result of that fact, controlling two carriers, Mr. Short through his intermediate corporation is himself able to be designated as a carrier subject to any reports the Commission could level and require of a carrier, including they could require him to meet the security regulation, if they so chose.

In any event, when I saw this report, the million dollar loan that was shown as outstanding as of December 31, 1970—here we were in September of 1971—I made a copy of it, went down the hall to the Bureau of Enforcement and asked did they know of this, were they aware of it. If not, I would like to have them put it under investigation and particularly make a report with respect to the implications under section 10 of the Clayton Act.

Now, I don't know whether Bob Short was president of the Washington Senators. I have never seen that documented. I have never seen

it documented that he is a director of it, other than what is in the newspaper. I presume that fact is true. He is both an officer and a director of the ball team.

In my opinion, and on this I apparently disagree with Mr. Kuhn and the Chairman of the Commission, I believe that there has been a violation of this section of the law. I believe further that from a practical matter had the ICC moved on September 24 and announced such fact, I would doubt that the good men of baseball would have approved that move. That is collateral to the basic question of the assets of a common carrier and how they are used.

The reports of the same Admiral Merchants also show over the last few years Mr. Short has been able to obtain loans from that company to his own personal account on unsecured notes. That raises some question in my mind as to the need of assets, and it particularly bothers me when I am representing such groups as the National Industrial Traffic League in rate cases and we are trying to get through to the truth of the revenue needs of the carriers and we see the use of the money going to these purposes. They are claiming they need more revenue increases in order to pay labor and other expenses, and a part of these expenses or use of funds are investments in baseball teams, are loans to officers on unsecured notes, and I have been very much concerned about it, and I am particularly concerned that here we are on May 4, 1972, the baseball season is now a couple of weeks old, and nothing was done.

The letter I wrote was to Commissioner Kuhn because I felt that he—if he knew these facts—would bring it to the attention of the other baseball owners and they might say maybe we should not move, maybe we should wait and see what the ICC says. I did not get a response from Mr. Kuhn, but Mr. Haddon, the general counsel of baseball, did reply, and the language that Mr. Dowling reported—until yesterday afternoon, the day after that article had appeared, I had never spoken with Mr. Dowling. But he apparently got copies of my letter and wrote the article. Mr. Dowling quoted that letter and took off from it, and I agree. I wrote back to Mr. Haddon that I was hopeful that baseball, now that he knew that the ICC was looking at this matter—and I was assured on September 24 that not only would the ICC look at it but had been looking at it for sometime.

The impression I was given was they were aware of financial problems and movements of funds back and forth with Admiral Merchants from sometime in the spring and early summer of 1971. So, they had had several months advance notice from the time I brought it to their attention. They made that quite clear to me, that they were fully aware of the situation and were investigating it. But there has not been any action.

When one reads that statute, I feel the power is there. I would love to see someone move.

Senator BEALL. At the very least, the ICC should have notified the Justice Department that perhaps there was a violation.

Mr. CLEARY. You are right. Under the statute the obligation of the ICC is to investigate and when they have reason to believe, to inform the Justice Department.

Senator BEALL. On the larger question, then, if there is argument as to the effectiveness of this particular section of the act, we have some conglomerate legislation that our chairman introduced, and you think the public interest would be well served if we pursued that particular

legislation at this time because it might prevent future such cases. I think it should be of concern to all of us.

Here is a case where a loan was secured for a specific purpose by a company regulated by an agency of the Government, and these funds were obviously not used for that purpose. They were lent to another agent that had no connection with the industry being regulated.

Mr. CLEARY. There is some question, for example, I think there is a question as to whether or not there was a security involved in that issuance, the loan to Admiral Merchants, and whether or not that had approval of the ICC. If not, it should have.

As to the conglomerate legislation, I am personally somewhat conservative with respect to the passage of law. I think we have an awful lot of law on the book. I think we have some very good laws on the book that the Congress in its wisdom has passed in the past. If I saw that was being used and it wasn't quite enough to deal with the intricacies of the maneuvers of the present day, then I would say now is the time for more law. I have said this personally to Mr. Kuhn, if there are hearings on these conglomerate bills, I personally—here again I wish to disassociate myself from the league. I know the league supports that conglomerate legislation. I do also, but I would like to see some assurance that it would be implemented.

From what I personally believe, there are laws now that could be used to get at the key problems that are created by conglomerates, and section 10 of the Clayton Act I believe, should have been used, should be used now and should be used in the future. It can deal not just with motor carriers, but the problem is throughout the railroad industry. That is where my initial basic concern is, what has happened to railroad assets, and this section I believe can be used. I should state I am a lawyer in practice. I live in Maryland. I ride a bus.

Mr. Chalk has been known as having assets moved out by way of stock exchanges to subsidiary corporations. I believe that I have standing to challenge that in courts, because I pay into the fare box of D.C. Transit. I have challenged that in courts. I have had a case which has been dismissed and now is at the court of appeals.

Senator BEALL. Thank you, Mr. Cleary. I think the least we can do is to send your testimony down to the ICC and the Justice Department to see whatever reaction they may have.

Senator HARTKE. Thank you.

Mr. CLEARY. I appreciate getting off on this tangent. I apologize to the chairman, push the button and I go off on it. I feel very deeply about it.

Senator HARTKE. Thank you.

Mr. Harry J. Breithaupt, Jr., general counsel, Association of American Railroads.

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

Mr. BREITHAUPT. Good morning, Mr. Chairman and Senator Beall. It may be something of a letdown to get back to the business on the docket.

My name is Harry J. Breithaupt, Jr. I am general counsel of the Association of American Railroads, with offices in this city.

Mr. Chairman, I would like to summarize this statement.

Senator HARTKE. Your entire statement will appear in the record. That will be fine.

I would appreciate it if other witnesses will do that. When they read lengthy statements, they may make points with their own clients, but they don't make points with this chairman.

Mr. BREITHAUPF. I will be particularly brief in view of that admonition.

The railroads take no position on those provisions of S. 2628 which have to do with the establishment of through routes and joint rates as between motor carriers themselves, intramode, and we, of course, take no position on those provisions of the bill which have to do with the establishment of such arrangements between motor carriers and water carriers.

But, we do oppose the bill to the extent it would call for mandatory or compulsory through route or joint rate arrangements as between the trucks and the railroads.

The law now provides, as I am certain the subcommittee knows, for voluntary arrangements between railroads and motor carriers, and up to this point in time at least, those voluntary, permissive arrangements have proven entirely adequate.

A comprehensive record was made before your subcommittee as long as 5 years ago in hearings then conducted on bills that were predecessors of the bill now being heard.

That record was a lengthy one and yet it was totally lacking in any demonstration of the need for requiring railroads to enter into through route and joint rate arrangements with particular motor carriers not of their own choosing.

All that we had by way of explanation from the ICC at that time to justify this intermode feature, that is, the rail-truck feature, of the proposal, were broad statements of generalities.

Then as recently as 2 years ago, another full record was made before this subcommittee on measures that were also predecessors of the current bill.

Again, all we heard from the Commission and other proponents of the bill by way of justification for the mandatory intermode proposal were generalities.

Both times, of course, reference was made by the Commission and by others to what were denominated as serious problems. The serious problems which were mentioned in both years, and I do not in any degree or in any wise discount the seriousness of those problems, didn't have anything at all to do with that part of the Commission's proposal, that part of the bill, calling for mandatory intermode through routes and joint rates between motor carriers and railroads.

All of the service breakdowns and all of the service inadequacies that were then cited, to some extent with specific illustrations, in both of those years, had to do with the failure of motor carriers between and among themselves, intramode, to establish and maintain through service.

Nowhere in the 1967 presentation nor in the 1970 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 in any way deficient.

Nor was there any such testimony from shipper witnesses.

Again at today's hearing, the testimony you have heard has dealt almost entirely, as heretofore, with motor carrier small shipment problems.

The present permissive and voluntary arrangements between the two modes are working satisfactorily, and there we feel the matter ought to 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.

Doctrinaire reasons like "eliminating gaps in the present law" certainly don't meet that test.

Thank you, Mr. Chairman.

Senator HARTKE. The reason that the railroads oppose it is because they just object to doing business with the truckers?

Mr. BREITHAUP. No, sir.

We object to being forced into a marriage without being able to pick the bride.

Senator HARTKE. Senator Beall.

Senator BEALL. You don't think there is a serious lack of cooperation now between the railroads and the truckers in order to provide the kind of service necessary?

Mr. BREITHAUP. I don't know of any specific instance that has ever been cited in that regard in the long testimony before this subcommittee stretching over 5 years.

Senator BEALL. You said the problem is among the truckers?

Mr. BREITHAUP. Except that purely as a matter of principle and as a matter of doctrine, the absence of intermode regulation is decried by some witnesses.

Mr. Cleary has said he wants to "close the gap in regulation," as an example. We cannot favor this.

(The statement follows:)

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

My name is Harry J. Breithaupt, Jr. I am General Counsel 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. 2628, which bears 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. 2628 was introduced on September 30, 1971, by the chairman of the Committee on Commerce (by request) to reflect and implement a legislative recommendation made by the Interstate Commerce Commission.

The Association of American Railroads takes no position on those provisions of the bill 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 bill having to do with through routes and joint rates as between motor carriers and water carriers.

We do, however, oppose the bill to the extent that it calls for mandatory or compulsory through route and joint rate arrangements as between motor carriers and railroads, for to that extent it 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 five years ago, in hearings then conducted on bills that were the predecessors of the bill 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 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 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 the intermode feature (i.e., rail-truck) of this proposal were broad statements of generalities by its spokesman such as:

"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." (1967 Hearings, p. 33)

Another full record was made before this Subcommittee two years ago, in hearings conducted on measures that were also predecessors of the instant bill. ("Through Routes and Joint Rates," 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, May 6 and 7, and June 11, 1970, Serial No. 91-65.)

Again all we heard from the Commission by way of justification for the intermode proposal were generalities, such as:

"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." (1970 Hearings, p. 25)

The "serious problems" which the ICC witnesses went on to mention in both years—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 calling for mandatory intermode through routes and/or joint rates between motor carriers and railroads. All of the service breakdowns and inadequacies they cited (to some extent with specific illustrations) in both years had to do with the failure of motor carriers, between and among themselves (intramodal), to establish and maintain through service.

Nowhere in the Commission's 1967 presentation nor in its 1970 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, does the Commission continue to recommend that this additional regulation be imposed upon the railroads and that its regulatory power and authority over the railroads be so enlarged?

A principal reason, it appears, is the Commission's professed and repeated belief that "gaps in the present law should be eliminated." When Senator Magnuson introduced this latest bill (S. 2628) on September 30 of last year, he caused the Commission's explanation of it to be inserted in the Congressional Record. Once more the Commission dealt pretty much in generalities and once more it said:

"Enactment of the recommended legislation would close this gap in existing law . . ." (Cong. Rec., September 30, 1971, p. S 15446)

The Commission also appears to find justification for its proposal on the ground that it would tend to equalize regulatory treatment. It has said:

"... an incidental effect of this legislation is the elimination of certain inequalities in economic regulation among the several modes of transportation." (1967 Hearings, p. 35)

With respect to its recommended bill on which hearings were conducted two years ago, it said:

"It would also have the effect of according greater equality of treatment in the regulation of the carriers of various modes." (Cong. Rec., May 26, 1969, p. 13690)

And the Commission says the same of this year's bill:

"It would also have the effect of accordng greater equality of treatment in the regulation of the carriers of various modes." (Cong. Rec., September 30, 1971, p. S 15467)

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"—almost as an afterthought, as it were—, the imposition of additional regulation upon the railroads.

A principal difficulty with the intermode feature of the bill is that no one knows just how it would work out. 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, the Congress is asked to "close gaps" with legislation that will have the "incidental effect" of eliminating "certain inequalities." Without any demonstration of need, and without any real explanation, the Congress is urged to provide the Interstate Commerce Commission with substantial additional regulatory authority over the railroads.

Under the pending bill the Commission would 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 is, in pertinent part:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes . . . and joint rates or charges applicable to the transportation of property by common carriers by motor vehicle . . . and common carriers by railroad . . ."

Thus, the bill 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 would be.

What is meant here by "desirable"? Why should the Commission's notion of what is "desirable" enable it to overrule and countermand managerial judgment? Railroads are now, under present law, permitted to work out through route and joint rate arrangements with motor carriers in instances where they judge it desirable to do so. The minimum standard for the Commission's substitution of its judgment for that of the carrier's managers ought at least to be public necessity.

Furthermore, under this bill the Commission would have the arbitrary authority to compel the establishment of through routes and joint rates even without a finding under the standard—loose as it is—of "necessary or desirable in the public interest." Consider the proposed statutory language:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest . . . establish through routes, etc. . . ."

Restated: The ICC *shall* prescribe through routes and joint rates whenever it finds it necessary or desirable in the public interest; and it *may* do so absent such a finding.\*

Let us look now for a moment at the matter of divisions of joint rates (i.e., determining the respective revenue shares of the participating carriers). This bill provides (new section 216(c)(3)) that the carriers themselves are to work out and establish the divisions—whether the joint rates are voluntarily published or ICC-prescribed. This approach would leave divisions, at least, to the carriers.

It does not mean, however, that divisions agreed upon by the carriers involved (assuming they could agree) would be safe from Commission interference, for section 216(f) of the Interstate Commerce Act (not amended by the bill) 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 carriers, or any of them, or otherwise established)."

S. 2628 contains a couple of provisions designed, I judge, to make compulsion a little less unpalatable.

\*The present bill differs in this respect from the ICC's proposal in the last Congress (S. 2245, 91st Congress).

One would require that divisions be promptly paid and interline settlements promptly made; and in the event of undue delinquency with respect thereto, "through routes and joint rates may be suspended or cancelled by the Commission under rules to be prescribed by it" (new section 216(e) (2)).

This approach is less desirable than that found in Senator Moss' bill in the last Congress (S. 3626, 91st Congress). That bill provided, in the event of undue delinquency in settling divisions, etc., "the Commission shall permit on short notice the cancellation or suspension of the through route or joint rate involved."

The present bill provides (new section 216(e) (3)), as an additional palliative, that:

"In any proceeding involving a joint rate the Commission shall consider, among other things, any evidence challenging the fitness of any carrier or carriers involved . . ."

This, again, is less protection for carriers about to be forced into unsought alliances than Senator Moss' earlier bill would have given. said that:

"No joint rate shall be prescribed except upon a finding . . . [if the issue is raised] that the carriers involved are financially and otherwise fit . . ."

In addition, Senator Moss' bill would have provided that no joint rate might be prescribed:

". . . except upon a finding . . . 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 . . ."

The current ICC bill says, in this regard, only that the Commission "shall consider . . . any facts relating to special operational circumstances attending the service to which the rate is applicable." (New section 216(e) (3))

The fundamental protections contained in Senator Moss' bill in the 91st Congress were, on the whole and as far as they went, salutary. Why the Interstate Commerce Commission should be unwilling to accept them, I do not know even after re-reading the transcript of their comments on the bill during the 1970 hearings.

Even with those safeguards, however, and as much as they would improve the bill, we would still oppose it. We are basically opposed to the concept 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. Doctrinaire reasons like "eliminating gaps in the present law," and "eliminating inequalities in economic regulation," don't meet that test.

Senator HARTKE. We will adjourn.

(Whereupon, at 11:45 a.m., the hearing was adjourned, subject to call of the Chair.)



# THROUGH ROUTES—JOINT RATES AND FREIGHT FORWARDERS LEGISLATION

THURSDAY, JUNE 8, 1972

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

The subcommittee met at 10:12 a.m. in room 1114, New Senate Office Building, Hon. Vance Hartke (chairman of the subcommittee) presiding.

Present: Senators Hartke and Stevens.

## OPENING STATEMENT BY SENATOR HARTKE

Senator HARTKE. Good morning everyone. The Surface Transportation Subcommittee today is conducting hearings on S. 1896, a bill to permit freight forwarders to negotiate contract rates with railroads and S. 2628, a bill to authorize the ICC to require through routes and joint rates between motor carriers and also between motor carriers and railroads.

We have conducted one day of hearings on the through routes and joint rates bill on May 4. It was set for hearing again today in case others wished to appear on it; to date, however, no request for time has been made for the bill.

Both of the bills before us purport to alleviate the small shipment and small shipper problem. This is an important issue and one that must be dealt with in any proposals to make fundamental changes in laws regulating transportation.

I am convinced that the small shipments problem is not adequately met in the Department of Transportation's bill to relax regulation of transportation. To be fair, I am not sure that the Surface Transportation Act takes care of it either.

We have finished hearings on these major surface transportation bills and will shortly take them up in executive session of the subcommittee. When we consider them, I believe that testimony on ways to improve service for small shipments will be important background. Therefore, we have scheduled the hearings on the bills before us for today and tomorrow.

First is Mr. Russell Moir, chairman of the board of the Freight Forwarders Institute.

**STATEMENT OF G. RUSSELL MOIR, CHAIRMAN OF THE BOARD,  
FREIGHTS FORWARDERS INSTITUTE; ACCOMPANIED BY GILES  
MORROW, GENERAL COUNSEL**

Mr. MOIR. Good morning, Mr. Chairman. With your approval, I will be accompanied here by Mr. Giles Morrow, general counsel of the Freight Forwarders Institute.

My name is G. Russell Moir. I am here to speak for the regulated freight forwarding industry as chairman of the board of governors of the industry's trade association, the Freight Forwarders Institute. My regular occupation is chairman of the board and chief executive officer of the United States Freight Co., a transportation-distribution company headquartered at 711 Third Avenue, New York City.

The forwarding industry strongly and unanimously urges approval and passage of S. 1896. I understand the time limitations involved. You have assigned 2 days for hearings and many witnesses wish to testify. Consequently, my statement is brief. Normally, I would file a comprehensive statement and summarize it orally but that procedure does not appear to be necessary in this case.

I say this because this bill is founded on and supported by a very complete report of the Interstate Commerce Commission in its docket Ex parte 266, which has been filed with your committee.

We are content to adopt that report as our brief in this hearing. It consists of 195 printed pages. If you study that report you will discover every facet of the underlying support for S. 1896. You will obtain an understanding of the critical need for the swift passage of the legislation. Moreover, you will find the arguments of the opposition set out and answered in detail.

Meanwhile, to keep the record of these brief hearings from becoming confused, we have employed a professional transportation consultant, Mr. Gilbert Parr, to show you how the competitors of the forwarders, who oppose the bill, may mislead you if their statements were to be accepted at face value. Mr. Parr will also bring you up to date on the economic factors which dramatize the necessity for passage of this bill.

Freight forwarders are common carriers of less-than-carload freight—basically small shipments, also known as LCL. Measured by the size of the rail and trucking industries the forwarding industry is comparatively small. But forwarders play—and have for more than a century—a vital role in the transportation system.

For a long time, the Nation's shippers have had difficulty in obtaining good service for the transport of their small shipments. The economics of this facet of common carriage have driven the railroads almost completely out of business. In addition, the ICC is deluged with complaints about the trucking industry's failures in this market.

Consequently, maintenance of the forwarding industry in a sound and vigorous posture is necessary for two basic reasons:

- (1) The shippers need them; and
- (2) Without a competitive freight forwarding industry, the shipping public would be confronted with a virtual motor carrier monopoly.

The ICC has concluded—just as our industry has concluded—that without a change in the regulatory treatment of freight forwarders,

the industry will continue to be less and less competitive with consequent harm to the shipping public.

The change which the Commission endorses, and which this bill would bring about, simply expands an existing provision of regulatory law by authorizing railroads and freight forwarders to negotiate contract rates with each other. To understand the implications of this change, I will explain briefly how forwarders function.

Forwarders solicit less-carload shipments and transport them in their service through the country. The shipper receives a forwarder bill of lading, differing in no respect from a rail or truck bill of lading, under which the forwarder assumes sole responsibility until the shipment reaches its ultimate destination.

The forwarder then has the individual shipments transported to a freight station which he maintains, usually located on a rail facility, where they are combined with other shipments which the forwarder has brought in from other points, and loaded in rail boxcars or piggy-back trailers. The full carloads and trailer loads are then dispatched by direct rail routes, to forwarder stations in other parts of the country near their destination where the loads are broken down again into individual shipments and delivered to the receivers or consignees.

For the gathering and distribution of the individual shipments forwarders use their own trucks or hire local draymen to handle the shipments within the terminal areas of cities.

As to shipments moving to or from points outside their terminal areas, forwarders work with common carrier trucklines on a negotiated basis under contracts authorized by section 409 of the act. It is this section which the bill expands to authorize contracts between railroads and forwarders.

For the movement of the consolidated forwarder shipments by rail, in boxcars or in trailers loaded on flatcars, the forwarders, due to a lack of statutory authority for negotiated arrangements are required to compensate the railroads on the basis of rates published in rail tariffs for use of commercial shippers. Forwarders, of course, are not shippers even though present law requires them to compensate railroads as though they were shippers.

Forwarder regulation always has authorized negotiated arrangements between forwarders and motor carriers, and the motor carriers, numbering many thousands, who work with forwarders on that basis have found these arrangements to be practical and rewarding.

Railroads are now, and always have been, authorized to negotiate arrangements with the express companies, motor carriers and barge lines. These are called "divisional" arrangements.

Thus there is this one outstanding gap in regulatory law where two types of common carriers—part I railroads and part IV forwarders—are required to deal with each other as carrier and shipper instead of carrier and carrier.

It is to close that gap—and thus not only equalize treatment of all carriers under the law, but permit and encourage improved and more economical LCL operations in a combination of rail and forwarder service—that this bill is before you.

There is no time to delve into the historic reasons for this glaring and inequitable gap in regulatory law. The gap is there and must be bridged.

I want to make it clear, however, that we do not base our support for the bill solely on a plea for equality. We want to see this bill enacted so we can provide better service for our present customers, and better service for more customers.

Concerning the competitive situation, I suggest that people whose sole motive in opposing the bill is to keep a competitor at an unfair disadvantage should not be considered as objective witnesses. And when these competitors speak to you disparagingly of the forwarding industry, it should be obvious that they would not bother to testify at all unless the forwarders were not doing a pretty good competitive job even under the artificial handicaps of an unequal law.

Naturally, your subcommittee will want to know more than just what this bill does—which I have explained. You will also want to know how it will accomplish its purpose.

Only experience can provide the full answer, but we do know that the bill will permit more realistic working arrangements between two modes of transport, forwarders, and railroads, to provide LCL shippers with a service that combines the speed, safety, and economy of rail transportation with the flexibility of motor carrier service.

Without the forwarder, the railroads would not share in this traffic today except as it suits the operating convenience of their competitors, the long-haul motor carriers, whose incentive to deal with the railroads is solely to cut their highway costs.

In a real sense, forwarders and railroads are partners. It could even be said that forwarders are the LCL arms of the railroads.

In a speech delivered in Los Angeles on March 20, 1969, Mr. Benjamin F. Biaggini, president of the Southern Pacific Co., referred to the forwarders as coworkers and said he used the term "because today the forwarders are, in a practical, if not a legal sense, an LCL arm of the railroads."

Forwarders solicit, bill, process, assume liability for, collect charges on, and pay claims with respect to a great volume of freight shipments which are given to the railroads as payload freight, instead of deficit freight, which it certainly would be without the participation of the forwarder.

If permitted to negotiate with each other, forwarders and railroads can help each other in numerous ways that are closed to them today because the railroads, by law, must look at the forwarder as a commercial shipper.

For example, forwarders can help the railroads solve the empty-equipment movement problem by making contracts for the movement of refrigerated or specialized cars that are suited to the needs of particular situations.

In addition, economies inherent in the manner in which railroads receive and handle forwarder traffic can be reflected in the division of revenue between forwarders and rails, something that simply cannot be done today through the averaging out process by which railroads publish rates for the general run of commercial shipper traffic.

In short, the sensible, realistic, and equitable arrangements between the rail-forwarder partners which this bill will make possible, should open up new potentials for expanded forwarder service, increased rail volume, and improvement of the lot of the LCL shippers.

The economic factors governing forwarder operations today, the basic ingredient of which is the rail published rate, are such that forwarders can operate profitably only over the longer hauls. Furthermore, they cannot, because of economic factors, reach out to as many outlying points as they would like to serve.

We think the realities are such that by means of negotiated arrangements between railroads and forwarders, we can reinstitute service in the shorter hauls and expand the scope of our gathering and distribution operations to many outlying points.

If these conditions can be brought about—and we think they can and will be—I assure you it will be to the advantage of the railroads as well as of the forwarders and the shipping public. Do not be misled by the charges of the bill's opponents that if the bill is passed, a ruthless and powerful forwarding industry will deplete rail revenues by hard bargaining for lower prices with the result that commercial shippers will have to pay higher rail freight rates.

The people who make such charges ought to know better, and I suspect they do.

The destiny of the forwarding industry is inextricably tied to the fortunes and the future of the railroads. If we do not help the railroads in our mutual endeavors, we surely will not help ourselves.

If S. 1896 is passed, it will create a regulatory climate in which the railroads and the freight forwarders, with profit to themselves, will be able to improve the quality, the quantity, and the economy of forwarder service to the public. Thank you.

Senator HARTKE. Mr. Moir, the purpose of your bill is to permit you to negotiate lower freight rates with railroads, is that right?

Mr. MOIR. Yes; rates and operating arrangements.

Senator HARTKE. Will that have any effect on the rates that will be charged by you to the customers?

Mr. MOIR. Yes. Obviously, since we are a regulated industry and have to go before the Interstate Commerce Commission to justify the level of our rates, they, in turn, relate the rates that we may charge to our operating costs. So, anything that serves to reduce the costs on the part of forwarders, is ultimately going to reflect itself in more advantageous rates to the shipping public.

Senator HARTKE. If your charges go down, won't your profits decrease again?

Mr. MOIR. Not if we are able to do two things, lower our costs and increase our volume, because as our volume increases, it reduces our per unit cost of overhead expense, which again puts us in a more favorable position in creating attractive rates for the shipping public.

Senator HARTKE. Is the principal desire on your part to have this bill passed, the fact that it would decrease rates, or the fact that it would improve service?

Mr. MOIR. It would do several things. It would certainly improve service.

It would put us in a more competitive pricing situation vis-a-vis competitors, and it would enable us to reinstate certain shorter haul operations that the forwarders at one time offered to the shipping public and have had to withdraw from because the economics as they are today don't permit operations in those runs, and it has left the shippers in those territories without any choice except one method of transportation: Motor carrier.

Senator HARTKE. You said motor carriers. Are they left without transportation at all at the present time?

Mr. MOIR. No; the motor carriers are there, but there is no competitive choice.

Senator HARTKE. I see. Now, the ICC made a recommendation for a 3-year experiment.

Mr. MOIR. Right.

Senator HARTKE. Do you support that recommendation?

Mr. MOIR. We have no objection to the 3-year time frame. We don't think it is necessary. We think it will prove to be advantageous, and for that reason we have no objection.

Senator HARTKE. What about the shippers generally? Do they oppose or support the bill?

Mr. MOIR. I think pretty generally it breaks down into two categories. We have tremendous broad-based support from the LCL shippers of the country, the people who regularly have to use the common carrier service of the freight forwarders and the motor carriers. There have been many, many supporting statements filed by not only individual shippers, but by trade associations of individual shippers. Chambers of commerce in a number of bigger cities have appeared in support of this legislation. It has a very broad base of shipper support.

Senator HARTKE. The western railroads who testify later this morning, will ask that the authority, if it is put in, be limited to shipments under 25,000 pounds. What is your comment on that?

Mr. MOIR. Again we don't think it is necessary. We don't think it is helpful. But if our railroad partners, for internal reasons of their own, feel this is desirable, we don't object to that.

Senator HARTKE. What internal reasons do you refer to?

Mr. MOIR. Well, this is something that didn't come from discussions with us, and it must be we can only conclude that within their own industry they feel this would be desirable, whatever the reasons may be, and we don't object.

Senator HARTKE. All right, Mr. Moir. Thank you for your testimony.

The next witness will be Mr. Arch Milligan, Sperry & Hutchinson Corp.

Good morning. You may proceed.

#### STATEMENT OF ARCHER G. MILLIGAN, GENERAL MANAGER OF TRANSPORTATION, SPERRY & HUTCHINSON CO.

Mr. MILLIGAN. Mr. Chairman, my name is Archer G. Milligan. I reside at 335 California Avenue in Uniondale, N. Y. I am employed by the Sperry & Hutchinson Co., whose home office is located at 330 Madison Avenue, N. Y., and I am its director of transportation and have occupied that position for the last 16 years. I speak in support of Senate bill 1896.

The main requirement of my position is supervision of a physical distribution system which distributes more than 2,000 items of general merchandise purchased by my company from almost 1,000 vendors. I might say parenthetically 85 percent of that is FOB point of origin; in other words, we pay the freight and as a consequence control its method of movement. The products I speak of run the gamut from

portable appliances, glassware and silverware to sofas—some shipments are large but many are small and shipped under my control and supervision to eight distribution centers or warehouses. They are then reshipped in mixed orders to the Sperry & Hutchinson Co.'s more than 790 store locations across the Nation.

I am an active member of the National Industrial Traffic League and the Transportation Committee of the New York Chamber of Commerce. I am a past president of the Chain Store Traffic League. I also serve on the User Panel of the Transportation Association of America and also serve as general chairman of the New York Transportation Council. We are also members of the National Small Shipments Traffic Conference, as well as the Commerce and Industry Association of New York. I do not presume to reflect the policy positions taken by these organizations but I can say that the Chain Store Traffic League did adopt a policy of nonopposition to the principle enunciated by Senate bill 1896 at a recent annual meeting. This represents a reexamination of position in that it eliminates a previous policy of outright opposition to this type of legislation by the Chain Store Traffic League.

My experience with the physical distribution of general merchandise dates back to 1935. Therefore, I have witnessed the withdrawal of the railroads from less-than-carload transportation and the subsequent movement of this business into motor common carriage, freight forwarding, and to some extent air and cooperative shipper associations.

The Sperry & Hutchinson Co., is in the position of both shipper and receiver. The products it buys are stored briefly and reshipped to its 790 or more store locations so that these items can quickly be offered for selection by the consumer.

I know you are fully aware of the fact that increased costs in manufacturing are ultimately passed on to the consumer but transportation costs also figure in the merchandise cost picture of any firm supplying merchandise to the consumer and that, too, ultimately passes on to the consumer. In recent years the major cost impact upon our traffic, as far as costs are concerned, has been in the area of the so-called small shipment. As an example of the impact of increases on small shipments, we estimate without compounding the percentages that we have had to contend with an average increase in costs of more than 32 percent on shipments moving within the range from the minimums up to 5,000 lbs.

This brings us to the threshold of the problem I think this bill is designed to help correct. As shippers we cannot deny that changes have taken place in the physical characteristics of our consumer goods. These changes have had a strong impact on the acceptability of freight to certain modes of transportation. However, the presently available machinery of rate and classification adjustments is the device that should be used to keep pace with this situation and we consider this to be adequate. Yet some way has to be found to flatten out the cost curve that bears down on the so-called small shipment.

The Sperry and Hutchinson Co. uses all major modes of transportation. By this I mean motor common carrier, rail, air, express, parcel post, parcel service, and freight forwarder. By his designation, the common carrier must under present law transport all goods properly

tendered for transportation. In practical terms, of course, things just do not happen this way. Railroads are permitted to treat traffic which is tendered to them as interline business by all common carriers except freight forwarders on the basis of through routes and joint rates. The freight forwarder cannot now do this. This places the freight forwarder in a straitjacket that inhibits his ability to compete. This, I think, then carries over to the marketplace where we shippers and receivers buy our transportation by limiting the quality and kind of transportation the shipper can purchase.

We have found that the freight forwarder is the most universally available service for the multiplicity of products that move in what we term small shipments. I necessarily exclude from this category those package shipments that move in postal or parcel services.

It has been said that this bill, S. 1896, and its companion bill, H.R. 6242, are simply devices to give regulated freight forwarders the right to get lower rates than other shippers implying, of course, that regulated forwarders are nothing more than shippers.

Before we go any further, I think I should try to clear up an incorrect premise. I do not personally subscribe to the idea that freight forwarders are nothing more than shippers because they must purchase their transportation from underlying carriers. The fact is that freight forwarders have been designated as common carriers by law and arguments that they are not must fall of their own weight unless part IV of the ICC Act is rendered void by congressional action.

In a clarification of this point, House Report No. 2489, 81st Congress, page 8, stated:

"Therefore, to describe freight forwarders as common carriers, as the amendment made by the first section of this bill proposes to do, does not change the status which they have always had, but simply recognizes that status by statutory law. This will remove any anomaly and confusion regarding the status of the freight forwarder and make it clear that they have the status of common carriers.

Referring to the definition of a freight forwarder, the same House Report states:

It seems clear that this definition does not cover any freight forwarder unless it is a common carrier.

Can we not then conclude that if part IV of the Interstate Commerce Act is bad law and not proper, it should never have been passed by the Congress of the United States? It is, therefore, my conviction that Congress in its wisdom placed part IV on the books to provide a stable regulated means of transportation for the shipper of small shipments. In its role as consolidator, and its acceptance of its responsibilities as a common carrier, the freight forwarder presents to its underlying carriers volume shipments which are the cumulative product of the combination of many shippers of small shipments and, therefore, provides necessary and desirable competition in the transportation marketplace.

It seems restrictive and unreasonable, therefore, for a common carrier like a freight forwarder not to be able to negotiate and publish reasonable compensatory rates and charges with another mode. This is especially true in my opinion if the one mode performs certain physical functions so as to present to the other mode freight in such volume and form as to be readily and economically transported by the latter.

In this context, I am pleased to note that the Interstate Commerce Commission in its report in Ex Parte 266 filed with Congress in January 1971 said:

In sum, it is our view that passage of legislation authorizing negotiated arrangements with common carriers by rail would be beneficial and a step toward solution of the more immediate problems which have been presented.

The erosion of available transportation that has taken place over recent years has alarmingly narrowed the choices we, as shippers, have in selecting our mode.

Services have been discontinued in wholesale quantities. Attempts have even been made to restrict movement of specific commodities through embargoes and other devices. Under present law, competition is certainly being stifled and no one has been able to convince me that our loss of forcefulness in the transportation marketplace is not due in part to this situation.

I, therefore, support the passage of S. 1896 in the hope that we will witness the return of some of these lost services I have just mentioned. I would like to see a return to the condition of strong competition. Is it not part and parcel of the vigor of our country that no single agency or mode be insulated against healthy competition unless that competition is patently unfair?

I think I should also mention that I am an officer of a large cooperative shipper association. In this area the argument has been made that this legislation would, if adopted, be detrimental to the welfare of such shipper groups.

I just cannot see this happening if S. 1896 is adopted simply because the freight forwarder would then have to come up with a price structure for use by the general shipping public that would undercut shipper association costs. A shipper association cannot hold itself out to the general public, nor can it solicit business, nor does it assume full responsibility under a bill of lading contract. In short its overhead is very limited. Therefore, if the shipper association is properly operated in its area of limited impact, I don't see how any set of forwarder costs can ever beat shipper association costs under present economic conditions.

But even if the impossible were to happen, and forwarder pricing for transportation service undercut association costs, there would be no catastrophe in my estimation.

Transportation managers are charged with the responsibility of purchasing the best and most economical means of transportation for their goods. If there were no need for shipper associations, it would simply follow that common carriers would be hauling the freight under the bill of lading contract taking full responsibility for its safe and expeditious transportation. I can see nothing wrong with that.

In conclusion, if there is no merit to the contention that freight forwarders are, in fact, shippers—and if they are to function as a fully competitive force in the field of transportation for the shipping public, they must be freed of the shackles that now prevent the fulfillment of their role in the economy. If this bill is not adopted, then I feel the merchandise shipper under present law is going to be helpless to avert further losses of service. What is more, there will be a deepening inability to purchase good competitive transportation. Such shortcomings in our distribution system will never assure the placement of consumer products in the hands of the consuming public at reasonable prices.

Thank you, sir.

Senator HARTKE. You take a position which is different from the National Industrial Traffic League of which you are a member, is that true?

Mr. MILLIGAN. Yes.

Senator HARTKE. Is there any reason other than that which you stated in your statement that makes you take a different approach? How do you account for that?

Mr. MILLIGAN. The National Industrial Traffic League has a policy that is adopted by majority rule, and I guess that you would have to say in those circumstances that I represent in that particular policy a minority report.

Senator HARTKE. You always reserve the right to disagree, right?

Mr. MILLIGAN. Yes, sir.

Senator HARTKE. Is there any reason that we could anticipate if this bill were passed that rates would be lower?

Mr. MILLIGAN. I think there is that possibility, although we are not counting on that so much as we are counting on the restoration of two things: One is competition, good, strong competition with the motor carrier industry, and the other is the return of some of the services that we have lost from the freight forwarders in recent years because of their inability to handle the traffic simply because their cost structure has reached the level where it doesn't permit them to do it any more.

Senator HARTKE. Do you have an actual elimination of some service that you can point to that has occurred?

Mr. MILLIGAN. Oh, very definitely.

Senator HARTKE. Could you supply those for the record?

Mr. MILLIGAN. Yes. Vertical traffic on the east coast, for example, from upper New York State to Atlanta, Ga.

Senator HARTKE. If you have any more of these, would you supply those for the record? I have just been alerted to the fact that I am going to be going to the floor on the question of Amtrak at 11:15. So, we are going to move right ahead.

Thank you.

Mr. Donald S. Beattie, executive secretary, Congress of Railway Unions. With him is Frederick T. Rinckwitz, general secretary-treasurer, Freight Forwarder Systems Board, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.

**STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY,  
CONGRESS OF RAILWAYS; ACCOMPANIED BY FREDERICK T.  
RINCKWITZ, GENERAL SECRETARY-TREASURER, FREIGHT FOR-  
WARDER SYSTEMS BOARD, BROTHERHOOD OF RAILWAY, AIR-  
LINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS  
AND STATION EMPLOYEES**

Mr. BEATTIE. If you don't mind, Mr. Chairman, we could skip the first page of my statement.

Senator HARTKE. It will appear in the record.

In line with Chairman Magnuson's admonition, one of the reasons we are having difficulty moving some of these bills is that the witnesses

persist in taking advantage of the rules, which is all right with me, except it doesn't make for very good legislation.

Mr. BEATTIE. Mr. Chairman, I will skip portions of my statement.

Senator HARTKE. I think you got the message.

Mr. BEATTIE. The interest of the shipper of small shipments and the interests of railroad labor come together as we face a crisis in the freight forwarding business.

The people I represent and the small entrepreneur of American business, alike, are hurt by the shrinking of service to areas of the Nation no longer within access of major rail and trucking points of service.

The day of regular common carrier service to all of America rapidly is becoming a thing of the past.

To railway labor this has meant a severe and continuing loss of jobs. Our membership in the freight forwarder division of the Brotherhood of Railway, Airline and Steamship Clerks has been cut by more than 66 percent, from a high of 6,125 in 1957 to less than 2,200 in 1972.

This loss of freight forwarder jobs has been due to the freight forwarders inability to handle freight which might otherwise be available to them.

The loss has been accompanied by similar reductions in the ranks of operating and nonoperating railroad employees. But we are not alone. There have been substantial losses of employment for many others in the transportation industry and outside of that industry.

Years ago, the railroads decided to leave the less-than-carload shipments to others. Now the common carrier truckers have followed suit, so far as off-line service is concerned.

The full effects of this development are still to be felt; only because long-distance interlining is still being worked out and bigger carriers by highway haven't finished the job of giant mergers, as the railroads experienced at the turn of the century.

Forwarders increasingly are left to handle small shipments only on a point-to-major-point basis. Their profitability is determined now by what they can carry from New York to San Francisco and with no stops in Ohio, Indiana—you name the State and intermediate town. The average haul of the most profitable forwarder system is over 2,300 miles. By comparison, rail and truck average hauls still stand below 500 miles.

The freight forwarder is and has been, since the late 1890's, an important responsible ingredient of the transportation system of the United States. It is in danger for its survival.

In the measure before this committee, supported by a lengthy study and conclusions of the Interstate Commerce Commission, it merely asks for rate equality before the railroads, already granted competitors—not equality really, just the right to establish rates subject to regulatory review that any trucker has been able to make without review for more than a decade.

Any inequity—though they already exist in the rail-truck relationship—that might develop can be rectified in the 3-year trial period recommended by the Interstate Commerce Commission's Chairman, George M. Stafford.

We think this essential forwarder service should be preserved. And we subscribe to the Commission program to see that it is done without hurting any other legitimate segment of the transportation industry.

We endorse S. 1896.

Thank you, Mr. Chairman.

Senator HARTKE. Do you think this will improve service any?

Mr. BEATTIE. We certainly are hopeful that it will improve service and it will expand service to areas which now lack reliable frequent service.

Senator HARTKE. Will it expand service to areas where there is not presently any service whatsoever?

Mr. BEATTIE. Yes; common carrier service, reliable frequent service of the kind that is needed by the small businessman.

Senator HARTKE. Is it just going to expand a competitive service in those areas for truckers?

Mr. BEATTIE. For all modes.

Senator HARTKE. Pardon?

Mr. BEATTIE. If the forwarder is made more viable and can expand his service into these areas, then all modes of transportation will get the benefit.

Senator HARTKE. Let me ask you as an aside, maybe you don't have the answer to this: I just noticed an ad in the paper last night in which the railroads sought to hire certain employees, including switchmen. I wondered, in view of the persistent conversations we have here in trying to handle railroad strikes in which they always complain about an excess of employees, is there a shortage of switchmen?

Mr. BEATTIE. Apparently there is. This is not a highly desirable job for many young people coming into the labor market, because the newcomer takes the worst jobs, the night shifts, works on the weekends and holidays. To many of the young people coming into the market that is not a desirable kind of service—on top of which it is a very hazardous service.

Senator HARTKE. I just happened to see that. I was wondering—I think I will hold that until the next time we have a national strike crisis on our hands and take a look at that one to see how they can explain it. We won't do that today, though.

(The statement follows:)

STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY, CONGRESS OF RAILWAY UNIONS

My name is Donald S. Beattie, and I am Executive Secretary of the Congress of Railway Unions, an association of chief executive officers of six standard railroad unions which speaks for approximately 75 percent of the railroad workers in this country. I am accompanied by Mr. Fredrick T. Rinckwitz, General Secretary-Treasurer of the Freight Forwarders System Board of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Stations Employees. He represents the employees of the major freight forwarding companies in the United States. Our offices are located at 400 First Street, NW., Washington, D.C.

The organizations I represent are: Brotherhood of Maintenance of Way Employees; Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees; Hotel & Restaurant Employees and Bartenders' Int'l. Union; Transport Workers Union of America; Seafarers' International Union of North America; United Transportation Union.

Gentlemen, the interests of the shipper of small shipments and the interests of railroad labor come together as we face a crisis in the freight forwarding business. The people I represent and the small entrepreneur of American business, alike, are

hurt by a shrinking of service to areas of the nation no longer within access of major rail and trucking points of service.

The day of regular common carrier service to all of America rapidly is becoming a thing of the past.

This committee might like to look into what has happened to the freight forwarder business and to the phenomenal growth of the so-called shipper associations. Common carriage for small shipments and off-line hauling by truck and rail is virtually destroyed on any business-like basis.

Big companies, with tremendous reserves of capital, have formed private fraternities that they might take advantage of loopholes in transportation regulation. And these loopholes provide access to expensive transportation at rates below cost, when over-all responsibilities of liable common carriage is fully accounted.

The small, sometime shipper cannot use gray area, non-regulated transportation because he cannot qualify for shipper association membership.

Contract transportation law combines with common carrier freight forwarder law under Section IV of the Interstate Commerce Act to exclude a numerically superior group of American shippers. The freight forwarder industry was given governmental common carrier status because small shipments needed a common carrier responsibility. Today that responsibility is decimated. Most of the major freight forwarder companies are in serious jeopardy. Several of the largest are on the verge of bankruptcy.

To railway labor this has meant severe and continuing loss of jobs. Our membership in the Freight Forwarder Division of the Brotherhood of Railway, Airline and Steamship Clerks has been cut by more than 66 percent, from a high of 6,125 in 1957 to less than 2,200 in 1972. This loss of freight forwarder jobs has been due to the freight forwarders inability to handle freight which might otherwise be available to them. The loss has been accompanied by similar reductions in the ranks of operating and non-operating railroad employes. But, we are not alone. There have been substantial losses of employment for many others in the transportation industry and outside of that industry.

No individual nor group of individuals has a greater stake in the welfare of the transportation industry than the railroad employee whose entire career generally is tied to the particular company for which he works. His skills for the most part are not transferrable to other types of employment. We believe that forwarding is an essential and irreplaceable part of the transportation industry.

Years ago, the railroads decided to leave less-than-carload shipments to others. Now the common carrier truckers have followed suit, so far as off-line service is concerned. The full effects of this development are still to be felt; only because long distance interlining is still being worked out and bigger carriers by highway haven't finished the job of giant mergers, as the railroads experienced at the turn of the century.

Forwarders increasingly are left to handle small shipments only on a point-to-major-point basis. Their profitability is determined now by what they can carry from New York to San Francisco and with no stops in Ohio, Indiana—you name the state and intermediate town. The average haul of the most profitable forwarder system is over 2300 miles! By comparison, rail and truck average hauls still stand below 500 miles.

Does this mean the end of small shipment traffic between smaller towns in New York and those of Kentucky, or between Ohio points and southern Illinois? Not at all. But not by freight forwarder. Not by railroad. And not by any well known common carrier trucker.

Your neighborhood hardware store clerk increasingly is moonlighting in the trucking business; this is no idle exaggeration. Literally hundreds of thousands of small outfits are springing up across the nation. They carry or subcontract with larger trucking systems only on a catch-as-catch can basis. They have no assurance they can get back home with paying loads. And the turnover is tremendous. Traffic moves westward. They come back empty-handed, disillusioned with fulfilled promises, and go back into the hardware business.

The freight forwarder is and has been, since the late 1890's, an important responsible ingredient of the transportation system of the United States. It is in danger for its survival.

In the measure before this Committee, supported by a lengthy study and conclusions of the Interstate Commerce Commission, it merely asks for rate equality before the railroads, already granted competitors. . . . Not equality really; just the right to establish rates subject to regulatory review that any trucker has been able to make without review for more than a decade. Any inequity—though they already exist in the rail-truck relationship—that might develop can be recti-

fied in the three-year trial period recommended by the Interstate Commerce Commissioner's Chairman, George M. Stafford.

We think this essential forwarder service should be preserved. And we subscribe to the Commission program to see that it is done without hurting any other legitimate segment of the transportation industry.

Railway labor endorses S. 1896.

Thank you for your kind attention.

Senator HARTKE. Mr. Lester J. Dorr, executive vice president of the National Industrial Traffic League.

**STATEMENT OF LESTER J. DORR, EXECUTIVE VICE PRESIDENT,  
NATIONAL TRAFFIC LEAGUE**

Mr. DORR. Thank you, Mr. Chairman, for giving me this opportunity to present the league's position on this bill.

For the record, my name is Lester J. Dorr. I am executive vice president of the National Industrial Traffic League, with headquarters at 425 13th Street, NW., Washington, D.C.

Mr. Chairman, I am not going to attempt to submit the word-for-word statement which Fred Tolan, chairman of the league's legislative committee and who has handled freight forwarder legislation for the league for the past 4 or 5 years, presented to the House on March 15.

He could not rearrange his schedule to be here today, and he asked, with your permission, I submit his statement. This is what I would like to do.

The statement has been redrafted only to show the Senate bill numbers rather than the House numbers. Otherwise, it is word for word.

I am sure Mr. Tolan will be happy to answer any questions that may arise, but I think his statement will pretty well speak for itself.

Senator HARTKE. I thank you for that. If we have any questions, we will direct them to him.

(The statement follows:)

**STATEMENT OF FRED H. TOLAN, FOR THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE  
AND OTHER SHIPPERS**

**I**

**IDENTIFICATION OF SHIPPERS AND THEIR POSITION IN OPPOSITION**

My name is Fred H. Tolan, I am speaking here today on behalf of the National Industrial Traffic League and for many other shippers identified hereinafter who have adopted and support the same policy as the National Industrial Traffic League on the subject before this Subcommittee today. In my regular day-in and day-out activity, I am a freight traffic consultant representing several hundred small shippers and others who are primarily located in the Pacific Northwest. My office address is 1818 Westlake Avenue North, in Seattle, Washington 98109.

The National Industrial Traffic League policy which the League membership and the many other shippers support, is as follows:

**NATIONAL INDUSTRIAL TRAFFIC LEAGUE POLICY**

*Charges paid by Freight Forwarders to Underlying Carriers*

(a) Freight forwarders should pay for the transportation services of underlying carriers at the published and filed tariff rates of those carriers, such rates being open and available to all shippers generally for similar services and under similar transportation conditions.

(b) No "through" rates, nor divisions of such rates shall be established between freight forwarders and their underlying carriers.

(c) No "contract" rates shall be established between freight forwarders and their underlying carriers.

#### IDENTITY OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League is a voluntary organization of shippers; including boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation. The National Industrial Traffic League was organized in 1907 and its members are located throughout the United States. The membership (approximately 1700) includes enterprises large, medium and small, who use all modes of surface transportation and also air transportation. Carriers are ineligible for membership in the League.

Over the years, the League has adopted policies with respect to transportation. The preamble to its statement of policies provides:

"The National Industrial Traffic League is dedicated (1) to the attainment and preservation of an adequate and efficient national transportation system, privately owned and operated, and (2) to the protection of the shippers' interests in transportation problems."

In pursuance of this dedication the League, recognizing administrative and technological breakthroughs, endeavors at all times to keep its policies completely abreast of developments in the field of transportation.

The policy of the National Industrial Traffic League set forth above, has been in effect for many years and has been specifically reaffirmed by a virtually unanimous vote of league members in every one of their last several annual meetings, including the last one in Dallas, Texas last November. There was no opposition of any kind evidenced to that policy when it was reaffirmed last November with something over 600 people in attendance at the annual meeting of the League.

The National Industrial Traffic League position is whole-heartedly endorsed by the more than 300 small shippers who are in the Washington-Oregon Shippers Cooperative Association, and in the Pacific Northwest Shippers Consolidating Association, headquartered in Seattle but serving the entire Pacific Northwest and Alaska. The address of those associations is the Westshore Center, 1818 Westlake Avenue North, Seattle, Washington 98109.

In California, the 119 members of the Bay Area Shippers Consolidating Association also adopt and endorse the National Industrial Traffic League policy set forth above, and adopt this statement. The many small members of that association ship thousands of very small shipments to the San Francisco/Bay Area and Hawaii. The address of that association is 330 Cypress Street, Oakland, California 94604.

The Utah Freight Association is a non-profit shippers association located in Salt Lake City, Utah, consolidating small shipments for its members in that area. Its mailing address is P.O. Box 1409, Salt Lake City, Utah 84110.

In addition to those named above, the National Conference of Non-Profit Shipping Associations, Inc. have indicated their over-whelming support for the National Industrial Traffic League policy and the justification reasons in its statement. That association includes the following shipper association groups, among others:

Arizona Shippers Assn., Inc., P.O. Box 17600, Tucson, Arizona 85710.  
 Dal-Worth Shippers Assn., 212 North Good Latimer, Dallas, Texas 75226.  
 Dayton Shippers Association, 12 North Ludlow, Dayton, Ohio 45402.  
 El Paso Shippers, Inc., P.O. Box 299, El Paso, Texas 79943.  
 Freight Shippers Assn., 202-9th Ave., South Minneapolis, Minn. 55415.  
 Great Falls Shipping Assn., Inc., P.O. Box 2165, Great Falls, Montana 59401.  
 Gulf Freight Association, P.O. Box 702, Tampa, Florida 33601.  
 Houston Merchants Shippers Assn., P.O. Box 4188, Houston, Texas 77014.  
 Memphis Freight Bureau, 701 McCall Building, Memphis, Tennessee 38103.  
 Queen City Shippers Assn., N-106 Union Terminal, 1301 Western Ave., Cincinnati, Ohio 45203.  
 Toledo-Maumee Valley Shippers Assn., Inc., P.O. Box 534, Toledo, Ohio 43601.  
 Utah Freight Association, P.O. Box 1409, Salt Lake City, Utah 84110.

Those 12 associations listed above and the others, paid the railroads and motor carriers about 4 million dollars for assembly and distribution and rail line-haul services in 1969, according to evidence furnished the ICC in Ex Parte 266.

These shippers and their associations are opposed to the subject legislation involved here today, for the many reasons capsulized below. The opposition to the proposed legislation by these shippers and shipper groups has been reaffirmed time and again in their own individual meetings in their own local areas. This is not new legislation. This is essentially the same legislation that has been before Congress in one modified form or another several times. Congress in its wisdom has declined to approve the legislation. We urge this Subcommittee to also deny approval for the reasons given hereinafter and for the reasons given by others who will testify in opposition to this bill.

## II

## RAILROAD REASONS FOR DECLINING PROPOSED LEGISLATION

*(Rail Line-Haul Forwarder Rates Below Cost)*

1. *There is no need for this legislation for the railroads are already hauling this traffic below the railroads' out-of-pocket cost*

Last November the ICC issued its first report in Ex Parte 270, "Investigation of Railroad Freight Rate Structure". There it found the following huge deficits in rail rates vs. rail revenues on freight forwarder traffic.

Freight forwarder	Below <sup>1</sup> (percent)—	
	Fully allocated rail costs	Out-of-pocket (variable) cost
Areas of U.S. haul:		
All United States to all United States .....	9.5 loss	0.9 loss.
Official (East) to official .....	13.0 loss	3.4 loss.
South to South .....	28.7 loss	23.7 loss.
West to West .....	7.4 loss	2.9 profit.
Official (East) to South .....	10.7 loss	.1 loss.
South to official .....	13.1 loss	8.1 loss.
Official (East) to West .....	12.5 loss	5.1 loss.
South to West .....	2.8 profit	10.5 profit.

<sup>1</sup> Except as noted.

There is no question that forwarding traffic is below-cost now. There isn't the slightest justification for legislation to enable forwarders to coerce another rate cut.

The ICC "bombshell" finding above in Ex Parte 270 came 10 months after the ICC decision in Ex Parte 266 (wherein the ICC favored this legislation). One can really wonder if they had the above loss facts (in January of 1971) whether they would decide as they did on this legislation.

*Rail Supplied Freight House Leases Under Investigation*

2. *There is no need for this legislation for the railroads are already furnishing freight houses to freight forwarders at levels that have precipitated ICC investigation*

ICC Docket 35172, "Investigation as to adequacy of Freight House Rental Charges or to be charged Freight Forwarders at Chicago, Illinois by Burlington Northern, Inc.," was started by the ICC on its own motion on October 2, 1969. It involved two freight houses leased (or controlled by) the U.S. Freight Company, the nation's largest forwarder with over 40% of the forwarding industry in its control.

The ICC's position in that still undecided case is as follows:

"The Bureau (ICC Bureau of Enforcement) believes that the proposed lease of freight house 10 just as the lease of freight house 7 fails to yield an adequate return on investment and this has the effect of reducing the transportation charges paid by said forwarders to a basis that is less than the published tariff rates, that the rents in the past have been unreasonably low and inadequate and thus the Burlington has and is granting concessions, practicing unlawful discrimination under Section 2 of the Act, giving unreasonable preferences and advantages in violation of Section 3 and Section 401(c) of the Act and departing from its published tariff rates in violation of Section 6 of the Act as well as violating Section 1 of the Elkins Act and that the forwarders have violated these provisions in accepting use of the facilities at these low level of rates, and that all respondents and those affiliated with them should be ordered to cease and desist from the practices found unlawful."

The ICC examiner has ruled the ICC failed to prove its case, and the matter is still to be decided by the Commission. In any event the Commission's Bureau feels the rental of the railroad warehouses are below cost.

*Rail Charge For Loading Forwarders Freight Very Low*

3. *Railroad carloading and unloading services for freight forwarders may now be below-cost according to ICC investigation order*

On September 18, 1971 (in the Federal Register) the ICC began an investigation of loading charges on forwarder freight at Chicago and St. Louis. Six railroads were made respondents. They are the Burlington Northern; the Norfolk & Western; the Santa Fe; the Milwaukee Road; the Missouri Pacific; and the Illinois Central. The case is ICC Docket 34569, "Investigation as to the adequacy and reasonableness of loading, unloading and handling charges for freight at Chicago, Ill. and St. Louis, Mo."

The ICC said in its investigation order of last September:

"It appearing, that in Freight Forwarding Investigation, 229 I.C.C. 201, 237 (1938), the Commission found that the rail carrier practice of loading and unloading carload freight of certain shippers at charges which were substantially less than the cost for performing such services, had the effect of granting unlawful concessions to such shippers, and of reducing the transportation charges paid by such shippers below the published tariff rates, and resulted in unjust discrimination, in violation of Section 2 of the Act, made and gave undue and unreasonable preferences and advantages in violation of Section 3 of the Act, and departed from the published tariff rates, in violation of Section 6 of the Interstate Commerce Act: this finding was modified upon further hearing, 243 I.C.C. 411, 421-422 (1941) in which respondents were admonished to examine their charges to the extent that such charges were found by the Commission to be unreasonably low, with a view to revising at an early date their tariff charges so that they would more adequately cover the cost thereof;

It further appearing, that the Commission presently has reason to believe that the Burlington Northern, Inc., Norfolk and Western Railway Co., The Atchison, Topeka and Santa Fe Railway Co., Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Illinois Central Railroad Co. and Missouri Pacific Railroad Co., common carriers by railroad subject to Part I of the Interstate Commerce Act, serving St. Louis, Mo. and Chicago, Ill. have been performing loading and unloading services for major shippers at freight houses and leased facilities at these points for charges which are inadequate and substantially less than the costs thereof; and good cause appearing therefore:"

*Railroad Cut Forwarder Rates Now*

4. *The railroads have slashed and are cutting freight forwarder rates without legislation—so no legislation is needed*

Right now, in Ex Parte 281, the railroads have declined to take any increase on piggyback traffic in the east and south. Forwarders use those rates on at least  $\frac{2}{3}$  of the traffic. Forwarders (and others) who use piggyback get no increase while other shippers get an average 4.1% increase.

In the same current case, east-west piggyback shippers and forwarder traffic in boxcars get only a 3% increase while the average increase for all shippers is 4.1% (with some going as high as 10%).

Since 1966 rail rates generally have risen about one-third. Freight forwarder rail costs have risen only about 11% through 1970 or about half the national average through 1970. Here is the average freight forwarder rail rate per ton from official ICC reports:

RAILROAD REVENUES FROM FREIGHT FORWARDERS

Year	Rail rate per ton	Increase since 1950 (percent)
1950.....	\$35. 97	
1955.....	43. 69	21
1960.....	45. 95	28
1964.....	37. 07	3
1965.....	37. 86	5
1966.....	37. 79	5
1967.....	36. 44	1
1968.....	36. 69	2
1969.....	38. 40	7
1970.....	41. 64	16

In 20 years the rail rates for freight forwarders have only gone up 16%, while freight rates on comparable traffic generally have increased at least 4 times as much.

The freight forwarders need no legislation to get very favorable freight rates. The problem is how to keep the freight forwarders from coercing the railroads into further unwarranted rate cuts. Chairman George Stafford of the Interstate Commerce Commission at the last hearing on this legislation on January 27, 1970, stated:

"They (the railroads) already have established rates reflecting the nature of the traffic tendered them and we do not believe they should be placed in the position of being pressured into rate concessions for certain favored shippers not warranted by other considerations."

The witness for the eastern railroads and the witness for the southern railroads both opposed this legislation in 1970 and earlier and forcefully brought up the ability of freight forwarders to force individual railroads to make rate cuts which would have to be matched by all railroads to stay competitive. Now all freight forwarders have to live by the tariff and pay only tariff rates and charges. Under contractual rates not subject to the tariff many concessions could be forced which would have a very adverse effect on the railroads:

(a) If one railroad made a rate cut whether warranted or not, all others would have to joint or forgo the freight forwarders business.

(b) If one railroad agreed to cut a rate for a freight house or other terminal facilities connected with the line-haul operation that could force others to do the same.

(c) If one railroad agreed not to issue freight bills for 30 days, the forwarder could seriously impair the cash flow of the railroads by merely not paying his bill promptly as now required by tariff and ICC credit rules.

(d) If one carrier agreed to more liberal stop-off rules or minimum weight requirements or other terminal advantages, others would have to match them or forgo the business.

The freight forwarders buy about 175 million dollars' worth of railroad transportation a year. They have terrific bargaining power. One company alone controls over 40% of that business. If the tariff rules are withdrawn, the law of the jungle would apply.

The shippers of the Nation are absolutely convinced they would have to make up the revenues the railroads lose to keep the railroads alive. The railroads have "no fat" on which to absorb further slashes in the freight forwarder rates. The record shows the freight forwarders have not passed on their freight rate savings to their customers. The result for the shippers would be no advantage to them from the freight rate cut for the forwarders, but they would have to make up the deficits of the railroads as they are doing now. Freight forwarder traffic is a loss traffic now. There is no reason to aggravate the problem by approving this type of legislation.

#### *Railroads in Desperate Straits Now*

##### *5. The railroads are in no position to absorb further slashes in the freight forwarder rates*

The railroads are on the brink of disaster with nine railroads now operating at a deficit:

First 9 months of 1971:	<i>Net railway operating deficit</i>
1. Ann Arbor Railroad.....	\$443, 000
2. Boston & Maine.....	1, 070, 000
3. C.P.R. Lines in Maine.....	1, 386, 000
4. Rock Island.....	6, 232, 000
5. Grand Trunk Western.....	12, 905, 000
6. Lehigh Valley.....	4, 066, 000
7. Penn Central.....	117, 117, 000
8. Penn Reading Seashore.....	2, 466, 000
9. Reading Railroad.....	1, 684, 000

Please note that full 1971 annual reports are not yet available to the public. Other railroads (such as the Milwaukee Road) have indicated huge 1971 deficits.

For the entire year of 1971 the railroads have just told the ICC (in Ex Parte 281) this will be their rate of return on investment.

Railroads in:	Rate of return in percent
Eastern district.....	(1)
Southern district.....	4.93
Western district.....	3.90
All U.S. railroads.....	2.51

<sup>1</sup> Deficit.

Railroad cost escalations in 1972 are estimated to be \$834,000,000 for labor and materials alone. Their current increase case (Ex Parte 281) is expected to cover only \$411,000,000 to \$501,000,000 of that \$834,000,000 cost increase. In short, the railroads realistically expect to recover only about half of their added costs. They are in no position to slash freight rates for forwarders. They should not be forced into such a position.

### III

#### FREIGHT FORWARDERS DO NOT NEED THIS LEGISLATION

##### *(Enlarged Terminal Areas Pending)*

#### 1. *Freight Forwarders have strong ICC and shipper support for enlarged (pickup and delivery) terminal areas in which they can operate their own trucks*

The National Industrial Traffic League actually suggested and urged the freight forwarders to go for an enlarged terminal area in which they can operate their own trucks in pickup and delivery service, comparable to the way the ICC has enlarged the terminal areas for REA Express. Both that League and Washington-Oregon Shippers, Bay Area Shippers, Utah Freight Association, and others, supported an enlarged terminal area for the freight forwarders in ICC Ex Parte 266. In the Commission order in Ex Parte 266, the ICC indicated a strong desire to do just that. Later in Sub. 1 of that proceeding, they began the official extension procedures. Widespread support by the National Industrial Traffic League and other shippers has been presented along with the affirmative position of the Freight Forwarder Institute and individual forwarders. A decision on that is expected soon.

This will enable the freight forwarders to haul up to 50 miles to and from the rail-head for assembly and distribution of their freight if the ICC agrees to the 50-mile rule. Short-haul motor carriers and others are naturally opposing the enlarged terminal area. The ICC commissioners, shippers and forwarders support the enlarged terminal area. This will enhance the inherent advantages of freight forwarders. That's a very real advantage they can utilize immediately. Now, freight forwarders are limited to the ICC commercial zone which with many exceptions is the city limits of a town plus about 5 air miles. This will enable faster service by enabling freight to go directly to forwarder-controlled trucks for distribution in a 50-mile radius around terminal and assembly points of the forwarders.

##### *Special Truck Contract Rates Up To 450 Miles*

#### 2. *Special contract rate authority with motor carriers for assembly and distribution of forwarders' freight is a huge advantage over shippers associations and others*

Over 40% of all freight forwarder traffic moves on special Section 409 rates below regular tariff rates to and from the forwarders assembly and distribution points. (See App. F-ICC Ex Parte 266).

One small forwarder, Clipper Carloading, testified it has 1,100 contracts under Section 409 in ICC Docket FF 128, Sub. 4.

Section 409 contracts hauled 277,992 tons of forwarder freight at a gross revenue of \$4,314,000. That was over 29% of all freight forwarder payments to motor carriers.

The forwarders' Section 409 advantage is so great, no further contractual advantage is warranted now.

##### *(Three Companies dominate this industry)*

#### 3. *This is special interest legislation in which 3 giant corporations have nearly two-thirds of all the interest*

Three giant corporations control about 60% of the entire freight forwarding industry:

Year 1969	U.S. Freight (U.S. Freight)	Acme Fast Freight (Alexander & Baldwin)	National Carloading (American Export)	All class A forwarders
Revenues:				
Revenues.....	\$242,600,000	\$76,300,000	\$31,900,000	\$590,600,000
Percent.....	41.1	12.9	5.4	100
Assets:				
Assets.....	\$42,200,000	\$10,800,000	\$6,900,000	\$125,800,000
Percent.....	33.3	8.5	5.5	100

Appendix 1, 2 and 3 show the make-up of those 3 giant corporations from the ICC records in Ex Parte 266.

*(Forwarders are normally profitable)*

4. *Freight forwarders are normally very profitable—and one bad year does not justify unwarranted legislation*

Appendix 4 is a 1971 advertisement of U.S. Freight (Universal Carloading) that certainly predicts boom—not bust.

Clipper Carloading is fighting most other forwarders (in ICC-FF 128, Sub. 4) to get ICC forwarding right to and from the south and the west coast. They want more—not less forwarding right and Washington-Oregon Shippers Cooperative Association is supporting them. They prove they make about a million dollars net profit each year (after taxes) on a gross revenue ranging from 17 to 21 million dollars a year.

1970 was a bad year for most business including the forwarders. The record shows the industry has been very, very profitable for many, many years prior to 1970, with a return on investment, after taxes, of from 16% to 58%. For the 10 years starting in 1960, the average return on net investment in transportation property plus working capital has been over 31% a year.

Such companies need no further legislative help.

*(Freight forwarder problems are internal not external)*

5. *Clipper Carloading has testified to the ICC that the freight forwarders' problems are primarily internal and not external.*

Clipper Carloading Company in ICC Freight Forwarder Docket 128, is much more critical of the freight forwarding industry (other than itself) than any shipper can be. The Clipper Carloading Company testifies most of the rest of the industry that has rights to and from various parts of the nation involved in their application, is unable or unwilling to meet competition. They contend most of their competitors do not even have a telephone or other listings in large areas of the country they are authorized to serve, and they resist charge and innovative rate making to meet competition.

If Clipper Carloading's statements are right to the ICC in the cited ICC case, FF-128, Sub. 4, then the prime need of the freight forwarders is internal revitalization and not legislative help.

Three hundred-and-fifty shipper statements furnished by Clipper Carloading in that case, documents their assertion of poor, inadequate or non-existent service by existing freight forwarders. One hundred-and-fifty shippers testified freight forwarding service was slow or delayed. Seventeen shippers testified freight forwarders in effect embargoed their undesirable freight. Seventy-one shippers indicated freight forwarders would not pick up eastbound transcontinental freight. Clipper stated in the area they seek to serve that there is "poor service which existing forwarders offer to the shipping public, is inadequate to non-existent".

We submit Congress should require correction of those facts before unwarranted legislation is passed. The problems of the freight forwarder are internal, not external.

*(Plan one truck/rail rates do not justify legislation)*

6. *Rail-Truck Contract Rates under Plan I (piggyback) contracts are declining not increasing*

"Plan 1" piggyback rates are private truck-rail contract rates. The freight forwarders have always used such "Plan 1" rates as justification for this legislation. That is unwarranted. Here are the facts from the ICC's Transport Economics received last May:

1969 versus 1970 1st 6 months piggyback	Net tons terminated by railroads		
	Tons terminated		Percentage of total piggyback 1970 versus 1969
	1970	1969	
Plan 1 <sup>1</sup> .....	1,434	2,195	Off 34.7.
Plan 2.....	4,713	5,513	Off 14.5.
Plan 2½ <sup>2</sup> .....	5,764	4,343	Up 32.7.
Plan 3.....	781	1,491	Off 47.6.
Plan 4.....	1,094	1,130	Off 3.2.
Plan 5.....	400	499	Off 19.8.
Other plans.....	1,365	1,613	Off 15.4.
Total.....	15,551	16,784	Off 7.3.

<sup>1</sup> Used exclusively for private truck-rail contracts.

<sup>2</sup> Used primarily by freight forwarders and shippers.

The record is clear that the forwarders' prime Plan 2½ traffic is up more than a third, while their Plan 1 competitors' usage is down more than one-third.

#### IV

#### THE SHIPPER ASSOCIATIONS AND THE MOTOR CARRIERS ARE SOLVING THE SMALL SHIPMENT PROBLEM AND NOT THE FREIGHT FORWARDERS

*(The Freight Forwarder's Average Shipment is not a Small Shipment)*

##### 1. The Freight Forwarders are not concentrating on small shipments but are in fact concentrating on the larger shipments

Here are the actual average weights of freight forwarder shipments from ICC reports:

##### *Freight Forwarders*

Year 1960—355 Pounds Per Shipment.  
 Year 1964—464 Pounds Per Shipment.  
 Year 1965—495 Pounds Per Shipment.  
 Year 1966—510 Pounds Per Shipment.  
 Year 1967—523 Pounds Per Shipment.  
 Year 1968—536 Pounds Per Shipment.  
 Year 1969—573 Pounds Per Shipment.

Small shipments are generally considered those under 500 pounds. The ICC has so ruled in small shipment truck tariffs. The freight forwarders have been concentrating on the larger shipments. Just this year a new tariff with only 20,000 pound rates has been established to get the bigger shipments. Today, 70% of freight forwarder revenue comes from shipments weighing over 500 pounds.

Those figures should be contrasted with shipper association figures, such as Washington-Oregon Shippers (WOSCA) whose actual average weight is only 179 pounds per shipment, and they handled 450,000 shipments in 1969. They originated these shipments in 482 cities and terminated them in 96 cities and towns (based on a one-week sample). Shippers associations are doing much of the job the small-shipment freight forwarders are not doing. Over half the WOSCA members tender less than 800 total pounds of freight a business day at all 8 loading points of that Association.

Shippers associations are filling the public's needs on small shipments. In 1969 they hauled 4,031,000 tons of freight, in 226,000 cars, paying the railroads \$118,256,000 in gross revenues. The freight forwarders hauled about 20% more freight than did the shippers associations in 28% more rail cars.

Motor carriers, United Parcel Service, and others than freight forwarders, are doing the small shipment job. Here is the latest available ICC record from last May's "Transport Economics". Freight forwarders' handling of small shipments has been static for years.

TABLE 1.—PARTICIPATION OF CLASS I AND II MOTOR CARRIERS OF GENERAL FREIGHT IN THE TOTAL ESTIMATED INTERCITY VOLUME OF REGULATED SMALL SHIPMENT TRAFFIC IN THE UNITED STATES, SELECTED YEARS, 1950-69  
 [In thousands of net tons]

Year	Direct carriers			Indirect carriers							Total	Index 1950=100			
	(1) Motor, LTL class I and II	(2) Rail LCL class I and II	(3) Bus express <sup>1</sup>	(4) Water carrier <sup>2</sup>	(5) Air freight	(6) United Parcel Service <sup>3</sup>		(7) REA		(8) Air express			(9) Freight forwarders class A <sup>4</sup>	(10) Parcel post	(11) Air parcel post
						Parcel	Service <sup>3</sup>	Surface	Air						
1950	53,405	22,164	168	534	289	NA	NA	2,747	50	4,204	3,475	11	87,047	100.0	
1955	64,132	14,045	183	268	389	112	1,995	1,390	66	4,697	2,711	18	78,616	90.3	
1960	62,547	6,447	202	175	510	386	1,390	1,373	70	4,100	2,581	26	78,031	89.6	
1961	68,577	3,354	206	139	553	496	1,340	1,340	73	4,010	2,362	28	78,121	89.7	
1962	68,577	3,373	210	216	647	585	1,340	1,318	82	4,311	2,352	31	82,788	95.1	
1963	70,794	3,348	215	193	702	775	1,724	1,318	84	4,215	2,283	34	83,958	96.4	
1964	73,048	2,126	219	69	864	1,064	1,724	1,845	96	4,413	2,283	37	86,263	99.1	
1965	76,896	2,126	224	351	1,080	1,347	1,845	1,626	110	3,994	2,137	43	90,152	103.6	
1966	82,048	1,650	224	278	1,242	1,650	1,626	1,626	118	4,501	2,107	52	95,501	109.7	
1967	80,190	1,512	224	309	1,338	1,815	1,683	1,285	121	4,352	2,021	71	93,676	107.6	
1968	83,223	1,297	230	329	1,368	2,047	1,285	1,029	136	4,503	1,879	81	96,617	111.0	
1969	84,505	1,279	243	292	1,740	2,627	1,029	1,029	134	4,443	1,878	81	98,344	113.0	

<sup>1</sup> Estimated 2.10 percent increase for each year from 1960 to present.

<sup>2</sup> Includes class A and B water carriers and maritime carriers.

<sup>3</sup> Estimated.

<sup>4</sup> Tons received from shippers.

<sup>5</sup> Includes heavy-weighted pieces of 1st-class mail beginning Jan. 7, 1968 (Public Law 90-206, Dec. 16, 1967).

NA—Not available.

(Freight forwarders aren't hauling short-haul shipments)

2. The small shipment problem is primarily a short-haul problem that is wholly incapable of any freight forwarder handling for the average haul is only 258 miles

Here are the facts from the annual report of American Trucking Trends for the last available year, 1968:

Regions of United States	Year 1968 average haul (miles)	Class 1 and 2 motor carriers
New England.....	151	237
Middle Atlantic.....	179	853
Central.....	256	715
Southern.....	316	435
Northwestern.....	235	152
Midwestern.....	234	235
Southwestern.....	285	233
Rocky Mountain.....	482	109
Pacific.....	317	421
All United States.....	258	3,390

Many small *truck* carriers are hauling the small shipments—not the freight forwarders. The people who are doing the small-shipment job should not be penalized to help those who are not serving the short-haul shipper needs.

The Penn Central and other railroads have publicly stated they want long-haul, not short-haul, piggyback business. The forwarders are basing their case essentially on railroad piggyback. In 1969 here are the ton-miles moved, piggyback vs. boxcar, etc.:

	Via piggyback of all rail traffic
U.S. Freight Co.....	61.2% of all ton-miles.
Acme Fast Freight.....	64.3% of all ton-miles.
Republic Carloading.....	74.8% of all ton-miles.
National Carloading.....	64.4% of revenue.
Clipper Carloading.....	90.4% of all ton-miles.

The freight forwarders are going after long-haul not short-haul business. In 1969 the ICC found the average freight forwarder shipment haul was 1,525 miles. That can hardly be called a short-haul. The big 4 forwarders had an average haul of over 2,000 miles per shipment.

The ICC record in Ex Parte 266 shows that 82% of all freight forwarder traffic originates in 10 points, and 67% of all freight forwarder traffic terminates at 10 points. Those 10 points are as follows:

Origin	In order of importance	Destination
Chicago.....		Los Angeles.
New York.....		Chicago.
Los Angeles.....		San Francisco- Oakland.
Northeast N.J.....		Seattle-Tacoma.
St. Louis.....		New York.
Boston.....		Portland.
Philadelphia.....		Northeast New Jersey.
San Francisco-Oakland.....		Miami.
Cleveland.....		Honolulu.
Atlanta.....		Philadelphia.

The record is overwhelming that the freight forwarders want long-haul not short-haul business. The head of the largest forwarding company testified to the House of Representatives in 1968 on H.R. 10831 (an almost identical bill to that involved here):

“... it has become economically impossible for the forwarders to handle the short-haul shipments that would move in service say 300, 400, 500, 600 miles.” (Page 25 of record.)

Later in 1970 the same witness on a later bill (H.R. 10293) said:

“... keep in mind that a prime objective of this bill is for the freight forwarding industry working with railroads to be able to go back in and reestablish freight

forwarding service that no longer exists today; hauls 500, 600, 700, 800 miles which today the freight forwarders have had to vacate. At one time they were prime movements."

It is clear the forwarders plan no service under 500 miles, and that is twice the average small shipment haul by truck today.

## V

## CONCLUSION

(A) *The present legislation is similar in purpose to legislation introduced in the past.*

*The net effect of S. 1896 is to provide lower rail charges for freight forwarders than other rail shippers for identical rail services. Why?—Why should freight forwarders have such preferred treatment at the expense of the near-prostrate railroad industry? Why should one rail shipper have rate preference over another identical rail shipper? Why should freight forwarders have such a right when they have no obligation to pass such saving on to the public? Why shouldn't all rail users be treated alike and pay the tariff rate subject to fairness and justness and reasonableness standards in the law today?*

This legislation will create no new tonnage and it can't possibly help the short-haul small shipper who is not close to the longer-haul goals the forwarders seek here. This can only hurt the railroads, the shippers and the public who will have to make up the rate cuts the forwarders can coerce from the railroads if they are given this legislation.

(B) *Regulated freight forwarders have enough advantages over other shippers and shipper associations now.*

*(10 Advantages Regulated Freight Forwarders Already Have)*

1. Complete freedom to make any freight rates they please (and can negotiate) with any motor carrier for line-haul rates up to 450 miles, at less than tariff rates other shippers must pay. (Sec. 409 of ICC Act.)

2. Every rate any shipper or shippers association has in any tariff is also open to any and all regulated freight forwarders. Existing laws allow them to negotiate any tariff rate they want with railroads.

3. They are exempt from antitrust acts. Regulated freight forwarders have anti-trust rate-making exemption under Section 5(a) of the Interstate Commerce Act.

4. Freight forwarders have no obligation to pass railroad freight rate reduction on to shippers (and history shows they seldom do). Non-profit shippers associations must and do so willingly.

5. Freight forwarders can handle freight for all shippers while shippers associations are restricted to hauling for their own members only.

6. Freight forwarders as an industry have been very profitable. Return on investment has averaged over 31% after income taxes for the last 10 years per the ICC report in Ex Parte 266 issued on January 25, 1971.

7. Three giant corporations now control nearly 60% of all of the major freight forwarding revenues. (ICC Ex Parte 266 Decision.)

Forwarding revenue only	Percent of total revenues	Gross revenue
U.S. Freight Corp.....	41.08	\$242,000,000
Alexander & Baldwin.....	12.91	76,261,000
American Export Lines.....	5.41	31,936,000

8. Freight forwarders have full federal power to prevent competitive price-cutting under their tariff rates by other competitive freight forwarders. (Sec. 405(c) of ICC Act.) ICC credit rules forces prompt payment of all freight forwarder bills by their customers.

9. Less-than-truckload assembly and distribution rates by truck (allowed under Section 408 of the Act) to and from all forwarder loading or unloading points, are far below local truck rates local-area shippers now pay for identical but purely local hauls.

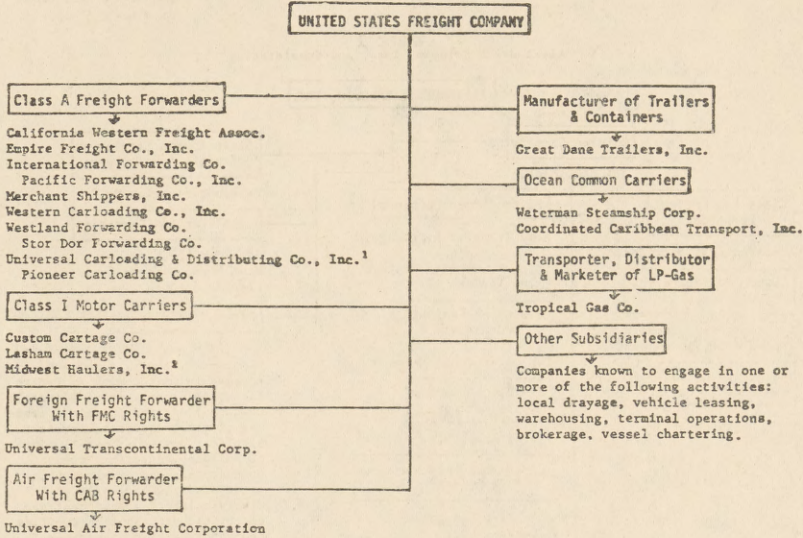
10. The National Industrial Traffic League and many other shippers and shipper associations, have and will support the right of regulated freight forwarders to extend their own private forwarder truck hauls from merely the origin or destination city commercial zone (generally city limits plus 5 miles), to include all points

within 50 miles of an origin or destination city where an intermediate line-haul forwarding movement is involved. (ICC Docket Ex Parte 266.)

For the reasons given above, the National Industrial Traffic League (and the host of shippers it represents) and the other protestants identified herein, respectfully ask this subcommittee to deny approval of S. 1896.

TABLE 2  
United States Freight Company and Subsidiaries

Appendix 1  
Ex Parte No. 266  
Appendix F



<sup>1</sup>Has FMC rights as a non-vessel owning common carrier by water.

<sup>2</sup>U.S. Freight contends it does not control Midwest Haulers, Inc., although it owns 49 percent of Midwest.

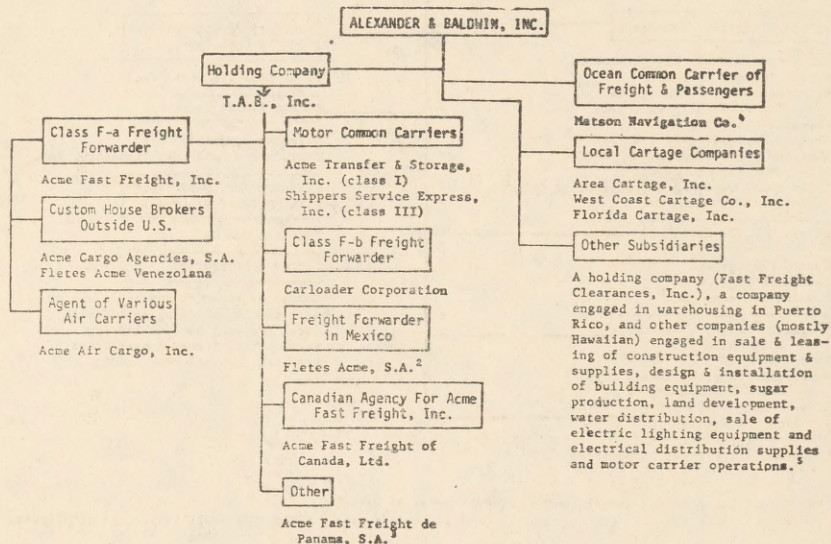
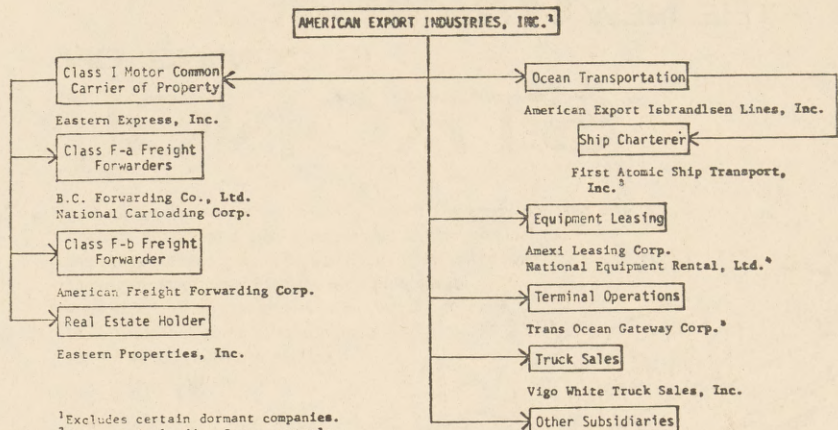
TABLE 3  
Alexander & Baldwin, Inc., and Subsidiaries<sup>1</sup><sup>1</sup>Excludes certain inactive subsidiaries.<sup>2</sup>Shown as under control of Acme Fast Freight, Inc., in Annual Report of Acme Fast Freight, Inc., but not in Ex Parte No. 266 statement.<sup>3</sup>From Annual Report of Acme Transfer & Storage Co., Inc., but not shown in Ex Parte No. 266 statement. Acme Air Cargo de Panama, S.A. shown in Annual Report of Acme Fast Freight, Inc.<sup>4</sup>Includes subsidiaries engaged in ocean shipping, stevedoring & terminal services, liaison services, ownership of tow boats, and management research.<sup>5</sup>Alexander & Baldwin, Inc., has stock in 2 Hawaiian motor carriers, but does not control because the stock is held in voting trusts (per Acme's statement in Ex Parte No. 266).

TABLE 4  
American Export Industries, Inc., and Subsidiaries

Appendix 3  
Ex Parte No. 266  
Appendix F



<sup>1</sup>Excludes certain dormant companies.

<sup>2</sup>National Carloading Corp. controls Panda Terminals, Inc., a terminal owner.

<sup>3</sup>Has subsidiary, SAFE, Inc., which refuels N.S. SAVANNAH.

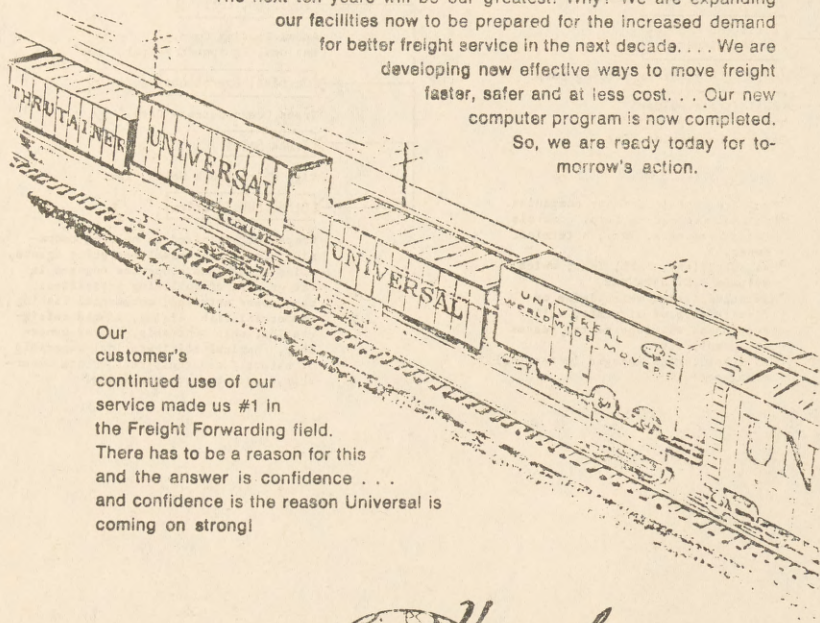
<sup>4</sup>Has subsidiaries which lease or finance sale of aircraft, sell secondhand airplane parts, leases equipment, etc.

<sup>5</sup>Has subsidiaries engaged in terminal management.

Companies organized as holding companies, freight & vessel operating agents, sales agents and companies engaged in one or more of following activities: management services, commercial fishing, commercial fish raising, liquid refrigeration, ship ownership, tanker ownership, chemical refrigeration, ownership of natural resources, real estate ownership, and computer consulting.

THE NEW *Universal*  
IS COMING ON  
**STRONG!**

The next ten years will be our greatest! Why? We are expanding our facilities now to be prepared for the increased demand for better freight service in the next decade. . . . We are developing new effective ways to move freight faster, safer and at less cost. . . . Our new computer program is now completed. So, we are ready today for tomorrow's action.



Our customer's continued use of our service made us #1 in the Freight Forwarding field. There has to be a reason for this and the answer is confidence . . . and confidence is the reason Universal is coming on strong!



CARLOADING & DISTRIBUTING CO., INC.

245 Hudson Street, New York, N.Y. 10013

Senator HARTKE. Mr. James M. Souby, Jr., president of the Western Railroad Association and chairman and counsel, Executive Committee, Western Railroad Traffic Association.

**STATEMENT OF JAMES M. SOUBY, JR., PRESIDENT, WESTERN RAILROAD ASSOCIATION AND CHAIRMAN AND COUNSEL, EXECUTIVE COMMITTEE, WESTERN RAILROAD TRAFFIC ASSOCIATION**

Mr. SOUBY. Thank you, Mr. Chairman.

I unfortunately prepared this statement in a degree of haste. It is largely a repeat performance of the statement presented before the House subcommittee.

I am not particularly prepared to deal with all aspects of it other than by reading it, but I will try to condense my reading of the statement in order to save time.

I would like to mention at the outset that I appear by direction of the executive committee of the Western Railroad Traffic Association, which has concluded to support S. 1896.

Now, the executive committee of the Western Railroad Traffic Association is an organization which was established under section 5A of the Interstate Commerce Act and operates under very strict procedures which have been approved or prescribed by the ICC.

I mention that point, because the bill does contain a provision which would authorize the railroads in their negotiation of the contracts with the freight forwarder to operate under these rate bureau procedures. We feel that this provision is vital to this bill.

We support the bill wholeheartedly, but we feel that particular portion is vital to it.

I might say this, too, we carefully reviewed our position on the bill. We supported, as you may recall, a prior bill that was similar in nature which dealt with special rates for freight forwarders. We think this bill is a more realistic approach than the former one, because here we would be able to negotiate contracts that would embrace many aspects of transportation, not merely the rates.

As Mr. Moir pointed out, we would attempt to work out arrangements which would produce the most efficient form of transportation which we could perform in the small shipment area. We would try to work out arrangements which would operate to increase our volume of business, reduce switching and other costly transportation services.

We feel that this bill, if it is passed, will have positive benefits for the railroad industry as well as for the forwarder industry.

I think it is widely known that the railroads have been forced to abandon the handling of small shipments under so-called less than carload rates in less than carload service. Their costs were such that they couldn't continue to handle this type of business.

Now, the railroads have not lost interest in the business.

We feel that there is still a potential for profit under the proper circumstances. These circumstances, as the situation exists today, involve the working with freight forwarders who are able to solicit, process, and organize the small shipments and turn them over to railroads in volume lots which can be profitable to us.

We think that the history of the relationship between the railroads and the freight forwarders has demonstrated that the partnership of having the forwarders assemble, consolidate, break bulk, and distribute LCL shipments has worked very well.

We want it continued, and we are fearful that it won't be continued unless something is done to revitalize the freight forwarder industry.

I think Mr. Moir pointed out that the ICC found, after an extensive study, that the forwarder industry was in need of revitalization.

I think Mr. Moir covered the point that I made in my statement to the effect that this bill really adds nothing new in principle to the existing law. It merely extends the provisions of section 409 of the Interstate Commerce Act so as to authorize forwarders to make contracts with railroads in addition to the right which forwarders have to make contracts with motor carriers.

We think that section furnishes a legislative precedent for the type of legislation we are supporting here this morning.

I believe I indicated that we see, as a benefit, improved efficiency and economy resulting from agreed upon operating arrangements for handling forwarder traffic.

Now, I think you asked Mr. Moir about the 25,000 pound limitation. That limitation came about from the discussions within the railroad industry. It was presented first in the prior bill that dealt with reduced rates only.

This 25,000 pound limitation was designed to make the type of arrangements which we will enter into with the forwarder entirely directed to the small shipment. We are not particularly interested in seeing the forwarders get into the business which would compete with carload business.

Consequently, some of the members felt that there ought to be a limitation on the weight of the forwarder shipments which are entitled to be transported at rates less than the published tariff rates.

However, this 25,000 pound limitation would not prohibit operating arrangements between the railroads and the forwarders under contractual arrangements in respect to the larger shipments. It would only prohibit the charging of less compensation than the published tariff rate for a 25,000 pound or greater lot of traffic involved in a forwarder consignment.

The proposed limitation is included as an appendix to this statement.

I think I indicated to you previously that we consider one provision of the pending bill extremely important. This has to do with the procedures for establishing contracts which are authorized.

Although we consider it essential that railroads and forwarders be given more freedom to work together in the common cause of improved LCL transportation, we nevertheless do not wish contractual arrangements to be made in a vacuum.

We think that the authorized contracts and their terms and conditions should be subjected to the established and well understood rate-making procedures under which each railroad will have full opportunity to express its views and to participate or not participate in any contract which is established.

Forwarders and railroads are carriers of different classes under section 5A of the Interstate Commerce Act. Our lawyers say that antitrust immunity presently applicable under the established rate

bureau procedures may not apply in the case of contracts between railroads and forwarders unless we have a specific provision in this bill.

We are aware of the charges that have been made that the bill will result in higher freight chargers to the carload rail shippers.

We do not agree with that in the slightest, and the ICC has indicated in Ex parte 266 that it did not agree with this contention. I can assure you that the railroad industry would not be so foolhardy as to operate at a loss simply to attract a larger volume of business.

We do believe, however, in bringing to the railroads larger amounts of traffic. We are likely to improve our rail profits as a result of the greater volumes of business and the greater efficiency that would result in our railroad operation.

I think that pretty well concludes the points I wished to make, Mr. Chairman.

Senator HARTKE. You say you want a bigger volume which you think will increase your efficiency and your rates.

Couldn't you do that now if you reduced rates?

Mr. SOUBY. We don't think we can do that adequately by a mere reduction of rates. We would like to enter into contractual arrangements which would cover more than compensation for the transportation service.

We would be precluded from doing that now under laws as our lawyers indicate.

It would be a haphazard type of thing. A reduction in a rate might produce some volume one place and not somewhere else and so on.

What we would like to do is to arrange for a contractual arrangement which would specify just how the freight would be tendered to us and what the charges would be.

Senator HARTKE. Do you think there will be a reduction in rates if this bill is passed?

Mr. SOUBY. I am not sure that there will, but it is somewhat likely that there will. If we can induce a larger volume, we can then afford to make a lower charge hopefully that would result in greater volume that the forwarder would tender to us.

Senator HARTKE. How much traffic do you think you will generate if this bill were to pass? How much would be generated for the railroads?

Mr. SOUBY. I have made no studies that give any particular volume of business. We do think there is a large potential, however, but the magnitude of it, I am not familiar with.

Senator HARTKE. Why is it that freight forwarders can handle less than carload lots and make money out of it and railroads cannot?

Mr. SOUBY. That is possibly something that dates back to antiquity. We did not see, apparently in the early days, the possibilities of this break bulk consolidation assembly business that the forwarders saw.

It started out by a fine organization of people who could see that by tendering the shipments in carload lots there would be a difference between the less carload rate we could afford to charge and the carload rate, and they worked out a highly efficient arrangement.

Perhaps we could have done it, but the time is passed now and it is beyond recall.

Senator HARTKE. Take shipper associations, are they not much in the same position as the freight forwarders?

Mr. SOUBY. To some extent, yes, they are.

Senator HARTKE. Would this give an advantage to the freight forwarders over the shipper associations?

Mr. SOUBY. It possibly could in some respects, yes, in lower compensation, because the shipper association would be obliged under the present law to utilize the freight tariffs.

Senator HARTKE. Thank you, sir.

(The statement follows:)

STATEMENT OF JAMES M. SOUBY, JR., PRESIDENT, WESTERN RAILROAD ASSOCIATION, AND CHAIRMAN AND COUNSEL, EXECUTIVE COMMITTEE-WESTERN RAILROAD TRAFFIC ASSOCIATION

Mr. Chairman and members of the Subcommittee, my name is James M. Souby, Jr. I am President of the Western Railroad Association and also am Chairman and Counsel, Executive Committee-Western Railroad Traffic Association. My Office is located at 222 South Riverside Plaza, Chicago, Illinois 60606. I appear by direction of the Executive Committee-Western Railroad Traffic Association to express the support of the Western railroads for S. 1896.

The Executive Committee-Western Railroad Traffic Association is an organization which acts as the governing body of the Western Railroad Traffic Association. This Association consists of traffic executives of the principal railroads operating in an area roughly west of Lake Michigan and west of a line running south from Lake Michigan along the Illinois-Indiana State line to the Ohio River, thence along the Ohio River to the Mississippi River and south along the Mississippi River to the Gulf of Mexico.

In reviewing our position as to proposed or pending legislation we first question whether it is in our own best interest. The Western lines have concluded that if this bill is passed it will have positive benefits for the railroad industry.

We realize that Congress analyzes all proposed legislation in terms of its anticipated effect on the general public. We think S. 1896 is in the public interest because its purpose is to encourage better service for the shipper of smaller lots of freight. We certainly expect that to be its effect.

It is well known that the railroads of this country have been forced largely to abandon the handling of small shipments, known as less-than-carload or L.C.L. freight. The railroads' costs are such that they simply have not been able to remain competitive in this field. This does not mean that the railroads have lost interest in the handling of small shipment traffic. By working with freight forwarders, who solicit and process and organize the small shipments and turn them over to the railroads in volume lots that are profitable for the rail lines to handle, our industry has been able to continue to serve the small-lot shipper through the instrumentality of forwarder-rail service.

The combining of the freight forwarder activities and services of assembly, consolidation, break-bulk and distribution of L.C.L. shipments with railroad terminal-to-terminal carload service has been going on for a great many years. It is an intermodal operation that has worked well. The two modes of common carriers—rail and forwarder—complement each other in the handling of L.C.L. shipments converted into carload freight.

This rail-forwarder working alliance has been good for the railroads, the forwarders and the shippers. It has enabled the railroads to continue to participate in the handling of small-lot-freight at a profit to themselves. It has afforded the shippers of small shipments an alternative transport medium which today is highly important as the shippers' choices are limited. Furthermore, through the forwarder method, the L.C.L. shippers obtain the benefits which accrue to rail carload transportation, such as speed, dependability, and improved safety.

Unfortunately, freight forwarders have not maintained their position in the economy. That fact is dramatically illustrated by a comprehensive study which was conducted by the Interstate Commerce Commission last year at the request of the House Committee on Interstate and Foreign Commerce. The Commission submitted its report and recommendations to Congress on January 15, 1971, in Docket Ex Parte No. 266. When we consider the fact that the small-lot shipper is today in desperate need of dependable transportation service, the Commission's finding in Ex Parte No. 266 that "forwarding is at best a static industry" strikes a very serious note. Of even more serious concern is the finding in that

report that the "margin of profit for the industry has been declining steadily, and the first six months of 1970 saw it operating at a loss".

The Western railroads have concluded that if the law were amended so as to permit closer and more realistic working arrangements between forwarders and railroads, the forwarding industry might be revitalized to the benefit of carriers and shippers alike. Our position is sustained by the I.C.C., as a result of its study of the question, by its finding that legislation should be enacted to provide for negotiated arrangements between forwarders and railroads.

This bill, S. 1896, does not add anything new in principle to the existing law. It simply extends the provisions of Section 409 of the Act, which was a part of the original Forwarder Act of 1942, so as to authorize forwarders to make contracts with railroads in addition to the right which that section already gives forwarders to make contracts with motor carriers. Thus, this bill has a foundation both in legislative precedent and in practical application. Freight forwarders and motor carriers have been filing contracts under Section 409, and operating under such contracts, for almost 30 years. After all this time there should be no new administrative problems when the Section is extended to authorize the same kind of contracts between forwarders and railroads.

Among the important benefits which we foresee as a result of a change in the basis of relationship between forwarders and railroads will be improved efficiency and economy resulting from agreed upon operating arrangements for handling forwarder traffic.

The objective of S. 1896 is to improve the transportation of small shipments. I have been instructed, by a vote of the majority of the Executive Committee of my Association, to offer one amendment which those roads believe to be consistent with that objective. The purpose of the amendment is to limit the application of the bill so that in the case of large shipments, weighing 25,000 pounds or more, the railroads would have to charge forwarders as much under contracts as they would charge if the shipments moved at regular published tariff rates. This does not mean that the railroads would be precluded from handling the large shipments under contracts with the forwarders. All that the amendment would require is that the contract could not fix a charge for transporting the 25,000 pounds or over shipments which is lower than the forwarder would pay if the applicable rail tariff rate were applied.

Attached as Appendix A to this statement is an amendment which is designed to accomplish the foregoing purposes. Again I emphasize that the proposed amendment relates only to the compensation or charge that will be applied to the large shipments. The terms and conditions of the contracts, establishing the important working rules and arrangements, will apply to the large as well as the small shipments.

I now direct attention briefly to one provision of the pending bill which our railroads consider rather important. It has to do with the procedures for establishing the contracts which are authorized. Although we consider it essential that railroads and forwarders be given more freedom to work together in the common cause of improved L.C.L. transportation, we nevertheless do not wish the contractual arrangements to be made in a vacuum. We think that the authorized contracts and their terms and conditions should be subjected to the established and well understood ratemaking procedures whereby each railroad will have full opportunity to express its views and to participate or not to participate in any contract that is established.

Forwarders and railroads are carriers of different classes under Section 5a of the Interstate Commerce Act. It is doubtful, therefore, that antitrust immunity presently applicable under established railroad rate bureau procedures would apply in the case of contracts between railroads and forwarders unless specific provision is made in S. 1896 for such handling. The Western railroads are very strong in their conviction that handling through the bureau procedures is essential to the working out of reasonable arrangements with the forwarders which will accomplish the desired objectives of the bill. We are, therefore, pleased to note that the present bill provides for the establishment of procedures which will afford all railroads an opportunity to participate in the establishment of and to become parties to any and all contracts. Section 5a of the Act will apply to the procedures so established. The language I refer to is found beginning at line 17 on page 2 of the bill. We consider this one of the important provisions of the bill.

We are aware of the charges made by opponents of this bill that it will result in higher charges to rail shippers. The I.C.C. rejected such charges as being without substance. As the Commission pointed out in its report in Ex Parte No.

266, it would be foolhardy for railroads to operate at a loss simply to attract a larger volume of forwarder traffic. I assure you our railroads are not that foolhardy. We support the bill because it will result, we believe, in bringing to the railroads larger amounts of traffic and is likely to improve rail profits as a result of the greater volume and better efficiency in operation. We believe that under the concept in this bill we can tailor our charges to the forwarders and the procedures for handling forwarder tonnage to provide more efficient and economical services which could rebound to the benefit of the small shippers.

In conclusion, let me stress again that the public interest in this legislation lies in its potential for improving service for the small-lot shippers. The small shipment problem has been with us a long time and despite all the studies that have been made no effective action program has yet been proposed and implemented. This bill represents an action program based on an intensive I.C.C. Study. We recommend favorable action on the bill.

SUGGESTED AMENDMENT TO S. 1896

The following should be added to the bill:

*And provided further,* That contracts between freight forwarders and common carriers by railroad shall not provide for compensation to be received by the railroad for transporting any freight forwarder shipment weighing 25,000 pounds or more which is less than would be received by the railroad for transporting a like shipment, by itself or as a portion of a like total consignment of freight, under rates or charges established under Part I of this Act. As used in this section "freight forwarder shipment" means a lot of freight received by a freight forwarder from one shipper at one point at one time for one consignee at one destination.

Senator HARTKE. In view of the action about to commence on the floor, I really don't think we should start with another witness. We have two more witnesses left, Mr. Vreeland and Mr. Chambers.

I will make an attempt to have someone come and fill in for me. We will recess these hearings and I will be back as soon as I can. In the event anyone can substitute, we will reconvene earlier.

I hope these two witnesses will stand by so that we can proceed as soon as I complete the work on the floor.

(Recess.)

Senator STEVENS (presiding). Gentlemen, could we call the committee back to order?

I have been asked to continue these hearings for the chairman. Mr. Vreeland, I am sorry to have held you up. We have another committee meeting going on. We are happy to have you here.

**STATEMENT OF BARRIE VREELAND, DIRECTOR, DEPARTMENT OF TRANSPORTATION, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK**

Mr. VREELAND. My name is Barrie Vreeland, and I am director of the Transportation Department of the Commerce and Industry Association of New York.

I am not going to read this entire statement. I will simply orally comment on it, comment on its highlights.

Senator STEVENS. We will print your statement in the record. I will be happy to have your commentary, Mr. Vreeland.

Mr. VREELAND. Thank you.

We keenly appreciate this opportunity to present the views of a broad-based chamber of commerce, certainly the largest in the East, if not the largest in the country. We represent about 3,500 businesses from all branches of industrial and commercial activity. It is a cross section organization composed also of all the carrier modes.

Because of this, our policies tend to hew closer to the public interest than other more specialized interest organizations. We support this bill vigorously.

Now, I would like to first indicate that there is widespread interest in more efficient intermodal transportation. This bill would afford a greater opportunity for one of our transport systems to improve intermodal transportation. It would be a new basic tool toward intermodality. It will allow a freight forwarder to be more efficient in that service that he is best able to render.

Now, it has been noted that while the other modes of transportation may make through routes and joint rates with the railroads, the freight forwarder is not presently permitted to do so.

This is because of a longstanding legal fiction that the freight forwarder is not a public carrier, or he is at least, not a carrier but a shipper when dealing with the railroads.

We believe that if you were to ask any shipper on the street if the freight forwarder was a carrier, he would say yes. Common sense indicates that the freight forwarder is indeed a public carrier, as do many sections of the Interstate Commerce Act.

We would also like to stress the fact that the motor carriers make contracts with the railroads under plan I, and they compete directly with the freight forwarder.

This bill would allow the freight forwarders to compete more effectively with motortrucks and would, of course, allow in effect the railroads to extend plan I provisions to them as well as contract provisions for general cargo service.

The freight forwarding industry, as was indicated by the previous witness, is today an extension of rail service. They have taken over a rail service that the railroads themselves, for one reason or another, historically were not able to manage, and that is the less-than-carload type of service.

We would like the committee to consider the problems of the railroads with their great unused capacities. They are in need of the kind of increased potential traffic that this bill might well afford.

Now, such increases in traffic we believe which produce well above marginal costs could ease, if not lower, the fully allocated pricing that the railroads need.

In other words, this increased volume will actually help the railroads, and I believe the previous railroad witness stressed the same point.

Senator STEVENS. You say it will help the railroads. What will it mean to the shipper and to the person who is using the transportation facility?

Mr. VREELAND. Well, the shippers would benefit by the opportunity of the freight forwarder to extend his service. In other words, if the railroad has more flexibility in dealing with the railroads, we believe that there will be more extended opportunities for service by the freight forwarders and that they of course, will be able to offer this to the public. There is, of course, some hope that the freight forwarders will be able to compete ratewise more effectively and extensively with motor carriers.

My next point, as a matter of fact, was that 70 percent of the revenues of the motortruck industry comes from small shipments, less

than truckload shipments, and this motortruck revenue exceeds that of the railroads today.

As was indicated by an earlier witness, the motortrucks have a limited amount of competition, and we believe that this bill will help the freight forwarders perform more service in this less-than-carload area.

Some shippers would confuse this Congress with the spurious economic argument which says that if the freight forwarders pay less into the rail gross revenues, then the remaining shippers will have to be charged more for the railroads to come out even.

These same shippers, however, neglect the counterargument that if the freight forwarder industry is not afforded this measure of relief, the railroads will have less freight forwarder business which pays substantially more into the fully allocated rail expense than does shipper carload generally, and the shippers will have to make up the difference.

So, if the freight forwarder business does not continue and prosper, it is going to have indeed an adverse effect on the shippers. Economically, this proposal is sound, as has been previously noted by earlier witnesses.

Now, the concluding points I would like to make orally here, are that this bill will provide some measure of significant relief to the small shipment crisis which this Congress has been concerned about, it will afford an extension and improvement of freight forwarder services, and we believe that it will preserve competition of the freight forwarder as a vital intermodal force in the ailing area of small shipments.

Senator STEVENS. I thank you very much.

In terms of your association, which is a very large one, is the position you have taken the result of discussions within your association, or is it an executive position taken by those who are leading it?

Mr. VREELAND. The positions of the commerce and industry are developed by a transportation council of roughly 100 members of the association. This transportation council is composed of both carriers and shippers.

As a matter of fact, the carriers, which are railroads, freight forwarders, motor carriers, and so forth, have half the vote. In other words, it is a representative vote. It is balanced. There are as many votes on the carrier side as on the shipper side.

So this recommended policy went through the catharsis of the consideration of what you might call a mixed transportation congress. This recommended policy of the members thence went to the board of directors for ratification. The recommended policy was for the support of this bill. The board of directors, after further consideration, approved this policy position; and, of course, I am instructed today to bring it here to the Congress for its further consideration.

Senator STEVENS. Are your business firms basically located in New York?

Mr. VREELAND. Yes. But they represent major industrial companies with interstate business. I might add that New York is particularly affected by this bill because of the great number of textile operations and garment district people who depend upon freight forwarders for service.

Senator STEVENS. Is there any labor representation in your association?

Mr. VREELAND. No; it is commerce and industry, but there is no labor representation in the organization.

Senator STEVENS. We thank you very much, Mr. Vreeland, for your assistance in support of this bill.

Mr. VREELAND. Thank you, Mr. Stevens.  
(The statement follows:)

STATEMENT OF BARRIE VREELAND, DIRECTOR OF TRANSPORTATION, DEPARTMENT OF COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK

The following testimony is given by Barrie Vreeland, Director of Transportation, Department of the Commerce and Industry Association of New York, whose principal offices are located at 99 Church Street, New York. It is the largest service Chamber of Commerce in the country, representing a region most affected by the proposed legislation. The Association represents approximately 3,500 large and small business firms in all branches of industrial and commercial activity—most of which are engaged in multi-state operations, including a strong cross section of all types of regulated carriers.

Significantly, this Association is a truly broad-based business organization, not influenced by any special group. Its policies, therefore, tend to hew very close to the broadest possible public interest.

This bill is strongly supported, as was similar earlier legislation, to remedy certain archaic regulatory restraints that are outdated, outmoded and in need of change. This bill is an improvement over earlier versions and removes most of the objections of other parties.

The following brief statement is limited to aspects of shippers or the public interest in this bill.

GENERAL PUBLIC SIGNIFICANCE OF BILL

1. Intermodal coordination is one of the most pressing needs in transportation today and forwarders, who are the greatest practical exponents of coordination, lack a basic tool—a tool which the bill supplies.

2. Railroads are permitted to treat the interline traffic which comes to their lines from all other common carriers on a basis that differs from the treatment afforded shipper traffic—that is, on the basis of through routes and joint rates. Yet forwarders, who are more closely affiliated with the railroads than any other mode of common carriage, must tender freight to the railroads on the basis of the same rates and rules that apply to shippers.

3. Railroads may even haul the trailers of truck lines in substituted rail-motor service at contract charges which differ from, and are lower than the rates they charge forwarders (Plan I), thus putting forwarders at a severe competitive disadvantage as opposed to the motor carriers. Thus motor carriers may ship their customers' freight by rail and pay the published rail rates, any time and anywhere, at the same time retaining the right to participate in both Plans I and V, where the railroads consent.

4. Without disturbing the basic pattern of regulation, this bill provides a means whereby railroads, if they so choose, may enter into contractual arrangements with freight forwarders, which are adapted to the cost and service characteristics of the traffic of such carriers. This will at least *permit*, even though it does not require the achievement of equality of treatment among carriers.

5. Whatever the forwarders and the railroads may be able to accomplish through the instrumentality of this bill, will be accomplished in the interest of improved, expanded and, hopefully, more economic service for shippers. Other carriers will have the same opportunity as forwarders to seek improved service for shippers.

6. Railroads have large unused capacities, and are greatly in need of the increased traffic potential this bill would afford.

S. 1896 WILL WORK GREATLY TO THE ADVANTAGE OF THE SHIPPING PUBLIC

1. It will give the freight forwarders an opportunity to extend and improve services.

The following uncontroverted facts show that it is later than most people think when it comes to competition in the area of small-lot and medium-sized-lot transportation:

(a) There is very little freight-forwarder service in Official Territory, and what there is is rapidly diminishing.

(b) Only the purely transcontinental forwarders are currently experiencing adequate revenues. All of the multiterritory forwarders are in poor circumstances.

(c) There is little promise that REA EXPRESS can provide any spur of competition. Wherever freight forwarder service dries up, shippers must be prepared to face the consequence that they will have only motor carrier monopoly to fall back upon.

2. It will strengthen carrier competition in the ailing small and medium-size shipment arena.

The ICC can adjudicate rates but it cannot prescribe efficiency nor, by official fiat, bring about economy of operation. If competition does not keep carriers on their toes, efficiency and economy will be lost sight of and rates will rise accordingly.

Competition in this country, is the most important regulator both of transportation rates and transportation services.

3. It should regenerate new railroad tonnage and, thereby, provide improvement in rail earnings. This is of particular economic significance in view of the large unused capacity of the railroads.

4. It will encourage coordinated intermodal transportation and may well prove to be the needed catalyst to more rapid growth of efficient domestic containerization.

5. It should induce motor carriers to make use of intermodal "rail highways", which can move volume goods at lower cost in many instances.

#### SOME FACTS ABOUT THE FORWARDER/SHIPPER PROBLEM

1. Over the years since regulation (1942) forwarders have not grown with the economy. For example, there is now very little, and soon there may be no forwarder service at all, within Official Territory.

2. As common carriers, whose sole function it is to serve the public, their continued existence depends upon how many shippers they serve, and how well. Shippers who have long-haul freight also have short-haul freight, and if they must divert one kind, they tend to divert the other.

3. Freight forwarders must maintain terminal facilities as well as working arrangements with pickup, delivery, and short-haul motor carriers. These facilities and arrangements are adequate to support lost short-haul business, as well as other traffic, which forwarders have been forced to discontinue handling.

4. Forwarders have the organization, the personnel, and the know-how to handle not only the business which they now have but the business which they formerly handled and additional business as well—and to handle such freight as efficiently and as economically as the most modern technology permits.

5. Mile for mile rail transportation, excluding terminal service which forwarders are in a position to provide, is as economical as highway service, *for any distance*. Consequently, forwarders firmly believe that, given the opportunity, they can, working with the railroads, put together a service that will be competitive with highway service in the shorter as well as the longer distances.

6. Since railroads have abandoned LCL service, and have no way of reaching the LCL shipper (and LCL shippers also generally are volume shippers) except via the forwarder, it is logical that railroads should cooperate by providing forwarders with the kind of contractual rates or charges and rules and working arrangements—always within the limits of their costs—which would enable the forwarders to maintain a competitive posture in the LCL field.

#### CONSISTENCY OF BILL WITH SOUND TRANSPORT ECONOMIC PRINCIPLES

Even before Ex Parte 266, William H. Tucker, Chairman of the Committee on Legislation of the Interstate Commerce Commission, in response to a request for clarification from the Honorable Harley O. Staggers, Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, said in his concluding paragraph, in a letter dated July 5, 1967 (see report on Hearings on H.R. 10831, 90th Congress, second session, p. 7 and 8) . . . "we recognize that the present inability of freight forwarders to participate in all TOFC plans or

other types of joint arrangements with railroads while such arrangements are, however, available to motor carriers, may cause serious economic harm to the forwarding industry. Under these circumstances, some amendment to Section 409(a) may be appropriate."

Had the Commissioner wished to elaborate on joint preferred arrangements available to others, he could have specifically noted:

(a) The Express Agency which for years was charged amounts much lower than comparable charges assessed against shippers; (b) that railroads pay divisions to other common carriers of all kinds.

The Interstate Commerce Commission, after exhaustive study at the behest of Congress in Ex Parte 266 has found this legislation sound and necessary to keep the forwarding industry viable.

Some shippers and a major representative group would confuse this Congress with the spurious economic argument which says, if freight forwarders pay less into rail gross revenues, then the remaining shippers will have to be charged more for the railroads to come out even.

These same shippers neglect the counter argument that if the freight forwarding industry is not afforded the measure of relief sought by this legislation, the railroads will have less forwarder business (which pays substantially more into fully allocated rail expense than shipper carload traffic) and the shippers will have to make up the difference.

The demand for freight-forwarder service is down and there is every reason to believe it will continue to decline. Contrary to what the shippers argue, Dr. Locklin, in his classic text on transportation economics says: "If the distinction between constant and variable expenses has been fully grasped, it will be apparent that preferential rates relieve, rather than increase, the burden on other traffic, if two conditions are fulfilled. These are 1) that the rate must more than cover the direct costs and, 2) that the traffic will not move at higher rates. When these conditions are fulfilled, preferential rates are of benefit to all concerned."<sup>1</sup>

In the present plight of the freight forwarder, both conditions exist. Present freight forwarder rates paid to railroads are extremely profitable. This bill will get some freight off congested highways. Because of increased volume it will aid the railroads in meeting their high fixed cost while at the same time still contributing handsomely as highly profitable freight.

#### SHIPPER INTERESTS SERVED BY SHIPPER ASSOCIATIONS

It would be strange if this Association, heavily weighted with a public interest in the adequacy and efficiency of the nation's transport capacity, should ignore shipper associations.

In earlier testimony in the 90th Congress, it was this Association's position that "Shipper Associations should not be given this right (i.e. to secure contract rates from railroads) which should be preserved for intermodal carrier arrangements."

The homogenous nature of shippers and carriers that produces this Association's policies requires that the Congress be advised of a retreat to neutral ground on this aspect of conflicting interests.

#### SUMMARY REMARKS

The provisions of S. 1896 are simple and clear. They represent a real forward step by the Congress to give the breath of life to the national quest for more efficient intermodal systems without disturbing the basic framework of the regulatory scheme.

The need for this legislation transcends the lease on life of the freight forwarders, shipper associations, motor carriers, or any other transport system.

There is firm conviction that this bill will, in fact:

1. Provide some measure of significant relief to the small shipment crisis.
2. Afford extension and improvement of freight-forwarder services.
3. Preserve competition of the freight forwarder as a vital intermodal force in the ailing arena of small shipments.
4. Encourage efficiency and economical intermodal systems.
5. Produce new rail traffic and much needed revenues for the railroads and, correspondingly, increase their efficiency.

<sup>1</sup> Dr. Philip Locklin, "Economics of Transportation," (Homewood, Ill., Sixth Edition. Richard D. Irwin, Inc., 1966, P. 150.

6. Encourage motor carrier use of "rail highways" with their unique characteristic economic advantage.

7. Generate new rail/water traffic.

This bill is very significant and an important measure that should be enacted as urgent transportation legislation by this Congress.

Senator STEVENS. Mr. Jerry Chambers, chairman of the board, Clipper Carloading Corp.

**STATEMENT OF JERRY CHAMBERS, CHAIRMAN OF THE BOARD, CLIPPER CARLOADING CORP.; ACCOMPANIED BY LEONARD STELZER, VICE PRESIDENT, TERMINALS**

Mr. CHAMBERS. With your permission, I have Mr. Leonard Stelzer, vice president, Terminals, with me.

Senator STEVENS. I am happy to have you and Mr. Stelzer here. You can proceed in any way you wish, I am sure you understand the problem under which we are operating today.

Mr. CHAMBERS. I do, and I will shorten my presentation rather considerably by not reading it, but will summarize it.

My name is Jerry Chambers. My address, 3401 West Pershing Road, Chicago. I am chairman of the board of Clipper Carloading Co., and president of the Freight Forwarders Institute.

Senator STEVENS. Your complete statement will appear in the record with its attachments, as though it were read completely, and we will be happy to have your abbreviated statement.

Mr. CHAMBERS. Thank you.

The main opposition that we have to passage of this legislation comes from the motor carriers and from various shipper associations. If you will refer to exhibit A, you will note that the freight forwarder traffic has declined over the years to where it is only 77 percent of what it was in the year 1943.

The motor carrier traffic has increased by 460 percent. So we do know that the motor carriers have been the primary beneficiaries of the economic growth of the country in the handling of LCL traffic.

The railroads' traffic has declined since 1943, to where it is only 4.28 percent of the LCL traffic that they were handling at that time. We do not see why the motor carriers are so concerned about an industry that is very small.

Insofar as the shipper associations are concerned, if you will refer to page 19 of my testimony you will note that a number of the shipper associations have told what the present saving is that their members enjoy under freight forwarder rates.

Mr. John Lincoln of American Institute for Shipper Associations specified that their savings are 25 percent under prevailing forwarder rates.

Mr. J. R. Abbey says that his members average savings of 28 percent.

Mr. Fred Tolan stated that the saving was at least 25 percent.

Mr. Douglas Macdonald testified that their savings were 25 percent.

Mr. Robert Cobert testified their savings were 20 to 25 percent.

Mr. Anthony A. Sicilia of United Shippers Association said that their figures would be 20 to 25 percent, and as high as 40 percent.

We do not see how any legislation such as this can harm shipper associations when they have such a tremendous edge on us at the present time. Their savings apparently are at least 25 percent.

Now, if you will refer to exhibit C, there is a list of members of ITOFCA, which is a very large shipper association, always in opposition to our legislation. Their average member does about \$1 billion in business, and their members do a total of \$135 billion in business.

How can any small merchant compete with such tremendous organizations when they pool their tonnage for the purpose of shipping their freight?

Turn to exhibit D, and you will note the annual sales of the members of Terminal Freight Cooperative Association. Here their average sales are about \$750 million per member. How is anyone—any small merchant—going to compete with these? These are unbelievable in their size, and these are the type of companies that we have in opposition to us.

It is rather simple for them to generate letter-writing campaigns that certainly impress Congressmen or anyone else because the names that are signed to those are the names of the industrial giants of the United States.

The statement is frequently made that the forwarders never pass on any of their savings to the shippers, that if we were to get lower rates that we would retain all of these lower rates to increase our profits.

In view of the fact that our profits run about  $1\frac{1}{2}$  percent of our sales volume, we don't have too much that we could pass on, but I do want to point out here on pages 10 and 11, the nine different methods where we have very substantial savings that the shipping public now enjoys because of freight forwarder competition.

If freight forwarders do not continue in this business, naturally, the motor carriers will not continue these concessions that we have made to the shipping public. We are attempting to increase our tonnage. In order to do this, we are doing everything that we can to attract more business to the freight forwarder.

I do ask for one thing. If this legislation is not passed, I do not believe that freight forwarders can continue in business as a viable industry, and I respectfully ask this committee that they take steps to deregulate freight forwarders so that we may no longer have the burden of being a common carrier and so that we may compete with shipper associations without regulation. I think this will be beneficial if this legislation is not passed.

I, personally, am in favor of common carriage because I think that it aids the smaller shipper. I can see where there would be a tremendous amount of companies operating between Chicago and Los Angeles, but when it comes to Brawley, Calif., I think it is going to be a little bit harder to find companies who want to operate from possibly Upper Michigan to Brawley, Calif., and places like that, because these would be unprofitable moves.

Our analysis shows that all off-line to off-line traffic is handled at a loss, an out-of-pocket loss. As common carriers, we must handle this, we are pleased to handle it with our other business, but it does present a problem.

Mr. Chairman, I have attempted to paraphrase the important parts of my testimony, and will be happy to answer any questions.

Senator STEVENS. Does Mr. Stelzer have any comments to make?

Mr. STELZER. No, sir.

I will assist in answering questions if necessary.

Senator STEVENS. It is a very forceful statement you have made.

You are also president of the Freight Forwarders Institute. For the record, what is that?

Mr. CHAMBERS. It is a group of the freight forwarders who are combined in a nonprofit organization for the benefit of the freight forwarding industry and the shipper and so on that use us. It is composed of freight forwarders.

Senator STEVENS. How extensive is your membership?

Mr. CHAMBERS. We have a total membership of about 35 freight forwarders, and there are not too many freight forwarders actually in the business. There are about 60, I would say.

Senator STEVENS. What would you estimate their annual gross volume is?

Mr. CHAMBERS. Average gross volume?

Senator STEVENS. Annual gross volume.

Mr. CHAMBERS. The annual gross volume of the freight forwarding industry is about \$550 million a year, and the members of the institute I think would comprise, oh, possibly \$450 million of that.

Senator STEVENS. Do your people do any business at all either with the larger shippers that are included in your exhibit C or with the members of the General Freight Cooperative Association, which is Exhibit D?

Mr. CHAMBERS. Yes, we do.

The members of the large cooperatives generally will tend to ship their on-line to on-line traffic via the cooperative.

We will tend to get the off-line to off-line traffic that they have, and the motor carriers also will find this to be true.

The reason that they are able to enjoy such tremendous savings is that they handle basically the simpler traffic, on-line to on-line traffic, terminal-to-terminal traffic. We do get business from many of their members; yes, sir.

Senator STEVENS. In January of last year, the ICC recommended that legislation similar to this, as I understand it, be effective for a 3-year period in order to test the concept which you are advancing.

Has your institute taken a position on a time duration for this bill?

Mr. CHAMBERS. I don't believe the institute itself did. The individual members have.

My personal opinion is, I think this makes sense. The Commission is in doubt about it, and we feel that we can definitely prove that this legislation will be beneficial within that period of time.

I don't know that we have ever taken an institute vote on this by the way.

Senator STEVENS. As I understand it, the ICC recommended that you should not be authorized to enter into joint rates and through routes with common carriers by water. Furthermore, you should be able to enter into negotiated arrangements with common carriers by rail.

Does the institute accept that also?

Mr. CHAMBERS. I would say that they do, sir.

We do not handle a great deal of traffic by water. The members do not. Here again I think this would be an individual thing. To the best of my knowledge, it has never been voted on by the institute.

Senator STEVENS. Mr. Chambers, the staff informs me that your industry has had a low profit as a percentage of sales.

Could you tell us what is different now about your financial condition?

Is that still prevailing?

Mr. CHAMBERS. Yes, sir.

If I might read the last 3 years: In 1969 our profit as a percent of sales was 1.20; in 1970 we had a deficit of .32; and in 1971 our profit as a percent of sales was 1.15 percent.

Senator STEVENS. What do you consider to be an adequate profit margin for your freight forwarders?

Mr. CHAMBERS. The highest we have ever enjoyed, as I recall, has been 2½ percent. This is a pretty modest profit. I believe that for motor carriers the Commission uses a figure of about 93 percent as an operating ratio that they consider to be adequate.

My own feeling, if I might give it, I would think about a 96-percent operating ratio.

Senator STEVENS. Would the enactment of this bill have any effect on your profit picture?

Mr. CHAMBERS. I am sorry, I didn't understand that last.

Senator STEVENS. If this bill were passed, assuming we took the ICC recommendation and had a 3-year test period, do you think it would have an impact on the profit margin as far as your freight forwarders are concerned?

Mr. CHAMBERS. I believe that the impact during the 3-year period would not be tremendously great, but I do believe that it would point out the fact that we were on the right track during that 3-year period.

I feel that the most important thing is for us to secure large additional quantities of tonnage which will benefit the railroads and will benefit us by reducing our overhead per 100 pounds of freight handled and so forth.

Senator STEVENS. As I understand the ICC recommendation, they are recommending that you be authorized to enter into negotiated arrangements with common carriers by rail, is that right?

Mr. CHAMBERS. Yes, sir.

Senator STEVENS. Do you primarily do your business with rail today?

Mr. CHAMBERS. Yes, sir.

Senator STEVENS. Do you do any business at all with the truckers on less than carload lots?

Mr. CHAMBERS. We do a great deal of business with the truckers for the assembly and distribution of freight. Generally this is done within a radius of 200 or 300 miles.

There is practically no business done with truckers for distances much greater than that.

Senator STEVENS. You have added to my education, Mr. Chambers. I hope you realize that.

Do you do business with the Postal Service also?

Mr. CHAMBERS. No, sir, we do not.

Senator STEVENS. We appreciate very much your being here. I must say it is a very comprehensive statement, and the committee is indebted to you for your time.

(The statement follows:)

STATEMENT OF JERRY CHAMBERS, CHAIRMAN OF THE BOARD, CLIPPER CARLOADING Co; PRESIDENT, FREIGHT FORWARDERS INSTITUTE

Mr. Chairman and distinguished committee members. My name is Jerry Chambers and I am Chairman of the Board of Clipper Carloading Company, a common carrier freight forwarder operating under Permit No. FF-128 issued to it by the Interstate Commerce Commission in 1942. Our general offices are located at 3401 West Pershing Road, Chicago, Illinois 60632.

In addition to this, I am also the President of the Freight Forwarders Institute.

Clipper Carloading Company was established by me in 1938 and I have been its Chief Executive Officer since its inception. With the exception of three years in the army during World War II, I have personally directed its activities since that time.

During this entire period, I do not believe that our industry has ever been in the critical situation in which it finds itself today. When comparable bills were previously before you, I always appeared to give my statement. Earlier when I testified before you, I said that the disadvantages under which the freight forwarding industry operates are too great for it to long continue. Since the time I made that statement, one of the largest, oldest and most respected freight forwarders in our industry has gone out of business. I refer to International Forwarding Company of Chicago, Illinois. Other freight forwarders are losing substantial amounts of money, and the future does not look promising. S. 1896 now before you, if passed, and enacted into law, will enhance the opportunity for intermodal freight rates and will be beneficial not only to the freight forwarding industry, but to the shipping public, the railroads, the motor carriers and the water carriers as well.

Exhibit A shows the total tons of freight handled by freight forwarders, railroad less-than-carload, and motor carriers since 1943. In 1943 the less-than-carload traffic handled by the freight forwarders and the railroads combined amounted to 23,631,000 tons. In 1970 it amounted to 5,014,625 tons, or a decrease of 78.8 percent. Compare this to the motor carrier 461 percent increase during the same period. This indicates very strongly that the forwarders and the railroads are doing something wrong in their attempt to handle less-than-carload freight.

Exhibit B outlines the Revenue, Expenses, and Operating Ratios of all Class A Freight Forwarders for the years, 1942, 1945, and 1950 through 1971, and includes in the last column Profit as a Percent of Sales. It will be noted that profit has never exceeded 2.43 percent of sales and for the year 1970, the industry as a whole had a .32 percent deficit. Here again it is quite apparent that something must be wrong in the forwarding picture and that it requires changes.

The best known freight forwarders in the industry are Universal, National, Acme and Republic, yet all of these companies in 1970 operated at a very substantial deficit and these losses with the exception of Republic continued in 1971. Figures for 1970 and 1971 are as follows:

	1970	1971
Acme Fast Freight.....	(\$5,244,373)	(\$1,973,936)
National Carloading.....	(3,557,995)	(1,899,074)
Republic Carloading.....	(598,573)	20,321
Universal Carloading.....	(5,051,575)	(500,418)

Note: Figures in parenthesis indicate losses.

Gentlemen, I think you will agree, this is not a very pleasant picture.

A great deal has been said by those opposed to passage of this bill, as to the financial well being of the freight forwarder industry. Specifically, Mr. Fred Tolan, representing the National Industrial Traffic League in hearings on H.R. 6242, a companion bill, before the House of Representatives, said that the average return

on net investment in transportation property plus working capital had been over 31 percent a year. See page 163 of the stenographic minutes covering that bill.

Your attention is again directed to the last column of Exhibit B which is titled "Profit as a % of Sales." This is the only proper way of measuring the profitability of industries selling intangible services, in our case, transportation. Experts in the economic field attest to this. With all due respect to Mr. Tolan, he simply could not operate a transportation business on average return on net investment. Profit in any business is sales less expense, and the only way to measure it is as a percent of sales. And when the industry operates at a deficit, as it did in 1970 and the best return it has ever earned was only 2.43 percent in 1966, then there is something drastically wrong with the conditions under which that industry operates.

It is my belief that if Bill S. 1896 is passed, the forwarders can substantially increase the less-than-carload tonnage that they are handling which will make them more valuable to the shipping public as a transportation medium. Forwarders are, at the present time, locked into an artificial rate structure which is based primarily upon shipping carload and trailer-load traffic for the general public. The average shipment of the freight forwarders is just a little over 500 pounds. The rules and rates under which we ship freight should be geared for a consolidation of this type of freight.

One of the greatest things that we could do would be to substantially relieve the car shortage problem. Freight forwarder terminals are generally located in the heart of the railroad marshaling yards so that it is easy to supply cars and trailers to them. During certain seasons of the year, it would be very advantageous for railroads to have the freight forwarders use refrigerator cars or refrigerator trailers to certain territories. During other seasons, to some territories, it would be advantageous to have them use 40 or 50 foot box cars. Again, at times it might be advantageous to have the forwarders use no box cars whatsoever, but to use trailers entirely. The availability would be on a day-to-day, week-by-week or month-by-month basis in order to accomplish the return to territories where the railroads desire these cars and trailers moved under load. Availability of equipment would determine this. Gentlemen, think what a contribution we could make to alleviate the car shortage if we had flexibility of action. I know that we could return a great many cars to destination under load, which are now moving empty. This, of course, is particularly true on refrigerator cars and refrigerator trailers now moving empty to the west coast. Returning them under load would save the railroads a great deal of money.

In 1969 the freight forwarders tendered to the railroads 291,234 carloads of freight including over 224,936 trailer-loads of freight. (Latest available I.C.C. figures) What a wonderful opportunity to use this tremendous movement freight which originates in the marshaling yards of the railroads to alleviate and control the car shortage problem.

This cannot be done now under general tariff provisions by the railroads because these tariffs would be subject to protest with the inevitable delay that comes under such a method of handling. To handle the movement of these cars would require great flexibility so that cars would either be available or not available, depending upon problems confronting the nation's railroads at certain seasons of the year.

We could work with the railroads for special methods of billing and tracing to try to cut their administrative costs. One thing which I believe would be most valuable would be to greatly reduce railroad liability for claims on freight shipped by forwarders unless the car had been in a wreck. By making a reasonable allowance to freight forwarders in lieu of liability for claims, the railroad would put all of the claim responsibility on the freight forwarder. This, of course, would make us much more aggressive in trying to eliminate claims. At the present time, if the forwarder has a damage claim for freight loaded in a car, he will process the claim, then forward it to the railroad for its share of the liability and the railroad has to process it. I believe that the savings that could be made would be very substantial. This would result in substantial cost reductions which could not be accomplished under tariffs available to the general public.

The shipping public would be greatly benefited by our ability to hold down our costs. We, in turn, would be able to hold down our rates and in a critical inflationary period, which we are going through, this surely would be beneficial. This, in turn, would increase the competition between motor carriers and freight forwarders, with the shipping public being the ultimate beneficiary.

This legislation would assist in solving the small shipment problem. The small manufacturer and others who make small shipments would be able to market their products more easily because of lower freight charges. Freight forwarders, whose

life blood is comprised primarily of small shipments, could serve the small shipper as they have never been able to do before.

Our industry has often been referred to as the less-carload arm of the railroads. As you know, the railroads have almost completely stopped handling less-carload traffic. They found that they could not handle this traffic on a compensatory basis, and thus phased out the operation. Our industry has filled this void and the same traffic which the railroads once handled as individual less-carload shipments is now being handled by them as carloads or trailerloads. We have taken the less-carload traffic the railroads once handled, consolidated it and returned it to them as carloads and trailerloads. Think of the economies the railroads are experiencing as a result of this.

It has been argued and it is true that the railroads need all the revenue they can get and they receive about \$175,000,000 per year from forwarder operations. That is why this legislation is so important to them, because without it, all of this revenue and tonnage will be lost to the motor carriers with disastrous results to the railroads.

Some opponents of this bill would like to see the railroads re-enter the LCL field and have, in fact, advocated this before the House of Representatives during discussion of H. R. 6242, the House companion bill to the Senate bill which is the subject of this hearing.

Specifically, Mr. Fred Tolan on page 183 of the stenographic minutes of H. R. 6242 when asked if the railroads would have to get back in the transportation business if the freight forwarders went out of business stated: "That is exactly our position, and we think that is exactly what could and should happen."

Gentlemen, I do not believe that Mr. Tolan had the authority of the National Industrial Traffic League to make this statement. Mr. Tolan is advocating the total dissolution of our industry and I submit this is his personal self serving view rather than the official position of the NIT League. Since the charge was made, however, the question arises as to whether the best interests of the shipping public, the railroads and the freight forwarding industry would best be served should this occur. The shipping public would be subjected to poorer service and higher rates. The railroads would lose revenue approximating 175 million dollars per year and would again be saddled with a non-profit operation, which they do not want and which they can ill afford. Lastly, the thousands of people employed in our industry would be thrown into an already over crowded unemployment field. Who benefits? No one really, except perhaps the large shipper associations, which are comprised of the giants of industry who already have tremendous economic advantages over their small competitors. I will deal with this later in my statement.

This entire subject of railroads re-entering the less-carload field could be dealt with at length, but the railroads, who know what the facts are and are aware of the problems that would result, are not interested in this at all. Certainly, if the railroads were of the opinion that re-entering the less-carload field would be beneficial and profitable to them, they would most certainly do so.

Mr. Tolan, continuing his attack on our industry on page 171 of the transcript on H. R. 6242 stated that the freight forwarding industry seldom passes on railroad freight rate reductions to the shipping public. Mr. Tolan does not have his facts correct. For example, at the present time our industry has in effect the following rate advantages over motor carriers:

1. On transcontinental traffic, freight forwarder rates are approximately 6% less than motor carrier rates between major cities on shipments weighing less than 2,000 pounds.
2. Freight forwarders between Chicago and major west coast cities have in effect 30,000 pound depressed volume rates on Freight, All Kinds. The motor carriers have not met these rates.
3. Freight forwarders on light and bulky freight have rates 15% lower than motor carrier.
4. Freight forwarders between Chicago and major west coast cities have in effect depressed 20,000 pound rates on numerous commodities. The motor carriers have not met these rates.
5. Freight forwarders allow split deliveries between major cities in California on the one hand and major cities in Oregon and Washington on the other. Motor carriers do not provide for this.
6. Freight forwarders have lower rates from Boston, Massachusetts; New Haven, Connecticut; New York, New York; Jersey City, New Jersey; and Philadelphia, Pennsylvania when shippers dray their freight to freight forwarder terminals in those cities. Motor carriers do not.

7. Motor carriers on transcontinental traffic penalize shippers of single shipments weighing less than 500 pounds by charging an additional \$1.79 per shipment. Forwarders do not.

8. Motor carriers on transcontinental traffic will not handle traffic to or from the New York boroughs of the Bronx, Brooklyn, Queens and Manhattan weighing less than 1,000 pounds unless freight charges are prepaid. Freight forwarders do not have this restriction.

9. Most of the large motor carriers on traffic to and from the same boroughs in 8 above, have established arbitrary charges on shipments weighing less than 1,000 pounds. Freight forwarders do not have these restrictions.

If freight forwarders go out of business, all of these advantages and many others will be lost to the shipping public and they will be forced to pay the higher motor carrier charges.

Freight forwarder rates, like the rates of other modes of transportation, are in a constant state of flux. They react to the competitive situation, and numerous other economic factors, including underlying rail costs, have a direct effect on them. As indicated in the representative advantages listed above, freight forwarders do in fact, when they can economically do so, pass on to the shipping public numerous lower rates. Mr. Tolan's facts relative to this matter were in error.

As I indicated earlier, the maximum profit our industry has experienced since it became regulated in 1942 was 2.43 percent in 1966. In fact, using Exhibit B statistics, the industry's average profit as a % of sales for the twenty years shown, amounted to only 1.52 percent. If we were to further reduce our rates, as suggested by Mr. Tolan, our industry would go bankrupt.

All we are trying to do is gain parity with the motor carriers. As I indicated, freight forwarders, even though we are common carriers, must now pay full tariff rates, and operate under rules and regulations that were established for the shipping public. This is not equitable. Our primary common carrier competition is the motor carrier industry. Unlike freight forwarders, however, they can and do make private arrangements with the railroads for the handling of their trailers. To put it another way, when it suits the motor carriers purpose, they can go over the road with their own power. They can utilize the identical tariff provisions that freight forwarders utilize, or they can make private contractual arrangements with the rail carriers. Even if this legislation is passed, we will still not have the ability to go over the road. Our inability to make intermodal rates with the railroads, a privilege the motor carriers already enjoy, seems to me to be manifestly unfair and inequitable. It must have also seemed so to the Interstate Commerce Commission because they are supporting us in our quest for equality.

#### WHAT ARE THE EVENTS THAT WILL PROBABLY TAKE PLACE IF THIS BILL IS NOT PASSED?

As I indicated in Exhibit A, the freight forwarding industry today handles 23 percent less tonnage than it did in 1943, and as was shown in Exhibit B, the industry has never experienced a reasonable return. Also as I indicated earlier in my presentation, International Forwarding Company went out of business. I think it would be reasonable to assume that if some assistance is not given to the forwarding industry, it will not be too far off before there will be no forwarding industry.

Should this happen, the motor carriers will have a virtual monopoly on less-carload and small shipment traffic in the United States. The railroads handle practically no less-carload traffic today. The financial condition of REA Express, the only other small shipment carrier, is "extremely critical" says Mr. Daniel J. Kerrigan, its Marketing Vice President, in a petition for relief to the Interstate Commerce Commission (TRAFFIC WORLD MAGAZINE—November 29, 1971 issue) and its future is in doubt. Rumors abound that REA will be out of business within the next few months. This then would subject the shipper of small shipments to the vagaries of motor carrier transportation alone and all that it entails.

As you gentlemen probably know, over the past several years, the Interstate Commerce Commission has entered into several studies and investigations regarding this. The most recent investigation was concluded in 1970. This case was titled Ex Parte No. MC-77 (Restrictions On Service By Motor Common Carriers). Its investigation disclosed numerous methods that motor carriers use to by-pass their obligations as common carriers in the handling of shipments whose transportation characteristics are unattractive.

Notwithstanding the Commission's decision in this matter, it is common knowledge that some motor carriers still continue to practice selectivity and give preferential treatment. Let me briefly explain.

The American Trucking Association, has constantly opposed this legislation, both before the Senate and the House of Representatives. It has attempted to give the impression that its members, primarily the long haul motor carriers who dominate it and determine its policies, serve all of the public at all of the points encompassed in their permits. This is not true, however. The motor carriers still carry on an extensive selectivity program, and the Interstate Commerce Commission, due to insufficient manpower and budgetary problems, cannot cope with it.

For example, it is common knowledge that many large long haul motor carriers will not handle short haul shipments even though their permits provide for short haul carriage. This is just one area in which they continue to practice selectivity. I would like to bury once and for all the myth that motor carriers handle all traffic tendered to them. They are not the guardian angels of the shipping public, as they would have you believe.

Should the freight forwarding industry cease to exist, the shipper of small shipments and/or unattractive freight will be left to the total mercy of these very motor carriers. Visualize, if you will gentlemen, your predicament if you were a small shipper. I know you will agree that you would not want to be in that position.

When previous forwarder bills were introduced, our industry always has had the very strong opposition of shipper associations. Among them were Terminal Freight Cooperative Association and ITOFCA. These are two shipper associations whose members combine their respective tonnage for the purpose of securing lower freight costs. The Interstate Commerce Act exempts these associations from any regulation.

Exhibits C and D are lists showing the members of ITOFCA and of Terminal Freight, and their 1970 gross sales volume. It is interesting to note that 134 of ITOFCA's members do approximately \$136 billion per year in gross sales. Terminal Freight Cooperative Association's members do over \$37 billion per year in gross sales.

These are the two largest consolidations of industrial power that have ever existed in the United States. To the best of my knowledge, there has never been anything to approach this concentration of power for economic purposes. These companies have a tremendous advantage over the ordinary small shipper who is not accepted for membership in such an organization.

According to the "Survey of Current Business" published by the Commerce Department of the United States, total manufacturing sales during the year 1970 were \$653.1 billion. ITOFCA's members sales amounted to \$135.9 billion or 20.8 percent of total manufacturing sales. Gentlemen, think of the economic leverage this association has.

Do any of you gentlemen see the names of small companies in this select group? Is the ordinary small shipper represented here? Of course not. Shipper associations, by their very nature, have as members only the largest companies in the United States. The small shipper is not welcome and it is the small shipper and receiver that will be hurt if our industry continues its downward trend.

Who is the small shipper to turn to? Not only does he have to compete with the giants of industry who are accepted as members in shipper associations, but in the absence of freight forwarder service, will be subjected to the monopolistic treatment of motor carriers. The freight forwarding industry, small as it may be, performs a service to the shipping public far out of proportion to its size.

An interesting fact is that these unregulated associations already have a tremendous economic advantage over the common carrier freight forwarder. In this connection, I would like to direct your attention to the statement that a leader of the shipper association industry made before the House of Representatives' Subcommittee on Transportation and Aeronautics during hearings on H.R. 10293 a few years ago. Mr. John C. Lincoln, Chairman of the Legislation Committee of the American Institute For Shippers' Associations, on page 223 of the printed record in H.R. 10293, said that members of an average shippers association realize savings which generally exceed 25 percent under prevailing freight forwarder rates.

The American Institute For Shippers' Associations is a trade association representing the interests of shippers associations throughout the United States, according to Mr. Lincoln.

Also, Mr. J. R. Abbey, General Manager of the Charter Oak Shippers' Cooperative Association, Inc., who also testified in H.R. 10293, in an article titled, "How Effective Are Shipper Co-ops?" in the August, 1970 issue of DISTRIBUTION

WORLDWIDE on page 31 said his members have experienced average freight savings of 28 percent.

Just a few months ago, in March, in hearings before the House of Representatives' Subcommittee on Transportation and Aeronautics on bill H.R. 6242, other shipper association representatives testified to the tremendous rate advantages their associations have over freight forwarder rates. For example, Mr. Fred Tolan, representing numerous shipper associations, on page 177 of the stenographic minutes said the saving was "at least 25 percent." Mr. Douglas R. Macdonald, General Traffic Manager of City Products Corporation, Chicago, Illinois and President of Terminal Freight Cooperative Association, on page 343 of the stenographic minutes said that 25 percent savings "would be well within the realm of possibility on those studies that I have made on behalf of my own company." Mr. Robert N. Cobert, General Counsel for the American Institute for Shippers' Associations, Inc., on page 359 stated "there is indication from other sources and other testimony that it (savings) is roughly in the area of 20 to 25 percent. I would prescribe to that." Also Mr. Anthony A. Sicilia, Assistant General Manager of United Shippers Association, Inc. of Chicago, Illinois, on page 376 stated "I would say that it (savings) depends, the figure has been tossed around 20 to 25 percent, but I think that it depends on an individual member. There are members who ship bulky freight who would be paying \$200 against \$300 and maybe save as much as 40 percent or somewhere around there."

Notwithstanding these tremendous savings, every time this legislation goes to hearing, the associations, who do not represent the little shipper, but primarily the largest manufacturing companies in the world, come to Washington to protect the "interests" of their members. Isn't a rate advantage of 25 percent, as has been testified to by these people, sufficient protection? I personally cannot imagine any rate or practice that would result from the proposed regulation, which would allow us to reduce our rates 25 percent to compete with associations. Their real reason for appearing here is to continue to preserve for their members the tremendous trade advantages inherent in such associations and to perpetuate the dominant position of their members in the market-place. The small shipper, generally is not acceptable for membership in associations and thus must utilize the services of common carriers, both freight forwarder and motor carrier.

Until recently, information relative to tonnage handled by individual shipper associations was not available; however, for the very first time in Ex Parte No. 266 (Investigation Into The Status of Freight Forwarders), some shipper association statistics were revealed and just recently an article was published in the October 25, 1971 issue of RAILWAY AGE about ITOFCA containing further information. The article was titled, "We've Only Scratched The Surface," and Mr. John C. Allan, Sr., its Executive Vice President and General Manager, gave out a good deal of information about this company. The information contained in the article about the growth of ITOFCA is almost beyond belief, but when one considers the rate advantages it maintains, it is understandable. Mr. Allan said he began his operation in 1959 and moved 459 trailers. For the fiscal year ending June, 1971, Mr. Allan said his company moved 76,000 trailers. Up until approximately September of 1971, ITOFCA handled only trailer loads of freight for its members. In September, it expanded its operations to include less-carload traffic.

In 1970, only two years ago, ITOFCA had 120 members. According to Mr. Allan in the above article, it now has 163 members, an increase of 43 members in two years. Now that it has entered the less-carload field, I think we can reasonably expect that its tonnage will increase even more than it has over the past several years. Let me explain why, gentlemen.

I have attached as Exhibit E, a one page rate chart circulated by ITOFCA indicating its less-carload rates from Chicago, Illinois to Los Angeles, California. Note that anything carrying a classification of 65 or over, will be rated at the Class 65 basis. Common carrier freight forwarder and common carrier motor rates are nowhere close to this, and it is contemplated that the erosion of traffic to ITOFCA, as a result of these depressed rates, will be tremendous.

While Exhibit E lists rates only from Chicago to Los Angeles, provisions are included on ITOFCA's rate chart to cover shipments originating both beyond Chicago and beyond Los Angeles. (See Item 6 of Exhibit E)

We have taken a representative commodity, machinery, and made a rate comparison of freight forwarder charges and ITOFCA charges from South Bend, Indiana and Chicago, Illinois to Los Angeles, California and Santa Barbara, California. See Exhibit F. I would like to direct your attention to the fact that ITOFCA's rate structure is set up in such manner that on movements destined

to Santa Barbara from Chicago, Illinois and South Bend, ITOFCA's charges are higher than freight forwarder on all shipments weighing less than 5,000 pounds, but considerably lower than freight forwarder on shipments weighing 5,000 pounds and over. To put it another way, to points like Santa Barbara, which are considered to be *beyond* terminal points, ITOFCA is only interested in handling 5,000 pounds and over shipments. These are the most lucrative to handle, whereas the small shipments are the most costly to handle.

Even to Los Angeles, a terminal point, from South Bend the same situation prevails. ITOFCA's charges are lower than freight forwarder on shipment weighing 5,000 pounds and over, but higher on shipments weighing less than 5,000 pounds.

We have an entirely different story, however, when the movement is between two terminal points such as Chicago and Los Angeles. Here ITOFCA's charges are higher only on minimum shipments (100 pounds or less), but substantially lower on all other weight levels.

To sum up, on movements from a terminal point, Chicago, to a terminal point, Los Angeles, ITOFCA wants all the business, except minimum shipments, and establishes its rates to accomplish this. Whenever a beyond point is involved, however, either at origin and/or destination, ITOFCA only wants to handle 5,000 pound shipments and over. Here again its rate structure is designed to accomplish this.

ITOFCA has also made sure that it will not handle light and bulky freight by including in its rate information sheet provisions which would result in exceedingly high rates on such traffic. See paragraph 5 of Exhibit E.

ITOFCA, by its rate application, effectively places an embargo on all traffic except the most lucrative and attractive and leaves the rest for freight forwarders and motor carriers.

Unlike regulated freight forwarders, unregulated shipper associations can pick and choose their members, the points they serve, the traffic they want to handle, the rates they want to charge, and so on. Common carrier freight forwarders, on the other hand, hold themselves out to the general public to handle all traffic to all points encompassed in their permits at rates published in their tariffs on file with the Interstate Commerce Commission.

You understand, of course, that when the members of shipper associations give their best and most desirable business to the associations and then pick and choose their worst freight to give to freight forwarders and to motor carriers, they in effect are raising the costs of the freight forwarder and the motor carrier and they are thus raising the rates that the common carrier must charge small shippers who are their customers.

In other words, these giants of industry not only derive the benefits of lower rates through consolidating their shipments, they also raise the transportation costs of their small competitors by giving the unprofitable freight to common carriers.

Was it the intent of Congress that such actions should be permitted when they exempted shipper associations from regulation?

These unregulated shipper associations and their representatives have no legitimate reason to oppose this legislation. It is presently impossible for freight forwarders to meet their depressed rate competition to and from the major cities, which is the only traffic they are really interested in. If this freight, which is the most economical for us to handle, continues to be taken from us and we are left to handle only the points beyond the major cities, we will not be able to shoulder the financial burden much longer and we will, unfortunately, go down the path that International Forwarding Company had to take. As a matter of interest, in International's petition to abandon its operating authority, its President listed as one of its primary reasons for abandonment, "increased diversion of profitable traffic to shippers associations."

To give to you gentlemen some idea as to the growth of shipper associations and shippers agents generally, I have prepared as Exhibit G some statistics compiled by the Interstate Commerce Commission. Note that shipper association traffic has increased 77.7 percent 1964 to 1970 and freight forwarder traffic has declined 1 percent during the same period. We are going backward, gentlemen, while shipper associations are fastly moving ahead.

I have also prepared some tonnage statistics of some of the major freight forwarders. See Exhibit H. Gentlemen, as a group, we have lost 24.8 percent in tonnage in just 2 years. If you do not help us now, to whom can we turn. It is almost too late for many of us, and it is a shame that an industry that has so much to offer to the shipping public must find itself in such dire straits.

Gentlemen, as you have seen from my presentation, the freight forwarding industry is in the worst financial shape that it has been in since it was placed under regulation in 1942. As I also indicated earlier, non-regulated shipper association and non-regulated shipper agent competition have greatly contributed to this very dire situation, yet, representatives have appeared before the Congress on innumerable occasions and will appear before you now in opposition to this bill, notwithstanding the fact that their charges to their large shipper members are generally 25 percent lower than ours.

As I see it, there are two choices. The first and most favorable, of course, is to pass this legislation and give us the opportunity to once again try to compete with unregulated transportation. The second choice is not to pass this legislation, in which case, our industry will pass out of the transportation picture within the next several years. Gentlemen, I cannot sit idly by and watch this happen. I cannot in good conscience watch my company, which I and my trusted associates have spent all of our working lives to make successful, die without trying to fight back. The course of action I am going to suggest to you is extreme and one that I have given considerable thought to. I make it because I will have no other choice should this legislation fail to be favorably acted upon by the Congress. If this legislation fails, I urgently plead that you put into motion the machinery that will deregulate us. At the present time, we are like a boxer with one hand tied behind his back, and we can only for a very limited time continue to take the punishment and abuse from nonregulated competition that we are experiencing, before totally disintegrating.

I have been in this business all of my adult life and never before has the handwriting on the wall been so clear. Either pass this legislation or deregulate us. There is no other alternative. I recognize the seriousness and magnitude of my deregulation request. But there simply is no point in allowing our industry to die by inches. Deregulation, in lieu of passage of this bill, will let us fight back, which is something we are unable to do now.

Gentlemen, we desperately need your help.

## EXHIBIT A

## COMPARISON OF TOTAL TONS OF FREIGHT RECEIVED FROM SHIPPERS BY FREIGHT FORWARDERS AND MOTOR CARRIERS WITH LESS THAN CARLOAD TONS OF FREIGHT RECEIVED BY RAILROADS WITHIN THE UNITED STATES, 1943-71

Year	Freight forwarder		Less than carload railroads		Motor carriers	
	Tons received	Percent of 1943	Tons received	Percent of 1943	Tons received	Percent of 1943
1943	4,720,000	100.00	18,911,000	100.00	48,847,000	100.00
1944	4,604,000	97.54	20,125,000	106.42	52,776,000	108.04
1945	4,092,000	86.69	20,833,000	110.16	53,618,000	109.77
1946	4,548,000	96.36	24,387,000	128.96	58,588,000	119.94
1947	4,527,000	95.91	22,561,000	119.30	49,922,000	102.20
1948	4,087,000	86.59	18,266,000	96.59	83,576,000	171.10
1949	3,531,000	74.81	12,592,000	66.59	86,872,000	177.85
1950	4,341,000	91.97	10,887,000	57.57	106,722,000	218.48
1951	4,836,000	102.46	10,379,000	54.88	103,477,000	211.84
1952	4,838,000	102.50	9,310,000	49.23	104,247,000	213.42
1953	4,504,000	95.42	8,255,000	43.65	113,468,000	232.29
1954	4,245,000	89.94	6,964,000	36.83	108,479,000	222.08
1955	4,708,000	99.75	6,993,000	36.98	124,334,000	254.54
1956	4,593,000	97.31	6,485,000	34.29	132,730,000	271.73
1957	4,302,000	91.14	5,443,000	28.78	120,098,000	245.87
1958	3,967,000	84.05	4,402,000	23.28	118,535,000	242.67
1959	4,173,000	88.41	3,923,000	20.74	138,303,000	283.14
1960	4,094,000	86.74	3,213,000	16.99	137,999,000	282.51
1961	4,041,000	85.61	2,586,000	13.67	139,564,000	285.72
1962	4,306,000	91.22	2,183,000	11.54	155,553,000	318.45
1963	3,993,000	84.59	1,625,959	8.60	161,693,000	331.02
1964	4,155,000	88.03	1,495,554	7.91	174,627,110	357.49
1965	3,994,208	84.62	1,333,000	7.05	185,823,000	380.40
1966	4,621,793	97.91	1,049,000	5.55	199,572,000	408.60
1967	4,347,635	92.11	960,000	5.07	191,737,000	392.50
1968	4,451,461	94.31	866,691	4.58	206,177,000	422.10
1969	4,442,597	94.12	837,000	4.43	242,371,000	496.18
1970	4,205,625	89.10	809,000	4.28	225,176,000	460.98
1971	3,638,230	77.08	(1)	(1)	(1)	(1)

<sup>1</sup> Not yet available.

Note: These tonnage figures obtained from statistics published by the Interstate Commerce Commission's Bureau of Economics.

## EXHIBIT B

## REVENUES, EXPENSES, AND OPERATING RATIOS—CLASS A FREIGHT FORWARDERS, 1942, 1945, 1950, AND 1955 THROUGH 1971

Year ended Dec. 31	Number of forwarders represented	Forwarder transportation revenue (millions)	Total operating expenses (millions)	Net income (millions)	Operating ratio after taxes (percent)	Profit as a percent of sales
1942	51	\$160.6	\$158.0	\$2.2	98.63	1.37
1945	52	170.1	170.1	.1	99.88	0.12
1950	62	287.0	281.1	4.6	98.37	1.63
1955	58	401.3	396.7	4.3	98.84	1.16
1956	60	417.3	413.7	3.5	99.12	0.88
1957	61	422.5	419.5	4.0	99.04	0.96
1958	57	412.9	410.0	4.2	98.97	1.03
1959	59	443.3	440.8	3.9	99.15	0.85
1960	64	437.0	436.4	2.8	99.48	0.52
1961	64	442.8	436.6	6.1	98.55	1.45
1962	64	464.6	455.4	6.8	98.42	1.58
1963	60	469.6	459.8	7.3	98.48	1.52
1964	60	487.0	479.2	5.1	98.88	1.12
1965	61	459.3	443.5	11.4	97.64	2.36
1966	61	526.8	507.8	11.8	97.57	2.43
1967	63	518.8	504.8	9.8	98.22	1.78
1968	64	560.7	548.2	6.8	98.76	1.24
1969	65	590.6	578.2	7.0	98.80	1.20
1970	63	594.3	596.2	(1.8)	100.32	(1.32)
1971	67	581.4	576.7	6.7	98.85	1.15
Grand total		8,847.9	8,712.8	107.6	98.48	1.52

<sup>1</sup> Deficit.<sup>2</sup> 20-year average.

## EXHIBIT C

## 1970 MEMBERSHIP LIST OF ITOFCA

Gross volume of annual sales of members of ITOFCA, Inc., for year 1970<sup>1</sup>

	Annual sales (in millions)
Ace Hardware Corp., Chicago, Ill.	( <sup>2</sup> )
Acklands Ltd., Ontario, Canada	128.3
Addressograph Multigraph Corp., Cleveland, Ohio	420.5
Advance Transformer Co. (subsidiary of North American Phillips Corp.), Chicago, Ill.	<sup>4</sup> 547.1
Air Reduction Co., Inc., New York, N.Y.	469.7
Alcan Aluminum Corp. (subsidiary of Alcan Aluminum Ltd.), Cleveland, Ohio	1,369.7
Allied Chemical Corp., Morristown, N.J.	1,248.5
Allied News Co., Inc., Chicago, Ill.	( <sup>2</sup> )
Allied Products Corp., Chicago, Ill.	196.8
Allis-Chalmers Manufacturing Co., Milwaukee, Wis.	870.1
Alton Box Board Co., Alton, Ill. <sup>3</sup>	120.0
Aluminum Co. of America, Pittsburgh, Pa.	1,522.4
American Bilrite Rubber Co., Inc., Boston, Mass.	160.5
American Metal Climax, Inc., New York, N.Y.	840.7
American-Standard, Inc., New Brunswick, N.J.	1,417.8
American Synthetic Rubber Corp. (subsidiary of American Bilrite Rubber Co., Inc), Louisville, Ky. (see above).	
Amade, Inc., Dayton, Ohio	( <sup>2</sup> )
Anaconda Co., New York, N.Y.	977.4
Ansul Co., Marinette, Wis.	40.0
Automatic Distributing Corp., Houston, Tex.	( <sup>2</sup> )
H. R. Basford Co., San Francisco, Calif. <sup>3</sup>	15.0
Beatrice Foods Co., Chicago, Ill.	1,576.1

See footnotes at end of table.

## EXHIBIT C—Continued

## 1970 MEMBERSHIP LIST OF ITOFCA—Continued

Gross volume of annual sales of members of ITOFCA, Inc., for year 1970<sup>1</sup>—Con.

	<i>Annual sales (in millions)</i>
Bird & Son, Inc., East Walpole, Mass.....	91. 4
Boise Cascade Corp., Boise, Idaho.....	1, 716. 9
Borden, Inc., Columbus, Ohio.....	1, 827. 3
Bowman Products Division, Associated Spring Corp., Cleveland, Ohio.....	4 113. 5
Brown & Williamson Tobacco Corp. (subsidiary of British American Tobacco Co.), Louisville, Ky.....	4 796. 6
Brunswick Corp., Chicago, Ill.....	450. 4
Cabot Corp., Boston, Mass.....	252. 5
Cain and Bultman, Inc., Jacksonville, Fla. <sup>3</sup> .....	30. 0
California Television Corp., Sacramento, Calif.....	(2)
Ceco Corp., Chicago, Ill.....	189. 1
Celanese Corp., New York, N.Y.....	1, 036. 7
Chemetron Corp., Louisville, Ky.....	297. 0
Colgate-Palmolive Co., New York, N.Y.....	1, 210. 2
Compac Corp., Newark, N.J.....	(2)
Consolidated Foods Corp., Chicago, Ill.....	1, 651. 5
Continental Can Co., New York, N.Y.....	2, 036. 5
Cooper Tire and Rubber Co., Findlay, Ohio.....	116. 3
Cowles Communications, Inc., Chicago, Ill.....	153. 2
Culligan USA, Northbrook, Ill.....	46. 1
Cuneo Press, Chicago, Ill.....	56. 0
Dow Badische Co., Williamsburg, Va. <sup>3</sup> .....	30. 0
Diversey Corp., Chicago, Ill.....	48. 5
Dow Chemical Co., Midland, Mich.....	1, 911. 1
E.I. DuPont deNemours & Co., Inc., Wilmington, Del.....	3, 618. 4
Ekco Products, Inc. (division of American Home Products), Wheeling, Ill.....	4 1, 294. 3
Electrical Distributing, Inc., Portland, Oreg.....	(2)
Electric Machinery Manufacturing Co. (subsidiary of Studebaker, Worthington Corp.), Minneapolis, Minn.....	4 858. 1
Endicott Johnson Corp., Endicott, N.Y.....	160. 0
F. D. Farnam Co., Necedah, Wis.....	(2)
Fawcett Publications, Inc., New York, N.Y. <sup>3</sup> .....	50. 0
Flori Corp., Phoenix, Ariz.....	9. 0
Florsheim Shoe Co. (division of Interco), Chicago, Ill.....	4 777. 9
Food Fair Stores, Inc., Philadelphia, Pa.....	1, 762. 0
Frito-Lay, Inc. (subsidiary of Pepsi Co., Inc.), Dallas, Tex.....	4 1, 122. 6
Fruehauf Corp., Detroit, Mich.....	450. 1
General Electric Co., New York, N.Y.....	8, 726. 7
General Foods Corp., White Plains, N.Y.....	2, 045. 4
General Motors Corp., Detroit, Mich.....	18, 752. 4
Georgia Pacific Corp., Stamford, Conn.....	1, 199. 4
Gerber Products Co., Fremont, Mich.....	217. 2
Globemaster, Inc., Houston, Tex.....	(2)
Globe-Superior, Inc., Philadelphia, Pa.....	15. 9
W. R. Grace & Co., Duncan, S.C.....	1, 917. 6
W. W. Grainger, Inc., Chicago, Ill.....	141. 8
Graybar Electric Co., Inc., New York, N.Y.....	792. 1
Harris-Hub Company, Inc., Harvey, Ill. <sup>3</sup> .....	8. 0
Hart-Greer, Inc., Birmingham, Ala.....	(2)
Hearst Corp., New York, N.Y.....	(2)
HMH Publishing Company, Inc., Chicago, Ill.....	119. 6
Honeywell, Inc., Minneapolis, Minn.....	1, 921. 6
Hooker Chemical Corp. (subsidiary of Occidental Petroleum Corp.), Stamford, Conn.....	2, 240. 2

See footnotes at end of table.

EXHIBIT TO THE 1970 ANNUAL REPORT

## EXHIBIT C—Continued

## 1970 MEMBERSHIP LIST OF ITOFCA—Continued

Gross volume of annual sales of members of ITOFCA, Inc., for year 1970<sup>1</sup>—Con.

	Annual sales (in millions)
Hoover Co., North Canton, Ohio.....	346. 7
Household Products Division, Miles Laboratories, Inc., Chicago, Ill.....	4 296. 5
Igloo Corp., Houston, Tex.....	(2)
Ingersoll-Rand Co., Los Angeles, Calif.....	765. 8
Inland Steel Co., Chicago, Ill.....	1, 195. 1
Interlake, Inc., Chicago, Ill.....	330. 0
International Harvester Co., Chicago, Ill.....	2, 711. 5
International Telephone & Telegraph Corp., New York, N.Y.....	6, 364. 5
InterRoyal Corp., New York, N.Y.....	(2)
Jewel Companies, Inc., Melrose Park, Ill.....	1, 628. 5
Joanna Western Mills Co., Chicago, Ill. <sup>3</sup> .....	50. 0
Johns-Manville Corp., New York, N.Y.....	578. 2
Kaylyn Manufacturing and Supply Co., Chicago, Ill.....	115. 6
Kayer Aluminum & Chemical Corp., Oakland, Calif.....	880. 9
Kayser-Roth Corp., Burlington N.C.....	489. 7
Kelley Manufacturing Co., Houston, Tex. <sup>3</sup> .....	10. 0
Kennedy Manufacturing Co., Van Wert, Ohio <sup>3</sup> .....	5. 0
Kohler Co., Kohler, Wis. <sup>3</sup> .....	126. 2
Lancaster Colony Corp., Columbus, Ohio.....	69. 4
Lawndale Industries, Inc., Aurora, Ill. <sup>3</sup> .....	6. 0
Geo. H. Lehleitner & Co., Inc., New Orleans, La.....	(2)
Lincoln Electric Co., Cleveland, Ohio.....	(2)
Lorillard, Division of Loew's Theatres, Inc., Greensboro, N.C.....	4 490. 4
Lovable Co., Atlanta, Ga. <sup>3</sup> .....	6. 0
Luminous Ceilings, Inc. (subsidiary of Jim Walter Corp.), Chicago, Ill.....	672. 1
Magline, Inc., Pinconning, Mich. <sup>3</sup> .....	6. 0
Marcor, Inc., Chicago, Ill.....	2, 804. 9
Marquette Manufacturing Co., Division of Applied Power Industries, Inc., St. Paul, Minn.....	19. 1
Leo Maxwell Co., Inc., Oklahoma City, Okla.....	(2)
Mead Corp., Dayton, Ohio.....	1, 038. 3
Midas-International Corp., Chicago, Ill.....	66. 8
Midland-Ross Corp., Pittsburgh, Pa.....	253. 7
Minnesota Mining & Manufacturing Co., St. Paul, Minn.....	1, 687. 3
Mobil Oil Corp., New York, N.Y.....	7, 260. 5
Mogen David Wine Corp. (subsidiary of Coca-Cola Bottling Co. of New York), Chicago, Ill.....	4 101. 0
Montgomery Elevator Co., Moline, Ill.....	(2)
Morton Norwich Products, Inc., Chicago, Ill.....	320. 7
Munsingwear, Inc., Minneapolis, Minn.....	72. 5
Nalco Chemical Co., Chicago, Ill.....	169. 5
Nashua Corp., Nashua, N.H.....	117. 5
National Distillers & Chemical Corp., New York, N.Y.....	667. 3
National Starch & Chemical Corp., New York, N.Y.....	134. 9
Nicholson File Co., East Providence, R.I.....	54. 1
NL Industries, Inc., New York, N.Y.....	915. 9
Nor-Am Agricultural Products, Inc., Chicago, Ill.....	(2)
Old Peoria Co., Minneapolis, Minn.....	(2)
Olivetti Corp., of America, New York, N.Y.....	(2)
Phillips Petroleum Co., Bartlesville, Okla.....	2, 273. 1
Pier 1 Imports, Inc., Fort Worth, Tex.....	27. 0
Pittway Corp., Northbrook, Ill.....	72. 1
Plumbing Products Division, Borg-Warner Corp., Mansfield, Ohio.....	4 1, 114. 8
Quaker Oats Co., Chicago, Ill.....	597. 7
Ray-O-Vac Division, ESB, Inc., Madison, Wis.....	4 288. 8

See footnotes at end of table.

## EXHIBIT C—Continued

## 1970 MEMBERSHIP LIST OF ITOFCA—Continued

Gross volume of annual sales of members of ITOFCA, Inc., for year 1970<sup>1</sup>—Con.

	Annual sales (in millions)
RMM Manufacturing Co., (subsidiary of City Investing Co.), Chicago, Ill.-----	4 504. 5
Richardson-Merrell, Inc., New York, N.Y.-----	380. 6
Rich's, Inc., Atlanta, Ga.-----	205. 2
Rubbermaid Inc., Wooster, Ohio-----	69. 7
Jos. T. Ryerson & Son (subsidiary of Inland Steel Corp.), Chicago, Ill. (see above).	
SCM Corp., New York, N.Y.-----	854. 5
St. Charles Manufacturing Co., St. Charles, Ill.-----	(2)
Seattle Hardware Co., Seattle, Wash.-----	(2)
Sherwin-Williams Co., Cleveland, Ohio-----	525. 8
Simplicity Pattern Co., Inc., New York, N.Y.-----	85. 2
R & G Sloane Manufacturing Co., Inc., Sun Valley, Calif.-----	(2)
A. O. Smith Corp., Milwaukee, Wis.-----	413. 1
Specialty Manufacturing Co., St. Paul, Minn.-----	(2)
Standard Oil Co. (Ohio), Cleveland, Ohio-----	1, 374. 4
Standard Packaging Corp. (subsidiary of Saxon Industries), Stamford, Conn.-----	4 228. 6
Stauffer Chemical Co., New York, N.Y.-----	482. 5
Stewart Co., Dallas, Tex.-----	(2)
Superior Continental Corp., Hickory, N.C.-----	(2)
Swimrite, Inc., Van Nuys, Calif.-----	(2)
Sylvania Electric Products, Inc. (subsidiary of GTE Sylvania Corp.), Danvers, Mass.-----	4 832. 3
Joe Thiele, Inc., San Antonio, Tex.-----	(2)
Thompson-Hayward Chemical Co. (Division of PEPI, Inc.), Kansas City, Kans.-----	4 177. 2
Time, Inc., Chicago, Ill.-----	632. 6
T??? Manufacturing Co., Minneapolis, Minn.-----	57. 8
Toten Corp., The Countryside, Ill.-----	(2)
Triangle Publications, Inc., Philadelphia, Pa. <sup>3</sup> -----	200. 0
True Temper Corp. (subsidiary of Allegheny Ludlum Industries), Cleveland, Ohio-----	4 515. 0
Union Carbide Corp., New York, N.Y.-----	3, 026. 3
Upjohn Co., Kalamazoo, Mich.-----	397. 7
U.S. Plywood-Champion Papers, Inc., Hamilton, Ohio-----	1, 356. 0
Walgreen Co., Chicago, Ill.-----	743. 6
Washington Mills Co., Winston-Salem, N.C. <sup>3</sup> -----	25. 5
West Chemical Products, Inc., Long Island City, N.Y.-----	48. 0
Western Electric Co., New York, N.Y.-----	5, 856. 2
Westinghouse Electric Corp., Pittsburgh, Pa.-----	4, 313. 4
Weyerhaeuser Co., Tacoma, Wash.-----	1, 233. 4
Woodward, Wight & Company, Ltd., New Orleans, La. <sup>3</sup> -----	22. 0
Total annual sales, 134 members-----	135, 944. 4

Sales figures from Standard & Poor's Corporation, Fortune Double 500 Directory, and Analysis of the 25,000 Leading U.S. Corporations by the editors of Newsfront Magazine.

<sup>1</sup> Membership list as of October 8, 1971.

<sup>2</sup> Sales data not available.

<sup>3</sup> 1970 sales data not available and 1969 data was used instead.

<sup>4</sup> Gross sales of parent company.

NOTE: 163 members; statistics not available for 29 members.

## EXHIBIT D

Gross volume of annual sales of members of Terminal Freight Cooperative Association for year 1970 <sup>1</sup>

	<i>Annual sales (in millions)</i>
Allied Purchasing Corp. (subsidiary Allied Stores), New York, N.Y.	\$1, 225. 1
American Bilrite Rubber Co., Chelsea, Mass	160. 5
American Home Products Corp., New York, N.Y.	1, 294. 3
Associated Dry Goods Co., New York, N.Y.	795. 3
Austin Shoe Stores, Dallas, Tex	(2)
Barrows N. Central Furniture Co., Phoenix, Ariz	(2)
The Boeing Co., Seattle, Wash	3, 677. 1
Broadway-Hale Stores, Inc., Los Angeles, Calif	662. 2
Ceco Corp., Cicero, Ill	189. 1
City Products Corp. (subsidiary HFC), Chicago, Ill	1, 207. 1
Cleveland Chair, Cleveland, Tenn	(2)
Cluett, Peabody & Co., New York, N.Y.	488. 0
Coast to Coast Stores (subsidiary, HFC) Minneapolis, Minn. (see above).	
The Coleman Co., Wichita, Kans	143. 8
Continental Can Co., New York, N.Y.	2, 036. 5
DeSoto Chemical Coatings, Inc. (DeSoto, Inc.), Des Plaines, Ill	215. 6
Dohrmann Co. (subsidiary Parvin-Dohrmann), San Francisco, Calif	(2)
Donahue Sales Corp., Milford, Conn	(2)
Endicott Johnson Corp., Endicott, N.Y.	160. 0
Federated Department Stores, Cincinnati, Ohio	2, 096. 9
Geigy Chemical, Yonkers, N.Y. (subsidiary Ciba-Geigy Corp.)	(2)
General Dynamics, San Diego, Calif	2, 223. 6
Graham-Brown Shoe Co., Dallas, Tex	(2)
Jorries Furniture, San Antonio, Tex	(2)
Lifetime Foam Products, Inc. (subsidiary Sears, Roebuck), Franklin Park, Ill. (see below).	
May Department Stores Co., St. Louis, Mo	1, 170. 4
Meier & Frank Co., Inc. (subsidiary May Department Stores), Portland, Oreg. (see above).	
Fred Meyer, Inc., Portland, Oreg	216. 7
North American Rockwell Aviation, Inc., El Segundo, Calif	2, 410. 8
Northrop Corp., El Segundo, Calif	626. 9
Quaker Industries, Inc., Antioch, Ill	14. 0
Rohr Corp., Chula Vista, Calif	288. 3
Scruggs-Vandervoort-Barney, Inc., St. Louis, Mo	(2)
Sears, Roebuck & Co., Chicago, Ill	9, 262. 2
Simpsons-Sears Ltd., Toronto, Ontario, Canada	649. 9
Skagit Corp., Sedro-Woolley, Wash	87. 3
Solar Division of International Harvester Co., San Diego, Calif. (I.H.C. Chicago)	4 2, 711. 5
State Stove & Manufacturing Co., Ashland City, Tenn	(2)
Uniroyal, New York, N.Y.	2, 555. 6
Van Waters & Rogers, Inc. (subsidiary V.W.R. United), Seattle, Wash.	206. 7
Warwick Electronics, Inc., Chicago, Ill	182. 9
Wm. E. Wright & Sons Co., W. Warren, Mass	(2)
<b>Total <sup>3</sup></b>	<b>37, 050. 9</b>

<sup>1</sup> Membership list as of 1967.

<sup>2</sup> Gross sales not available. Annual sales figures from Standard & Poor's Corp. and Fortune Double 500 Directory.

<sup>3</sup> Total annual sales, 31 members; statistics not available, 11 members (total members, 42).

<sup>4</sup> Gross sales of parent company.

## EXHIBIT E

ITOFCA LTL RATES FROM CHICAGO TO LOS ANGELES, CALIF.,  
TERMINAL TO TERMINAL

Weight of shipment, AQ-9,999.

Class 65 and above, \$4.65.

Class 60, \$4.15.

Class 55, \$3.65.

Class 50, \$3.48.

Freight All Kind Rates, Terminal to Terminal: 10,000-19,999, \$3.48; over 20,000, \$3.24.

1. *Rates.*—Rates are based on the movement from ITOFCA's consolidation terminal at Chicago to ITOFCA's deconsolidation terminal at Los Angeles. All origin and destination drayage and/or handling paid by ITOFCA will be billed as advance charges. No additional management fee will be assessed.

2. *Classification.*—Shipments will be classed according to their LTL ratings in National Motor Freight Classification A-12, supplements thereto or reissues thereof. Classification rating of each commodity must be shown on member's bill of lading. When member fails to do so, we will class all shipments at Class 65, unless the FAK category applies. When member has caused such arbitrary classification by failure to show rating on bill of lading, no subsequent adjustment will be allowed.

3. *Minimum weights.*—When total charge to member is lower by assessing a higher weight factor; such lower charge shall apply.

4. *Minimum charges.*—The minimum charge shall be \$5.00.

5. *Light weight factor.*—The LTL rates assessed by ITOFCA make no provision for any light weight factor. To insure equitable proration of charges and to the extent that the nature of any member's freight is such that it utilizes a substantial portion of the capacity of a trailer, ITOFCA reserves the right to assess charges on the basis of the full trailerload arrangement rather than on the basis of the LTL rate sheets.

6. *Surcharge on shipments originating beyond Chicago or destined beyond Los Angeles.*—When inbound shipments are billed on a collect basis to ITOFCA at Chicago or when ITOFCA is instructed to bill outbound shipments from Los Angeles on a prepaid basis, a surcharge of \$2.50 per such transaction will be assessed. This surcharge will not apply when Grane Trucking is carrier to Chicago nor when G & H Transportation is carrier from Los Angeles.

7. *Claims and released valuation.*—ITOFCA will be responsible for the filing and payment of all claims but only to the extent of the limited liability of the released valuation requirement of the rail carrier.

Issued Mar. 13, 1972; effective Mar. 13, 1972.



Chicago, Ill., to—  
 Los Angeles  
 Santa Barbara

	100 lbs.	500 lbs.	1,000 lbs.	2,000 lbs.	5,000 lbs.	10,000 lbs.	20,000 lbs.	100 lbs.	500 lbs.	1,000 lbs.	2,000 lbs.	5,000 lbs.	10,000 lbs.	20,000 lbs.
Pickup (hundredweight) 1	\$5.00	\$4.65	\$4.65	\$4.65	\$4.65	\$3.48	\$3.24	\$5.00	\$4.65	\$4.65	\$4.65	\$4.65	\$4.65	\$3.24
Line haul (hundredweight) 1			1.10	1.58	1.10	1.79	1.46	6.37	3.76	3.76	3.76	3.76	3.76	1.08
Beyond/delivery (hundredweight) 2			1.10	2.18	3.30	4.74	5.52	1.15	2.25	50	75	1.25	6.48	9.12
Surcharge on delivery (\$2.50) 3								2.50	2.50	2.50	2.50	2.50	2.50	2.50
Comparison:														
Total ITOFCA charges	11.37	37.96	63.40	126.78	290.08	431.74	745.52	14.02	44.80	80.26	171.45	313.25	464.98	811.62
Total Freight Forwarder charges 4	11.15	40.60	73.60	147.20	350.50	701.00	1,104.00	11.82	43.05	78.00	147.20	350.00	701.00	1,104.00

Chicago, Ill., to Los Angeles and Santa Barbara, Calif.:  
 ITOFCA:

ICCF-FF 175, 20,000 lb. rate—items 113 and 7205, FFTB Tariff 8-B, ICC-FF No. 66, Los Angeles rate group 1 and Santa Barbara rate group 1-A.  
 Chicago to Los Angeles: 100 lbs. at 11.15=minimum charge, \$11.15; 500 lbs. at 8.12=minimum charge, \$40.60; 1,000 lbs. at 7.36=minimum charge, \$73.60; 2,000 lbs. at 7.36=minimum charge, \$147.20; 5,000 lbs. at 7.01=minimum charge, \$350.50; 10,000 lbs. at 7.01=minimum charge, \$701.00.  
 Chicago to Santa Barbara: 100 lbs. at 11.82=minimum charge, \$11.82; 500 lbs. at 8.61=minimum charge, \$43.05; 1,000 lbs. at 7.80=minimum charge, \$78; 2,000 lbs. at 7.36=minimum charge, \$147.20; 5,000 lbs. at 7.01=minimum charge, \$350.50; 10,000 lbs. at 7.01=minimum charge, \$701.00.

ITOFCA Authority:  
 1 TOFCA rate sheet (see exhibit E).  
 2 California Public Utilities Commission Minimum Rate Tariff No. 2.  
 3 ITOFCA rate sheet (see exhibit E).  
 4 Minimum charge.

5 Surcharge.  
 6 Freight Forwarder Authority: Machinery N.O.I. item 133300, sub. 3, class 85 National Motor Classification No. A-12, 100 lb. rate—class 85, NMFC A-12, item 5230 and sec. 12 of FFTB Tariff No. 2-C, ICC-FF No. 130, 500 through 10,000 lb. rates—class rating 385, item 1016 of FFTB Tariff No. 1-C, ICC-FF No. 161, item 615 and sec. 5 of FFTB Tariff No. 37, ICC-FF No. 188, Chicago, Ill., group 5200, Los Angeles, Calif., group W800, Santa Barbara, Calif., group W837, FFTB Tariff 56,

## EXHIBIT G

The purpose of this exhibit is to compare revenue tonnage originated by shipper associations and freight forwarders for the years 1964 to 1970, and show the increase in shipper association tonnage and decrease in freight forwarder tonnage.

Prior to the year 1964, shippers association traffic was included in a general classification called "Manufacturing & Miscellaneous Other Traffic Not Specified." This was a very large category and there was no way to isolate shipper association traffic as a part of this total. It was in 1964 that shippers association traffic was coded by itself. The most recent railroad freight commodity statistics available are for the year 1970.

## REVENUE TONNAGE ORIGINATED

Year	Shippers association traffic (tons) <sup>1</sup>	Freight forwarder traffic (tons)	Shipper associations as a percent of freight forwarder
1964.....	2,413,474	4,753,768	50.7
1965.....	2,520,110	4,785,587	52.8
1966.....	2,834,757	5,247,678	54.1
1967.....	3,102,308	4,820,202	64.5
1968.....	3,602,630	4,678,617	77.2
1969.....	4,031,252	4,846,093	83.3
1970.....	4,288,804	4,706,604	91.1
Increase, 1970 versus 1964 (in percent).....	77.7	(1)	

<sup>1</sup> Freight commodity statistics—Class 1 railroads for years ended Dec. 31, 1964, through 1970. Issued by Bureau of Accounts, Interstate Commerce Commission.

## EXHIBIT H

The purpose of this exhibit is to compare tonnage figures for the Year of 1969 versus the Year of 1971. It shows a decrease of 24.8% in tonnage.

## TRANSCONTINENTAL FREIGHT FORWARDERS

	Tons 1969	Tons 1971	Percent of increase or decrease
Acme Fast Freight.....	520,215	323,364	(37.9)
Arrow-Lifschultz.....	18,842	18,541	(1.6)
California Western.....	83,376	73,339	(12.0)
Clipper Carloading.....	121,677	125,048	2.8
International.....	206,993	22,055	(89.4)
Merchant Shippers.....	157,121	132,642	(15.6)
National Carloading.....	231,153	93,997	(59.3)
Republic Carloading.....	335,051	312,671	(6.7)
Star Forwarders.....	83,163	77,601	(6.7)
Universal Carloading.....	652,521	563,198	(13.7)
Western Carloading.....	336,031	289,223	(13.9)
Westland Forwarding.....	173,760	141,434	(18.6)
Westransco Freight.....	53,924	63,260	17.3
Total.....	2,973,827	2,236,373	(24.8)

Note: 1970 figures were not used due to teamster strike in effect April, May, and June 1970.

Source: QFF 950 Quarterly Report of Revenues, Expenses and Statistics of Freight Forwarders.

Senator STEVENS. These hearings will resume tomorrow morning at 10 a.m.

(Whereupon, at 11:45 a.m., the hearing was adjourned, to reconvene at 10 a.m. on Friday, June 9, 1972.)

## THROUGH-ROUTES—JOINT RATES AND FREIGHT FORWARDERS LEGISLATION

FRIDAY, JUNE 9, 1972

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

The subcommittee met at 10:05 a.m. in room 5110, New Senate Office Building, Hon. Vance Hartke (chairman) presiding.

Present: Senators Hartke and Stevens.

Senator HARTKE. Good morning. The committee will come to order.

This morning we have one of the most distinguished Members of the other side, Congressman John Murphy of New York, who has sponsored this measure on the other side of the House.

Mr. Murphy, we will be delighted to have your testimony this morning.

### STATEMENT OF HON. JOHN M. MURPHY, U.S. REPRESENTATIVE FROM NEW YORK

Mr. MURPHY. Thank you, Mr. Chairman. It is a pleasure, to be sure.

Mr. Chairman, at the present time, this legislation is in executive session in the House Transportation Subcommittee and will be acted on next week, and it is interesting to note that as we consider this legislation, we are also considering other legislation that involves the other common carriers, rail and truck, and we can understand the very serious situation that faces this particular common carriage industry when we look at the Surface Transportation Act where the railroads are asking for \$5 billion of guaranteed loans for longer than 15 years. In some instances, they could go to 20 years, which certainly is a, I think, a tremendous move to assist one common carrier mode, and here is another common carrier mode that has demonstrated that it is virtually in the same troubled financial situation as the railroads are, and, of course, we are also considering other legislation to deregulate in the area of highway transportation as far as the truckers are concerned.

We are almost at a crossroads of our overview of our common carriage system as we have known it to date in the United States.

In the last Congress when we considered this legislation, the committee on the House side felt that an in-depth study by the ICC was necessary. As a consequence, the committee asked the ICC to make a study. *ex parte 266* is an investigation into the status of freight forwarders. They did not just study this one piece of legislation. They studied freight forwarders and studied their relationship with the en-

tire industry, and they recommended by a vote of 8 to 3 the legislation that I introduced with an amendment, an amendment that would make this a 3-year in-depth study, tie down the time period for this type of relief for this industry.

I would ask that the Senate committee include *ex parte 266* in their record.

Senator HARTKE. We will include it by reference. The committee is very much aware of that and has made reference to it in its hearings.

Mr. MURPHY. Thank you, Mr. Chairman.

I have 24 other sponsors in the House to this legislation, and they are all listed in my prepared statement. They cover virtually the entire United States as far as representative area is concerned.

Basically, the objective of the bill, and it is a consumer bill, and it is a small business bill, is to spare the consumer the delays, the inconveniences, and the higher costs that have steadily increased for 10 years as a result of the chronic small shipment problem. And we know the railroads have virtually abandoned small shipments.

The bill is designed to preserve some competitive balance in unit shipping costs and services between small business and big business, or else small business failures, already a national catastrophe, will accelerate.

It is to save, immediately, regulated freight forwarders, and then to permit the industry, if it can, to improve and expand to the benefit of the shipping public and without discrimination against any other elements of the transportation community.

It is to encourage truckers, railroads, and forwarders to work together—they can work separately when they are looking for a surface transportation agent or when they want to fight deregulation on the highways, but when it comes to their own existence as an industry, I think this is the opportunity for them to come and work together and not work in separate directions or to do nothing when we reach such a critical point for this particular industry.

And it is to avoid further Government regulation specifically of nontaxpaying shipper associations that have mushroomed rapidly in recent years to the benefit of a minority of member companies, but to the detriment of their small business competitors, consumers, and the regulated sector of the taxpaying transportation community.

Mr. Chairman, the ICC, the Department of Transportation, the Department of Defense, the Department of Justice, and the Federal Maritime Commission are all alined in favor of this urgent legislative action. We have read their communications before our committee, and I certainly hope that the Senate will favorably consider the bill.

Senator HARTKE. I want to say to the Congressman we will certainly give it every consideration. The fact that you are one of the sponsors of the legislation and that your record is such an outstanding one makes a lot of difference.

Mr. MURPHY. Thank you, Mr. Chairman.

Senator HARTKE. Mr. Jervis Langdon, trustee, Penn Central Transportation Corp.

STATEMENT OF JERVIS LANGDON, JR., TRUSTEE, PENN CENTRAL  
TRANSPORTATION CO.

Mr. LANGDON. Good morning, sir.

My name is Jervis Langdon, Jr., and I am one of the trustees of the Penn Central Transportation Co. in reorganization.

I appear before this subcommittee to express Penn Central's support for S. 1896 which would amend section 409 of part IV of the Interstate Commerce Act so as to authorize freight forwarders to enter into contracts with common carriers by railroad for transportation at other than the published rates then and there on file with the Interstate Commerce Commission.

Under this legislation, such contracts could be negotiated between railroads and motor carriers, on the one hand, and freight forwarders, on the other, on "just, reasonable, and equitable terms."

The terms and conditions, moreover, would be subject to advance public scrutiny, since the agreements would be required to pass through the same procedures which have been set up by the carriers in their ratemaking bureaus for published rates. The railroads are assured the opportunity to participate, or to forego participation, and any party believing that the terms of any particular contract are not consistent with the principles of the National Transportation Policy may complain to the Commission where the contracts would be on file.

In the past, Penn Central has had misgivings about this type of legislation, and from time to time it has joined other groups of railroads in expressing opposition. This earlier position was principally based upon the apprehension that contract arrangements could be concluded in secrecy, affording freight forwarders the opportunity to exercise their economic power—in terms of traffic volume—to pit one railroad against another for the most advantageous terms.

Recently, however, Penn Central has come to the view that, contrary to its former position, the legislation should be actively supported.

In the first place, there is no reason for Penn Central to be apprehensive of secret arrangements between railroads and forwarders. This legislation ensures advance scrutiny by all concerned, and the possibilities of economic pressure are no greater than those presently encountered from day to day.

Second, and of great importance, Penn Central must have a substantial increase in freight volume and a complete reversal of recent downward trends in business if this railroad is to be able to emerge from bankruptcy and reorganize. While there are other vital conditions to reorganization, a strong trend of growing freight volume to be handled at compensatory rates is the single most important factor which will determine the future of Penn Central and whether or not it can conduct a viable operation. In this connection, an ability to make contract rates generally would help the trustees in achieving this reversal, and we have repeatedly made this point in our several presentations of the Penn Central situation.

Here, in the case of the legislation presently proposed, there would be afforded an opportunity to make contract arrangements with forwarders. However one may view a railroad right to make contract rates generally, such a right should certainly exist when one form of transportation is dealing with another form of transportation. Undeniably, the forwarder is a regulated carrier under part IV of the Interstate Commerce Act, and S. 1896 would go no further than to permit one form of carriage; namely, the railroad, to work with the forwarder, another form of carriage, on a contract basis—which contract basis would be open to public scrutiny.

We have been greatly encouraged in our decision to support the proposed legislation by the report issued by the Interstate Commerce Commission in *ex parte* 266, Investigation into the Status of Freight Forwarders, January 19, 1971. We are also mindful of the Commission's concern with the small shipment problem and its efforts to improve transportation service on this particular type of traffic. The Commission believes that the proposed legislation will be of material assistance in that area, and Penn Central concurs.

Penn Central is therefore strongly of the opinion that this proposed legislation should be enacted into law. On behalf of Penn Central, I therefore urge early and favorable action by this subcommittee on S. 1896. I should add that I have expressed similar support to the chairman of the subcommittee on the companion measure, H.R. 6242, now pending in the House of Representatives. A copy of that letter is appended to this statement.

Senator HARTKE. Mr. Langdon, do you expect if this measure would be passed that there would be a lowering of rates for material which is handled by freight forwarders on railroads?

Mr. LANGDON. A lowering of rates, sir?

Senator HARTKE. Would there be lowering of the traffic which is presently carried by freight forwarders?

Mr. LANGDON. I think the contract basis of rates that this legislation if enacted would authorize might be on a lower level in many cases, but I think that the return to the railroad would be improved so that while the level of the rates themselves or the contract basis of charges rather might be lower so far as the railroad is concerned, I think the railroad's net position would be improved.

So far as the charges to the public are concerned, this, of course, would be up to the forwarders, because under this legislation they would be using the railroad as an underlying carrier. They might if they had favorable arrangements with their underlying carriers be in a position to pass some of that advantage on to the public. But that would be a forwarder decision, sir.

Senator HARTKE. We have another witness coming this morning from the shipper associations. They anticipate there might be a reduction in rates as much as 30 percent, which they feel would result from the negotiation process. They feel that increased costs would result to the other participants of the railroad.

Do you anticipate such a result? In other words, what they anticipate, as I understand their testimony, is to the effect that the lowering in the rates which would be occasioned as a result of a new contract with the freight forwarders would have to be accommodated in some other fashion.

Mr. LANGDON. I think exactly the opposite would occur, sir. I think that the improvement in our net position as a result of the contract rates which this legislation would authorize would tend to ease the burden on other traffic rather than to increase the burden.

Senator HARTKE. The American Trucking Associations in their testimony this morning cites the ICC report to the extent that they say that as a result of present action, that the railroads are already losing money if it is calculated on a fully allocated cost basis on the amount of freight they handle for freight forwarders.

Do you feel that the Penn Central currently loses money as a result of the shipments they handle from freight forwarders?

Mr. LANGDON. No, sir, and we do very careful cost work on the Penn Central, and forwarder traffic is making a contribution, a substantial contribution in most instances above our long-term variable costs which is generally acknowledged to be the proper floor for ratemaking.

Senator HARTKE. That is all I have, Mr. Langdon. I want to thank you for coming this morning.

I hope you get the railroad back on its feet.

Mr. LANGDON. Thank you, sir.

Senator HARTKE. I should say back on the rail.

(The letter follows:)

PENN CENTRAL TRANSPORTATION Co.,  
June 9, 1972.

Re H.R. 6242—Contracts between freight forwarders and railroads.

HON. JOHN JARMAN,

*Chairman, Subcommittee on Transportation, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.*

DEAR CHAIRMAN JARMAN: On behalf of Penn Central Transportation Company, I wish the record to show our support for H.R. 6242 authorizing contracts between railroads and domestic freight forwarders.

It is our considered opinion that this measure will improve the railroad's opportunities to provide more efficient transportation service particularly for the smaller shipments. It should be particularly effective in promoting the growth of intermodal trailer-on-flatcar service.

At the same time, H.R. 6242 provides adequate safeguards for public scrutiny of such contracts under our established rate-making procedures and guarantees, as well, appropriate opportunity for all concerned to participate in the service under such arrangements as they see fit.

I therefore recommend that this committee take early and favorable action on this measure. I am expressing the same support for the companion measure now pending in the Senate at their subcommittee hearing today. A copy of the statement to the Senate subcommittee is appended hereto.

Very truly yours,

JERVIS LANGDON, Jr.

Senator HARTKE. Mr. Peter T. Beardsley, vice president and general counsel of the American Trucking Associations, Inc.

**STATEMENT OF PETER T. BEARDSLEY, VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.**

Mr. BEARDSLEY. Good morning, Mr. Chairman.

Senator HARTKE. Good morning, sir.

Mr. BEARDSLEY. Just a few months ago I testified before the House Subcommittee on Interstate and Foreign Commerce on H.R. 7986, a bill similar to S. 1896.

In order to conserve your time and that of the subcommittee, Mr. Chairman—

Senator HARTKE. Let me interrupt you just a moment.

I have reviewed this testimony. Senator Stevens is here, and I know it is not common to permit the Republicans to chair a committee, and under normal circumstances I would be very hesitant to do so, too, but knowing Senator Stevens as I do, and knowing that he was really a native of Indiana, I have the highest degree of confidence in him, even though he now claims Alaska as his State.

Seriously, I asked Senator Stevens to do us a favor to chair these hearings, because we are in the final session of the welfare reform and social security bill, and either I present my views to the executive session this morning, or they are lost forever, at least until we get to the floor.

Senator Stevens?

Senator STEVENS (presiding.) I am happy to be here.

Mr. BEARDSLEY. In order to conserve this subcommittee's time, I will not repeat in detail my House testimony. I am, however, attaching it as an appendix to this statement, with the request that it be incorporated as a part of my statement here.

I would also like to state briefly our main reasons for opposition to S. 1896.

Forwarders are already securing unbelievably low rates from the railroads for the movement of their traffic. The first report of the ICC, issued November 11, 1971, in *ex parte 270*, "Investigation of Railroad Freight Rate Structure," breaks down the transportation of forwarder traffic by railroad into eight directional categories.

On a fully allocated cost basis, the railroads lose money on the transportation of this high-grade traffic on seven of the eight movements. The figures range from revenues 7.4 percent below fully allocated cost (west to west) to 28.7 percent below fully allocated cost (south to south).

Only on the south to west movement do the railroads show a profit, and that is only 2.8 percent above fully allocated costs. Even on an out-of-pocket (variable) cost basis—and this is what Mr. Langdon was referring to, the railroads lose money in six out of eight categories, ranging from revenues 0.1 percent (official to south) to 23.7 percent (south to south) below out-of-pocket cost. The two categories in which the railroads show a return above the out-of-pocket cost of handling forwarder traffic are west to west (2.9 percent) and south to west (10.5 percent).

Yesterday Mr. Tolan introduced all these figures from the Commission's report in *ex parte 270* and they are found in his testimony, and you will find that traffic moving out of official territory is moving at a 13-percent loss on fully allocated rail costs and a 3.4-percent loss on an out-of-pocket basis. That is the territory that the Penn Central is located in. So I wonder if Mr. Langdom might not better check his figures again, or whether the ICC figures are inaccurate.

In any event, I will let it go there.

Certainly, under these circumstances, Congress should not even consider allowing the large forwarders to use their tremendous economic power to secure still lower charges from the railroads on their very high grade traffic.

Forwarders are extremely selective in the points between which they provide service, and in the traffic they will handle. They will only compete with motor carriers on traffic moving between large metropolitan areas relatively long distances apart (The ICC's report in *ex parte* 266 shows that only 1.6 percent of forwarder traffic moves 499 miles or less. 339 ICC 711, 767), and even then only on the highest grades of traffic.

One of the exhibits which we introduced in *ex parte* 266 (and which is appended to my House testimony attached) shows that with respect to traffic moving from Minneapolis to Dallas the forwarder rates were on a parity with those of motor carriers on less-truckload traffic, and even below them on volume traffic.

However, on traffic moving to smaller points between those metropolitan areas, for example, Bartlesville, Okla., the forwarder rates—even on the high-grade traffic to which they largely restrict their service, classes 150, 100, and 85—are from 60 cents to \$1.49 per hundredweight higher than the motor-carrier rates. And on traffic rated below class 85 (except Tulsa and Sherman, Texas, in which cases class 70) the forwarder rates on lower grade traffic were "frozen" at class 85.

This forwarder pattern of selectivity exists nationwide and the ICC is well aware of it. In one of its recent decisions it said:

One of our major concerns, for example, is with the traffic patterns of existing freight forwarders. Commission investigations have revealed that these traffic patterns show a preponderance of movements between major metropolitan areas to the virtual exclusion of smaller communities. American Delivery System, Inc. Freight Forwarder Application, 340 ICC 776, 789 (served March 27, 1972). This forwarder selectivity coupled with the fact that the railroads have largely "retired" from the field of less-carload service, leaves to the motor carriers the task of providing service to the many thousands of small towns throughout the country, very often at rates which are below the cost of the service rendered.

For reasons we are unable to understand, the ICC threatens only motor carriers with loss of their operating rights when they conduct their operations in a manner which, in the Commission's opinion, does not comport with their common carrier obligation. This hardly complies with the ICC's obligation, under the National Transportation policy, to regulate all transport modes fairly and impartially.

If S. 1896 were to be enacted and if the forwarders cut their rates on traffic which is now moving by truck, the motor carriers will have no alternative except to meet such reduced rates. When this is done, the motor carriers will be hard put to continue service to the many small points which only they serve, which service is often subsidized by revenues derived from profitable traffic moving between major metropolitan areas.

Thus, the preferential treatment which the bill before you would give to freight forwarders, would, in the final analysis, aggravate the so-called "small shipment problem." This problem cannot be solved by debilitating the revenues of the only carriers which serve small shippers located at small points throughout the country.

The vast bulk of the freight forwarder tonnage is concentrated in the hands of four or five large forwarders or forwarder families. One

of these families alone—United States Freight Co.—controls seven class A freight forwarders, several motor carriers, and owns 50 percent of an ocean carrier with worldwide operations, as well as a trailer manufacturer.

This concentration is what gives these large forwarders their economic clout which enables them, even now, to obtain ridiculously low volume rates from the railroads which move their traffic.

The forwarders already occupy a favored position in the movement of their tonnage by motor carrier whereby, under section 409 of the Interstate Commerce Act they can enter into contracts for the movement of their traffic at rates far below those paid by other shippers for the movement of similar tonnage under similar conditions.

The enactment of section 409 was a bad mistake, and enactment of S. 1896 would seriously compound that error. The forwarders will probably claim that enactment of this bill is necessary to secure equal treatment of railroads vis-a-vis motor carriers. In fact, I think that is the gist of one of the previous witness' statements.

If this is equality, there is another way to solve it.

But in any event, getting back to this idea of equal treatment, as I say, this is nonsense.

Reduced to its simplest terms, this simply means that forwarders, having been allowed for many years to take unfair advantage of motor carriers, should now be allowed to extend this treatment to railroads. The only fair way—and the only way to benefit the shipping public—in this regard is to repeal the provisions of section 409 of the act which allow forwarders, by virtue of their economic power, to overreach the motor carriers which handle their traffic.

For the reasons stated—and in much greater detail in my House testimony—we urge this subcommittee not to recommend enactment of S. 1896.

Senator STEVENS. Your appendix will be placed in the record.

I do thank you for your testimony.

I am in the position of trying to secure the record for the chairman, so I will ask some of the questions that I feel he would have asked, had he not been called away.

In regard to the ICC investigation into the status of freight forwarders, in *ex parte* 266, on page 734 of that report of the ICC, it makes this statement:

And although motor carriers do handle most of the small shipments it cannot be said there is a large number of motor carriers desirous of this specific type of traffic.

Would you agree with that?

Mr. BEARDSLEY. 744?

Senator STEVENS. 734.

Mr. BEARDSLEY. I am sorry. I have no quarrel with that statement. But the fact remains that the motor carriers, whether they like it or not, and you will find this in the testimony I gave in the House—I have not detailed it here—are the only form of these so-called common carriers with respect to which the Commission holds their feet to the fire, so to speak.

The Commission knows how highly selective the freight forwarders are, and yet they have never threatened the freight forwarders to my knowledge, with a revocation of their operating permits, for example,

when they are selective. It is only the motor carriers whom the Commission, in the cases that I cite in my House testimony appended say in effect you are a common carrier, you go out and do your job.

The railroads are supposed to be common carriers. The Commission sat on their hands when the railroads retired from the less-carload business. They took no action whatsoever. They didn't threaten the railroads with any loss of their right to handle that traffic or their obligation to handle that traffic if they are truly common carriers.

So, I am not trying to put a halo around the heads of our people. I am simply saying that they are the ones who seem to be expected—although I don't see any difference in the law that governs the railroads than the motor carriers—but they are the ones that the Commission says must handle this undesirable traffic, if you please, moving in small quantities to and from small points.

We are the only people that handle it whether we like it or not.

Senator STEVENS. I assume that your association believes that the railroads lost money on freight forwarder traffic, is that right?

Mr. BEARDSLEY. That is what the Commission shows. That is why we are so astounded that the Commission in effect is coming here and saying that the forwarders ought to be allowed to get still lower rates from the railroads for the movement of their tonnage.

Senator STEVENS. In your opinion, why do the railroads support this legislation?

Mr. BEARDSLEY. I would have to be candid. I don't know. My opinion is that the forwarders have sufficient economic power to get some of them to come in and support them.

Senator STEVENS. In your estimation, what amount of trucking industry traffic do you think would be lost to your industry if this bill were to pass?

Mr. BEARDSLEY. I have no way of knowing.

What I do know from past experience, looking at forwarders' operations over decades, seeing how they worked, things haven't changed any, is that the only place the forwarders would want to move this tonnage at lower rates if they decrease their rates at all would be in the areas where it is profitable to us.

They aren't going out—first of all, passage of this bill won't create 1 more pound of traffic anywhere, and if a little bit of traffic is moving to or out from Podunk now, which only the motor carrier handles, there is not 1 more pound of that traffic that is going to move in the future.

Therefore, the forwarder is not going to lower their rates at that point. At the same time, if they lower their rates between major metropolitan areas, so if they take some of our profitable tonnage away, it makes it that much tougher for us to serve these small points, and, as I said, we are the only ones that do.

Senator STEVENS. I am told this ICC decision in *ex parte* 266 recommended investigation of extending the terminal area for freight forwarders.

What is the position of your association in regard to that extension?

Mr. BEARDSLEY. We oppose that.

Senator STEVENS. Would you tell us why?

Mr. BEARDSLEY. Because we think it will give the forwarders a still further unfair advantage.

We are restricted to commercial zones of a certain size. The forwarders are restricted to commercial zones of the same size.

Now the forwarders want maybe areas, we will say, of 50 miles, and we believe that will give them a competitive edge over us.

Senator STEVENS. I understand that the trucking industry scares away most of the small shipments; is that right?

Mr. BEARDSLEY. I think that is a foregone conclusion. Facts bear it out.

Senator STEVENS. Aren't those small shipments your large problem?

Mr. BEARDSLEY. I think one of the problems with the so-called small shipment problem is that it isn't limited—it doesn't cover all small shipments. As a matter of fact, most of our shipments are small in the sense that they are under 500 pounds.

But when shipments of that size move in heavy quantity, that isn't a small shipment problem. It is these small lots of freight moving to and from small points where you have no opportunity to consolidate a truck. A load of those small shipments, or even a decently sized segment of that traffic is what causes your small shipment problem where you are moving the truck empty or significantly empty to or from these small points.

Senator STEVENS. Thank you very much.

We appreciate your testimony today.

(The statement follows:)

STATEMENT OF PETER T. BEARDSLEY, VICE-PRESIDENT AND GENERAL COUNSEL,  
AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman, and members of the Subcommittee:

My name is Peter T. Beardsley and I am Vice President-Law and General Counsel of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. 20036. 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.

In its decision in Ex Parte No. 266, *Investigation Into The Status of Freight Forwarders*, 339 I.C.C. 711, decided January 19, 1971, the Interstate Commerce Commission recommended that "forwarders should be allowed to enter into negotiated arrangements with common carriers by rail . . . at least for a 3-year period . . ." *Id.* at 809.

We are opposed to H.R. 7986. This bill would enable freight forwarders to obtain lower rates from railroads for the transportation of forwarder traffic than those charged other shippers for the same service. It would place forwarders in a privileged position, similar to that which they now occupy under Section 409 of the Interstate Commerce Act, which permits them to contract with motor carriers to handle their traffic at much lower rates than are charged for similar traffic of other shippers, tendered under similar conditions. This would be accomplished by allowing forwarders to make similar contracts with railroads, thus putting them in a preferred position whereby they can use their large tonnage between important transportation centers to drive down the railroads' rates and, in turn, increase their profits.

It is pertinent to note that § 409, as it presently reads, prohibits motor vehicle movements in volume lots for distances greater than 450 miles. The bill before you, however, proposes no such limitation on rail transportation of volume tonnage. H.R. 7986, it is also noted, would afford "all interested railroads an opportunity to participate in the establishment of and to become parties to" forwarder-rail contracts, but it does not extend this same right to "interested" motor carriers.

A little over two years ago, we were here opposing H.R. 10293, a bill intended to achieve the same ultimate result as H.R. 7986, although H.R. 10293 used different phraseology. The bill was not enacted.

In 1956, hearings were held on H.R. 9458, to amend § 409 of the Interstate Commerce Act to allow freight forwarders to make contracts with railroads similar to those they make with motor carriers. But the proposed 1956 legislation, unlike the bill before you, would have been limited to movements of forwarder traffic in so-called piggyback movements. The forwarders claimed that such legislation was needed because there was "no practical basis on which freight forwarders can legally utilize piggyback service, and second, because the motor carriers who compete with forwarders for traffic already are authorized to use the service on a contractual basis." Hearings, Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce, 84th Cong., 2nd Sess., p. 1158. The forwarders said the legislation was needed to achieve "equality of regulatory treatment." This catchphrase has been popular with the forwarders for a long time, but it won't really stand scrutiny. The forwarder's claim that they are subject to "unequal regulation under law" is based on nothing more substantial than the fact that they are regulated *differently* than are rail, motor and water common carriers. Being different creatures, in fact and in law, there is no reason whatever that they should be treated the same as the common carriers which transport their traffic. What the forwarders really want is to enjoy the privileges attendant upon common-carrier status, without shouldering the responsibilities, a point I will develop later. But for the moment, let me note that forwarders do not transport goods; they merely act as a "middle man" between the shipper and his customer, using the services of true common carriers to transport the freight. Forwarders do not transport goods; they merely arrange for such transportation. The forwarder's status, with respect to the common carrier which transports his traffic is, and always has been, that of shipper.

Freight forwarders have been in business almost as long as the railroads. Their success was due to the railroads' failure to move less-carload shipments with reasonable speed. The forwarders solicited these shipments on the same rate basis as the rail less-carload charges, and promised faster service than the railroads gave. By consolidating these shipments into volume lots, the forwarders were able to receive the much faster service the railroads provided for carload traffic, and to live off the spread between the higher less-carload rates they charged the shipper and the significantly lower volume rates they paid the railroads. The conduct of forwarding activities requires a very small investment. In 1970, according to the latest annual report of the ICC (1971), the "net investment in transportation property plus working capital" of Class A freight forwarders was \$32.5 million, in rounded figures. The comparable figure for Class I motor carriers of property is \$2.9 billion. And using the same source, but for 1969, the last year for which comparable figures are available, the forwarders' ratio of net income to shareholders' equity is 24.5%, whereas that for motor carriers of property is only 10%.

Forwarders accept common carrier responsibility for loss or damage to the goods of their shippers, but in their relations with the various common carriers which actually transport the freight, forwarders are shippers.

The definition of a "freight forwarder" in Section 402 of the Interstate Commerce Act makes the forwarder's status clear. He is:

- (1) a person other than a carrier subject to Part I, II, or III of the Interstate Commerce Act;
- (2) who assumes common carrier responsibility with respect to shipments tendered by the shipping public;
- (3) who undertakes the assembling and consolidating of shipments, and the break-bulk and distribution thereof; and
- (4) who uses, for all or any part of the transportation of shipments moving in forwarder service, the services of a rail, motor or water common carrier regulated by the Interstate Commerce Commission.

In the early days of regulation, the railroads attempted to charge their less-carload rates on each individual shipment which the forwarders tendered in consolidated volume lots. Had they succeeded, the forwarders would have been out of business. But the forwarders argued that their status was that of a shipper, and that the railroads had to charge them the same volume rate as they did other shippers. The Supreme Court, in *Interstate Commerce Commission v. D. L. & W. R.R.*, 220 U.S. 235 (1911) held with the forwarders, saying:

The contention that a carrier, when goods are tendered to him for transportation, can make the mere ownership of the goods the test of the duty to carry, or, what is equivalent, may discriminate in fixing the charge for carriage,

not upon any difference inhering in the goods or in the cost of the service tendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods, is so in conflict with the obvious and elementary duty resting upon a carrier, and so destructive of the rights of shippers, as to demonstrate the unsoundness of the proposition by its mere statement.

And in *C., M., St. P. & P. R. Co. v. Acme Fast Freight*, 336 U.S. 465, 467-68 (1949), the Supreme Court said:

In its relations with its customers, a forwarder is subjected by the Act to many of the requirements and regulations applicable to common carriers under Parts I, II, and III of the Act. . . . In its relations with these carriers, however, the status of the forwarder is still that of a shipper.

Before either motor carriers or forwarders were subjected to federal regulation, motor carriers transported forwarder traffic on a contract basis. When motor carriers came under federal regulation in 1935, these arrangements were declared unlawful by the ICC, whose decision was upheld by the Supreme Court in *U.S. v. Chicago Heights Trucking Co.*, 310 U.S. 344, 60 S. Ct. 931 (1940). The Court unanimously held that "forwarders are shippers protected by the Interstate Commerce Act" and that the Commission's action in holding the contract arrangements unlawful was an exercise of its "power to protect and maintain a transportation system free from partiality to particular shippers." The Court also noted that "forwarders in using railroads enjoy no special tariff rates and pay the same published carload and less than carload rates that other shippers pay."

ATA and other motor carrier organizations participated in Ex Parte No. 266. Through a series of exhibits we introduced, we showed that forwarders do not provide service between many points they are authorized to serve, and that they are highly selective in the traffic they choose to handle. We demonstrated that forwarders do not compete at all with motor carriers over relatively short distances (the ICC report, page 767, shows that only 1.6% of forwarder traffic moves 499 miles or less) and that even over long distances, their competition is limited, generally speaking, to traffic moving in heavy volume between the larger cities. And further, with respect to such "long-distance" movements, the forwarders generally restrict their holding out to the higher-rated traffic through the device of publishing rates much higher than those of the motor carriers on the balance of the traffic.

For example, one of the exhibits we introduced, and which is appended hereto, compared the motor-carrier and forwarder rates from Minneapolis to Dallas, and intermediate points. From Minneapolis to Dallas only, the forwarder rates were on a parity with those of the motor carriers on LTL traffic, and even below them on volume traffic. However, on traffic moving from Minneapolis to smaller points short of Dallas, e.g., Bartlesville, Okla., the forwarder rates on high-class traffic (Classes 150, 100 and 85) range from 60¢ to \$1.49 per cwt. higher than those of the motor carriers, depending on the weight of the shipment. And on traffic rated below Class 85 (except Tulsa, in which case Class 70), the forwarder rates on lower-class tonnage were "frozen" at Class 85. This demonstrates the selectivity in which the forwarders engage whereby they "compete" with the motor carriers only between metropolitan areas where tonnage is heavy, and, even then, only on the most desirable traffic. This leaves the motor carriers the "privilege" of providing service to the smaller cities and towns throughout the country, very often at rates which do not equal the cost of providing the service.

The Commission's report acknowledges that the railroads "have almost completely discontinued their LCL service" (339 I.C.C. at 735), and that:

Motor carriers handled almost 85 percent of the volume of small shipment or LTL traffic in 1964. Freight forwarders were second (though the largest of the indirect modes of transportation) accounting, however, for only 5 percent of over-all tonnage. *Ibid.*

I do not know why the Commission did not use the latest figures available to it at the time, in view of the fact that 1968 figures are cited in its report. To update its figures, motor carriers handled 86.1% of the small shipments tonnage in 1968, whereas freight forwarders handled 4.7%. (Ex Parte No. 266, App. C, Table 1).

As the Commission noted in its report (339 I.C.C. 741), the forwarders "argue that they are common carriers; and should be given full common carrier status; that they should not be treated as shippers; and that the authority under section 409 to enter into contracts with motor common carriers establishes that, at least with respect to that mode, they are common carriers." Perhaps the best way to demonstrate the infirmity of this forwarder claim is to turn from the technical

aspects of the matter, i.e., court decisions, to more practical considerations. This requires a look at the Commission's day-to-day regulation of the two transport modes. When motor carriers have strayed from the "straight and narrow path" and have reduced or eliminated portions of their service on the ground that the service costs more than the rates return, the Commission has been quick to castigate them and threaten revocation of their franchise unless they "get back on the track," so to speak. Thus, in *Pacific Intermountain Express Co.—Investigation*, 96 M.C.C. 204 (1965) the ICC held that the named carrier and two others were not "maintaining a reasonably continuous and adequate service" in performing the transportation authorized by their certificates to and from some of the points they were entitled to serve. The Commission ordered the carriers to correct the deficiencies in their service, and threatened them with revocation of their certificates if they did not do so, despite its recognition that "there is a paucity of traffic generated at these points."

In *Buhr—Revocation of Certificate*, 62 M.C.C. 774, 776 (1954), the Commission said:

\*\*\* carriers holding operating rights issued by us should render the service authorized and should not be permitted to retain authority unless they intend to and do render such service. The failure of a common carrier to operate may be regarded as a violation of the terms of its certificate and of the provisions of the Act and of the Commission's rules and regulations promulgated thereunder, and constitute grounds for the Commission's calling upon the carrier to resume operations under penalty of having the certificate revoked.

And, in a more recent case, *T.I.M.E.—D.C., Inc.—Investigation and Revocation of Certificates*, 113 M.C.C. 897 (1971), the Commission found that respondent, while not refusing 1-t-1 shipments to certain points, had turned the traffic over to other motor carriers. The Commission turned a deaf ear to the carrier's argument that it could not transport the traffic involved except at a financial loss. It said:

Nor are we impressed by respondent's argument that reinstatement of the considered service would have an adverse financial effect on its operations. This is no more than a pleading that it has discontinued the unprofitable portions of its operations while retaining the profitable portions. Respondent cannot be permitted to skin off the cream of the traffic and offer a less than complete service to shippers located at the involved points \*\*\*.

I have cited these proceedings to show that the Commission holds the motor carriers' "feet to the fire" insofar as the rendition of the service authorized by their certificates is concerned. It will not do for the motor carriers to argue that they lose money on certain operations and, therefore, should be allowed to avoid them. The Commission, in answer, says: "No, you will take the bad with the good. That is your common carrier obligation."

Now, if it be a fact that the forwarders occupy the same common-carrier status as motor carriers, why—in view of the abundant evidence of their failure to live up to their "common carrier obligation"—has the Commission never seen fit, in any case we can locate, to criticize them for such failure or threaten to revoke their permits? The answer is simple. The forwarders, regardless of their technical, legal status have never, for practical purposes, been considered by anyone—other than themselves when it suited their convenience—to be common carriers.

We submit that the Commission's decision in Ex Parte No. 266 is—at one and the same time—outrageously inequitable and extremely naive. The Commission has shown a total lack of concern at the successful avoidance—by both forwarders and railroads—of the transportation of traffic which is not profitable, while at the same time "coming down hard" on motor carriers for attempting to do precisely the same thing. It should know that if this bill is enacted, and the railroads reduce their charges to forwarders, there can be only one of two results: either the forwarders will pocket the reductions as profit, or will use them to attempt to divert motor-carrier traffic which will return a profit to them. And the Commission should know that the motor carriers will meet any forwarder rate cuts in order to retain such traffic. Meanwhile, if its past performance is any criterion, the Commission, having promoted a program to enrich the forwarders at the expense of motor carriers, can be expected to continue to insist that motor carriers shall "toe the line" in carrying out their common carrier obligation, while looking the other way as the forwarders "skim the cream" of competitive traffic. This, under a National Transportation Policy which provides for "fair and impartial regulation" of all transport modes!

When the legislation to provide federal regulation of freight forwarders was being considered by the House, Congressman Wolverton referred to the abuses which had arisen by virtue of the "large volume of tonnage which [forwarders]

control [and use] as a means of inducing the rail lines to establish rates specially designed to accommodate this particular [forwarder] traffic." He noted that "by playing one railroad against another and by playing railroads against motor carriers, the forwarders have been able to obtain concessions from the railroads which have greatly aided them in extending their operations."

In his remarks, Congressman Wolverton referred to the fact that "forwarders have favored the authorization of joint rates as a permanent matter." He said:

Upon most careful consideration, however, your committee has concluded that the likelihood of abuse is so great, and injury to the underlying carriers so probable, as to make it imperative, in the interest of the public and for the good of the transportation system of the country as a whole, that Congress should adopt the definite policy of forbidding such rates.

\* \* \* \* \*

The principle underlying reason why the forwarders desire to obtain authority to make joint rates with the actual carriers whose services they utilize, is in order to enable them to secure transportation at a less price than the regular rate of the carrier, and at a price which will not be open and available to other shippers. Even were such authority surrounded with all possible safeguards, the tremendous bargaining power which the larger forwarders would have by reason of the great amount of traffic which they control, would inevitably enable them to divert from the carriers performing the actual transportation important amounts of revenue greatly exceeding the value of the service contributed by the forwarders themselves. 87 Cong. Rec. 8218 (1941)

His comments today are just as pertinent as when made, and as applicable to H.R. 7986 as to the bill then under consideration.

The fears expressed relative to the forwarders' power, by virtue of the volume of freight they control, to force concessions from carriers remains entirely justified. The great bulk of the forwarding business is concentrated in the hands of four or five large forwarders or forwarder groups. According to the Commission's report in Ex Parte No. 266, one conglomerate organization, United States Freight Co., controls seven Class A freight forwarders, several motor carriers, owns 50% of an ocean common carrier with worldwide operations (Waterman Steamship Co.), and owns a trailer manufacturer (Great Dane). 339 I.C.C. 753-54 "Other controlled companies further contributing to USF's transportation empire include some 30 active entities engaged in transportation or related activities including foreign freight forwarding, local drayage, platform handling, terminal management and operations, agency services, and insurance brokerage." *Id.*, at 754 Again, according to the ICC's report, its gross revenue in 1969 was \$326.4 million, with net income of \$13.9 million. *Id.*, 753.

In 1969, the Class A forwarders owned by U.S. Freight accounted for \$242.6 million, or 41.1% of the \$590.6 million of forwarder revenue reported to the ICC by all Class A forwarders. When the revenue (\$176 million) of the four largest forwarders not a part of the U.S. Freight complex is added, the total, or \$418.6 million, constitutes 71% of the revenue of all Class A forwarders for 1969. These figures demonstrate the high concentration in the forwarder field and the power which enactment of H.R. 7986 would give to a few large forwarders (particularly the U.S. Freight conglomerate) to force rate reductions from the railroads.

I suggest that if any small number of motor carriers represented such a significant portion of total motor carrier operations as does this handful of forwarders and forwarder families in their field, this Subcommittee wouldn't be considering proposed legislation to enhance their profits. Rather, it would undoubtedly be much more interested in reducing their near-monopoly position.

Our organization has opposed the forwarders' continuing efforts, over many years, to achieve a highly favored position in transportation and to enjoy the benefits of either shipper or carrier status whenever one or the other would best suit their convenience and pocketbook. Almost twenty years ago, we opposed the provisions now found in Section 409, whereby forwarders are given the privilege of using their tonnage to extract from motor carriers much lower rates than they charge other members of the shipping public for the same service. See Hearings on H.R. 5967, Subcommittee on Transportation of the House Committee on Interstate and Foreign Commerce, 81st Cong., 2nd Sess. (1950), pp. 148-181. But

the legislation was enacted, resulting—in the Supreme Court's words—in "partiality to particular shippers." The amendment to Section 409, of course, placed the forwarders in the same position that they had occupied prior to regulation of motor carriers. Insofar as motor carrier-forwarder relationships are concerned, it is almost as though neither was subject to federal regulation. The Commission has done nothing to assure that the "contract" rates which the forwarders pay motor carriers under § 409 are reasonable, or for that matter, that they even equal the cost of performing the service. The bill under consideration would compound the problem by vastly increasing the ability of forwarders to profit—not because of the service they render—but because of the economic power they wield through the tonnage they control.

The enactment of §409, which allows forwarders to contract with motor carriers for lower rates than those paid by other shippers of similar goods was, we submit, a bad mistake. The forwarders now ask you to compound that error. Not satisfied with their free rein to obtain unreasonably low rates from motor carriers by virtue of the traffic they control, they again seek to increase their profits, by asking the Congress to allow them to use the same tactics on the railroads. For the reasons so clearly expounded by Congressman Wolverton when Congress first regulated freight forwarders, we ask that you reject H.R. 7986.

The forwarders claim that enactment of this bill is needed to achieve "equal treatment" with motor carriers and make the equally fallacious contention that enactment of the bill will benefit small shipment traffic. (ICC Report, p. 741) While the forwarders deserve full credit for a vivid imagination, these claims are completely baseless.

Forwarders have traditionally been, and, as I have shown, continue to be "traffic skimmers." Because of the significant tonnage the large forwarders can tender, they already receive extremely favorable rail rates. To the extent, therefore, that forwarders restrict their holding out to high-rated traffic between metropolitan centers, the "spread" between the rates they charge and those they pay is increased. As stated by Commissioner Murphy in his dissent in Ex Parte No. 266:

In this regard, the forwarders' spread—the difference between what the forwarder receives from its customers and what it pays for the underlying transportation—has increased steadily during the past 14 years from 25 cents to 35 cents of each dollar paid to the forwarders by their shippers. This spread seems to me to be ample to meet the expenses of a reasonably efficient forwarder and to return a satisfactory profit to that forwarder. That is may not do so in certain limited situations does not, in my judgment, constitute sufficient cause to increase it. 339 I.C.C. 813.

As noted, it is commonplace to find forwarder rates which meet, or sometimes go below, motor carrier rates between certain points on high-rated traffic, but they decline to maintain lower rates for lower-grade traffic, leaving that for the motor carriers to handle. The same tactic is employed by the forwarders with respect to *all traffic* moving to or from minor points or geographical areas. It is the necessity to subsidize traffic moving to and from such points which is responsible—in very large part—for the "small shipments" problem.

This problem is of relatively recent origin, and results from a combination of circumstances. First and foremost is the fact that the railroads have "retired" from the field. This, in turn, has had the effect of "dumping" a vast amount of small shipment traffic upon motor carriers. The forwarders won't take it, except when they can handle it at a profit. This leaves the truly "cat and dog" traffic—small-volume shipments moving sporadically to and from small points throughout the country—for the motor carriers to handle. This traffic cannot move at all, except on a loss basis, and the Commission requires *only* the motor carriers to transport it. Passage of H.R. 7986 can only aggravate the "small shipment problem," in that diversion of profitable traffic from motor carriers to forwarders will make it harder for the former to serve the small points, and the latter have no intention of doing so.

For the reasons stated, we urge this Subcommittee to reject H.R. 7986.

MIDDLEWEST MOTOR FREIGHT BUREAU  
 COMPARISONS OF RATES AND MINIMUM CHARGES OF MOTOR CARRIERS EXHIBIT 2  
 AND FREIGHT FORWARDERS EFFECTIVE AS OF 8-13-70 (Page 1 of 1)

TO	WEIGHT BREAK (LBS)	FROM MINNEAPOLIS, MINN.															
		CLASSES															
		150		100		85		70		60		55		50		35	
		RATES (In cents per 100 lbs)															
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	
Bartlesville, Okla.	Min Chrg \$	955	1022	955	1022	955	1022	955	1022	955	1022	955	1022	955	1022		
	LTL																
	Under 500	895	1044	830	779	551	700	472	700	419	700	392	700	366	700		
	500 - 999	843	944	580	679	501	600	422	600	369	600	342	600	317	600		
	1000 - 1999	769	849	524	604	431	531	377	531	320	531	304	531	279	531		
	2000 - 4999	745	816	499	520	426	497	332	497	304	497	280	497	254	497		
	5000 and over	701	760	467	527	396	456	326	456	281	456	268	456	233	456		
TL - Vol.	688	--	487	--	390	--	320	--	278	--	253	--	229	--	172	--	
Tulsa, Okla.	Min Chrg \$	992	921	992	921	992	921	992	921	992	921	992	921	992	921		
	LTL																
	Under 500	943	943	664	664	580	680	495	495	439	495	412	485	383	495		
	500 - 999	666	896	614	914	531	531	445	445	399	445	363	445	333	445		
	1000 - 1999	619	819	557	557	479	479	400	400	347	400	321	400	295	400		
	2000 - 4999	706	790	533	533	453	456	376	376	323	376	298	376	270	376		
	5000 and over	760	760	499	499	425	425	350	350	300	350	276	350	250	350		
TL - Vol.	735	--	480	--	417	--	342	--	285	--	289	--	245	--	195	--	
Okmulgee, Okla.	Min Chrg \$	1018	1059	1019	1099	1018	1059	1019	1099	1019	1099	1019	1099	1019	1099		
	LTL																
	Under 500	978	1127	885	834	596	747	510	747	453	747	424	747	393	747		
	500 - 999	830	1039	835	734	549	648	461	648	403	648	375	648	343	648		
	1000 - 1999	853	933	580	680	496	578	417	578	391	578	335	578	307	578		
	2000 - 4999	328	899	554	625	474	545	380	645	337	545	310	545	283	545		
	5000 and over	781	841	580	580	443	503	364	503	313	503	286	503	261	503		
TL - Vol.	766	--	810	--	434	--	357	--	306	--	281	--	257	--	204	--	
Durant, Okla.	Min Chrg \$	1207	1171	1207	1171	1207	1171	1207	1171	1207	1171	1207	1171	1207	1171		
	LTL																
	Under 500	1077	1201	762	886	666	790	571	790	507	790	477	790	444	790		
	500 - 999	1029	1103	712	736	616	690	521	690	459	690	427	690	394	690		
	1000 - 1999	954	1069	655	710	565	620	476	620	415	620	386	620	357	620		
	2000 - 4999	929	975	628	675	510	566	451	566	392	566	362	566	332	566		
	5000 and over	878	911	592	627	507	542	423	542	352	542	338	542	309	542		
TL - Vol.	836	--	557	--	473	--	390	--	335	--	308	--	279	--	249	--	
Sherman, Tex.	Min Chrg \$	1085	1180	1085	1180	1085	1180	1085	1180	1085	1180	1085	1180	1085	1180		
	LTL																
	Under 500	1064	1213	743	892	648	797	550	699	485	699	455	699	423	699		
	500 - 999	1014	1113	892	792	598	697	500	599	437	599	406	599	374	599		
	1000 - 1999	938	1018	636	716	547	627	456	556	394	556	365	556	336	556		
	2000 - 4999	915	966	612	663	523	583	431	502	370	502	340	502	311	502		
	5000 and over	863	923	576	635	480	549	402	462	345	462	316	462	287	462		
TL - Vol.	856	--	566	--	470	--	364	--	338	--	311	--	282	--	254	--	
Dallas, Tex.	Min Chrg \$	1131	1033	1131	1083	1131	1083	1131	1083	1131	1083	1131	1083	1131	1083		
	LTL																
	Under 500	1121	1121	780	789	679	679	578	578	509	599	478	476	441	441		
	500 - 999	1072	1072	731	731	630	630	529	529	460	490	426	426	382	382		
	1000 - 1999	968	965	674	674	579	579	462	462	419	419	386	386	355	355		
	2000 - 4999	971	871	651	651	553	553	458	458	393	393	363	363	330	330		
	5000 and over	917	917	612	612	519	519	428	428	368	368	336	336	305	305		
TL - Vol.	899	878	600	563	509	495	420	428	359	350	331	321	300	292	300	292	

LEGEND:  
 COLUMN A Rates - Motor Carrier MMFB, Agent, Tariff 35-F MF-ICC 530.  
 COLUMN B Rates - Freight Forwarders, Freight Forwarders Tariff Bureau, Tariff 38-A ICC FF 117 for LTL rates and Freight Forwarders  
 Tariff Bureau Tariff 40-G, ICC-FF 188 for TL Vol. rates.  
 Indicates where Freight Forwarder LTL or AQ rates are frozen at next higher class, example-Bartlesville, Durant and Okmulgee,  
 Okla. are frozen at class 85; Sherman, Tex. and Tulsa, Okla. are frozen at class 70.

Senator STEVENS. Good morning, Mr. Brewer.

STATEMENT OF HAROLD C. BREWER, CORPORATE TRAFFIC MANAGER, AMERICAN BILTRITE RUBBER CO., REPRESENTING THE TERMINAL FREIGHT COOPERATIVE ASSOCIATION

Mr. BREWER. Good morning, sir. My name is Harold C. Brewer. I am corporate traffic manager of American Biltrite Rubber Co., 29 Hampshire Street, Cambridge, Mass.

My company has been a member of Terminal Freight Cooperative Association since January 6, 1947, and I personally have been a member of the executive committee for many years. I am appearing

here today on behalf of 45 companies who ship their products to and from most major cities in the United States, and for Terminal Freight Cooperative Association, a nonprofit shipper association whose services are used by these same 45 companies.

Mr. Douglas R. MacDonald, general traffic manager of City Products Corp., and president of Terminal Freight Cooperative Association, who presented our statement before this subcommittee in 1968, and before the House Interstate and Foreign Commerce Committee, Transportation and Aeronautics Subcommittee, in 1968, 1970, and on March 16, 1972, on similar bills, was unable to be present today and asked me to appear for Terminal Freight Cooperative Association and the 45 member companies.

The language of the various bills sponsored by the freight forwarders, I understand, has differed over the years, but the effect of the bills has always remained the same. If enacted, such bills would authorize freight forwarders to negotiate special railroad rates and charges lower than those available to the shipping public. The result would be either reduced revenues for the railroads from a lowering of rates and charges to freight forwarders, or higher rates to the shipping public to make up for the lower rail revenues received from freight forwarders.

Further, while I believe the bill would result in lower rail rates and charges to forwarders, I find no corresponding assurance that freight forwarders would lower their own rates to the shipping public.

Before discussing in detail the reasons for our opposition to S. 1896, let me briefly tell you about the companies and Terminal Freight Cooperative Association for whom I am appearing today.

My own company, American Biltrite Rubber Co., is a manufacturer of rubber soles, heels, soling, industrial rubber products, sports surfaces, floor tile and carpeting, which are distributed throughout the United States and Canada. Some of the companies for whom I appear are familiar names in retailing: Sears, Roebuck; Federated Department Stores, City Products Corp., Broadway-Hale Stores, May Co., Meier & Frank Co., and others.

Some of the member companies of the Association are smaller and operate in smaller communities such as Barrows North Central Furniture Co. of Phoenix, Ariz.; Haverty & Jorrie's Furniture Co. of Houston and San Antonio, Tex.; Rubinstein's Furniture Co. of Eugene, Oreg.; Skagit Corp. of Sedro Woolley, Wash.; and William E. Wright & Sons of West Springfield, Mass.

All of these companies have voluntarily joined together in a nonprofit shipping association of which my company is a member. The Terminal Freight Cooperative Association has been operating for 30 years, and during that time, has saved its member companies considerable sums of money in freight costs. Lower freight rates can mean lower prices for consumer goods in the competitive marketplace in which all of our members compete.

Terminal Freight Cooperative Association consolidates its members' small shipments and ships them in consolidated loads in carload or piggyback service. In the year 1969, 60 percent of the shipments consolidated weighed under 100 pounds, and 89 percent weighed less than 500 pounds.

Rail and motor carriers offer lower volume rates for consolidated carload or truckload service because of the economies in allowing others to bear the expense of consolidation. In fact, there is very

little less-than-carload service left by rail, and a shipper of small shipments has little choice but to join with others to consolidate or move his goods by forwarder or motor carrier.

In handling these consolidated shipments in carloads or in piggyback trailers, the railroads perform the same services and offer the same rates and charges whether the name on the bill of lading says American Biltrite Rubber Co., Terminal Freight Cooperative Association, or U.S. Freight.

Who owns the goods, or whose name is on the bill of lading should not be grounds for special rates and charges by the railroads in providing service or making rates. The law presently requires the railroads to treat all shippers equally. S. 1896, however, would authorize railroads and freight forwarders to enter into special contracts for lower rates, and charges—such as for unlimited credit, split deliveries, stopping in transit, or freight house handlings—which would be denied to my company, to Terminal Freight Cooperative Association and to any other companies shipping their goods.

The first proviso of S. 1896 on page 2 of the bill states that the contracts "shall not unduly prefer or prejudice any of such participants or any other freight forwarder." But the shipper or consumer, who is not mentioned in the proviso—since he is neither a participating railroad, nor a freight forwarder—could be prejudiced by being charged higher rates.

In other words, two shipments one by a shipper, and one on a freight forwarder bill of lading moving under contract, both on the same train and to the same place, could pay different rail rates for the same service.

Not only could these contracts include rates which are preferential to forwarders and prejudicial to the shipping public, but also the forwarders and railroads are granted a special exemption from the antitrust laws by the third proviso of S. 1896, which states that:

Agreements establishing the procedures referred to herein shall be deemed to be agreements within the meaning of section 5a of this Act.

Section 5a is the so-called Reed-Bulwinkle Act exemption from antitrust laws. I am unaware of any special justification for giving this additional exemption from the antitrust laws to railroads and freight forwarders to agree on these special contract rates and charges.

One of the prime purposes of passing the Interstate Commerce Act was to prevent discrimination by railroads in their rates to their their customers. We oppose this bill because we do not believe that preferential and discriminatory rates are justified.

If there are economies and efficiencies permitting the railroads to offer lower rates on certain kinds of traffic, such as the movement of piggyback traffic, then such rates should be open to all railroad customers on a nonpreferential basis. The present ratemaking machinery will allow lower rates where justified. Therefore, this legislation is not required.

Ostensibly, these preferential rail-freight forwarders contracts, under procedures exempt from the antitrust laws, are to assist small shipments. Supposedly reduced rail rates and charges will enable freight forwarders to offer lower rates which in turn will benefit small shipments. We do not agree with this theory for three reasons:

(1) Preferential rates to some customers of the railroads but not to others are not justified and should remain unlawful;

(2) Preferential reduced rail rates for forwarders will deprive the railroads of needed revenues which they can only regain by collecting from other shippers even higher rates, and;

(3) While this bill will result in lower rates and charges to freight forwarders, this bill contains no requirement that customers of forwarders receive the benefits of a similar reduction in rates, and the public, therefore, could conceivably receive no advantage. In short, the bill might only increase the freight forwarders' "spread" between what they pay for transportation and what they charge and may not result in lower rates to the public.

Last year, in *ex parte 266*, a majority of the Commission agreed with the freight forwarders' comments to the limited extent of recommending contract rates for a limited trial period, such as 3 years.

However, the three senior ICC Commissioners with a combined experience of over 50 years dissented vigorously. Commissioner Murphy, in his dissent, so effectively destroys, in my opinion, the weak rationale of the majority opinion that I would ask that you review the portion of his dissent on pages 5 and 6 of my statement which I will not take the committee's time to read.

In my appearance today before your subcommittee, I have had to testify in opposition to the legislation being offered. I do not personally like being placed in a position of having to oppose because there are many changes in transportation which should be considered.

The ICC has initiated *ex parte 266*, sub 1, enlarged terminal area for freight forwarders, which Terminal Freight Cooperative Association is supporting, and there are important transportation bills pending before this committee.

I would encourage the committee to act on these bills which will benefit all forms of transportation and the shipping public, rather than, as Commissioner Murphy so aptly put it in his dissent to *ex parte 266*, "to favor the few at the expense of the many shippers and receivers of freight throughout the Nation."

In conclusion, I urge your opposition to S. 1896.

Thank you for your time.

Senator STEVENS. As I understand your testimony, yours is a non-profit association, is that right?

Mr. BREWER. That is right, sir.

Senator STEVENS. Can anyone join it?

Mr. BREWER. Yes, sir.

Senator STEVENS. If I own a small shoestore, in downtown Boston, with two employees, I could join it?

Mr. BREWER. No.

Senator STEVENS. Who can join it?

Mr. BREWER. Anyone, where we can handle the type and the volume of traffic.

Our terminals are expanding; we are building new terminals today. We can then take on more traffic.

The cost of a small shipper of that type would be prohibitive.

Senator STEVENS. Then you are a nonprofit membership, are you not?

Mr. BREWER. No, sir.

Senator STEVENS. What is the difference? You are discriminating against the small businessman that would be protected by this bill and yet you are objecting to it.

You do exactly what these freight forwarders do, do you not?

Mr. BREWER. No, sir.

Senator STEVENS. What is the difference?

Mr. BREWER. We are a nonprofit shipping association whose membership participates in any savings in proportion to the tonnage.

Senator STEVENS. I understand that.

You have Sears, Roebuck, Federated Stores, City Products, Meier & Frank, which includes the "Whos Who" from Dun & Bradstreet in Boston.

What I am concerned about is the small guy. How does he get involved with this, except through a freight forwarder, and how can a freight forwarder do it unless he makes a profit?

Mr. BREWER. The freight forwarder makes a profit.

Senator STEVENS. Not in small business, unless he can use the railroads?

Mr. BREWER. I am not questioning that, sir.

The forwarder still makes a profit. The statement was made here yesterday, of the low percentage of profits made by the forwarders.

Senator STEVENS. How many people belong to your cooperative?

Mr. BREWER. Fifty-two, I believe.

Senator STEVENS. You have got 52 different profitmaking companies that belong to your association?

Mr. BREWER. Yes, sir.

Senator STEVENS. And they already have brought about considerable savings according to your testimony by virtue of forming this cooperative association?

Mr. BREWER. Yes, sir.

Senator STEVENS. As I understand this bill, it would, in effect, allow freight forwarders to make that agreement in advance and say, that if we can get so much volume, we can make agreements and we can get preferential rates based on those agreements in advance with the railroads or trucking companies. And if we can put it together and ship it on this basis, all these little guys are going to have the same advantage which you have right now, stemming from an association which you say they cannot join.

What is wrong with that?

Mr. BREWER. My own company joined this because of the tremendous increase in the cost of transportation over the past 10 years. The relation of transportation costs to our net profit and our net sales has risen—it has more than doubled in the past 10 years.

We, ourselves are shippers, our average shipment is under 800 pounds.

Senator STEVENS. Am I correct in assuming that you are not a company but rather a cooperative association company, comprised of member companies who are in business? You are saving them money by acting on a nonprofit basis?

Mr. BREWER. Right.

Senator STEVENS. If you do not mind my saying so, in my opinion, you are not a company. As a cooperative, I do not see how you are anything more than a freight forwarder yourself.

Mr. BREWER. We are a nonprofit freight forwarder, if that is the term that you want me to tell you.

Senator STEVENS. As I understand it, you are really saying that those who are big enough ought to be able to have this privilege of

membership, yet the little guys are not entitled to that privilege because they cannot join your association.

Mr. BREWER. Why should the freight forwarder pay more, or less in this case for the same service that we do today jointly with the railroads? Why should they pay less for a carload of traffic or a piggy-load of traffic than we do?

Senator STEVENS. Let us turn that around. Why should Congress not prohibit you from getting together as an association on a non-profit basis and shipping for less than the nonmember companies?

You already ship for less than the smaller companies.

Mr. BREWER. Yes.

Senator STEVENS. You just said you did.

Mr. BREWER. When you go into a store to buy merchandise, different stores, is all the merchandise the same type and at the same price?

Senator STEVENS. You are objecting to this bill because it would lower some freight rates because of an advanced agreement, which is exactly what your association does.

Mr. BREWER. It is preferential treatment. For the same type of service between the same points, we ought to get the same type of rates?

Senator STEVENS. I would suggest an amendment to this bill providing that there cannot be any discrimination by cooperative terminal freight associations, and that you must accept freight from anybody.

In that regard, could you still exist on a nonprofit basis, and save money for Sears, Roebuck at the same time?

Mr. BREWER. All I can say is I do not feel qualified to answer this statement that you ask. Mr. McDonald who appeared before you before, who is well versed in this, could.

I do not feel qualified.

Senator STEVENS. Do not misunderstand me. We sometimes assume the position of the devil's advocate. It just seems to me it is incongruous that you have an association which has accomplished, for the very large companies exactly what Senator Hartke is trying to accomplish for the smaller companies.

I am not saying I am for or against the bill. I really do not have a position on it, yet; but as a practical matter, unless you will take in the little guy, someone must take him in; is that not right?

Mr. BREWER. They do not take in the little guy. The little guy ships because the rate is there. He uses motor carriers. We use motor carriers. We use freight forwarders, ourselves.

Senator STEVENS. I understand if this bill is passed, the freight forwarder could make advance agreements and preferential rate contracts with railroads and truckers, and therefore, put together freight from various sources and take advantage of the rate for the shippers?

Mr. BREWER. Are you going to include in the bill that they are therefore going to reduce their rates accordingly?

Senator STEVENS. I think they could do this.

Mr. BREWER. This is all that sort of thing.

Senator STEVENS. We are naive enough to believe that the ICC is doing that already.

Mr. BREWER. All right, I will buy that.

Senator STEVENS. Thank you very much.

Mr. Singer, for your benefit and the benefit of the other witnesses, you may either place your testimony in the record and highlight it or read your entire statement.

**STATEMENT OF CHARLES W. SINGER, GENERAL COUNSEL, ITOFCA, INC.; ACCOMPANIED BY JOHN C. ALLEN, JR., VICE PRESIDENT OF OPERATIONS**

Mr. SINGER. Mr. Stevens, I would like to have it placed in the record, and then if I could summarize it, I would appreciate it.

Senator STEVENS. Your statement will appear in the record, Mr. Singer. I will be glad to have your summary and any comments you might make. I see that you are in a similar position as my last advocacy. If you want to answer any of those questions, you may.

Mr. SINGER. Appearing along with me is John C. Allen, Jr., who is the vice president and manager of operations of ITOFCA. He will be in a position to answer any particular questions you might have about the operations of ITOFCA that I might not be in a position to answer.

Senator STEVENS. What does ITOFCA stand for?

Mr. SINGER. Industrial Trailer-On-Flat-Car Association. In order to reduce that somewhat, the name was changed to ITOFCA. ITOFCA is a nonprofit shipper association comprised of some 164 members. It is governed by the members and the board of directors. It does not discriminate as to the members, and any shipper of freight (large and small alike) is eligible for membership.

While ITOFCA has some of the largest shippers in the country, it also has a number of smaller shippers, that is, individual distributors, stores, and other similar small businesses. A shipper may use ITOFCA to any extent desired.

I would like to point out in connection with the small shipment problem that it is not necessarily the movement of freight from one small shipper to another small consignee but rather it concerns the movement of small shipments irrespective of the size of the consignors or consignees. Many of the members of ITOFCA, while they are large industrial concerns, do have substantial less-than-truckload shipments; and ITOFCA participates in those movements through the members' tender of freight.

Senator STEVENS. Are you able to consolidate both as to less than carload lots and to destination on a through basis? Could you pick up for example from Sears, Roebuck here and then pick up something in Pennsylvania and deliver both shipments on the way to Chicago to somewhere else? In other words, are you able to consolidate and stop over?

Mr. SINGER. Normally, the consolidation is effected through a motor carrier who participates in the traffic from and to the consolidation point. What ITOFCA does, taking New York as an example, is to have a motor carrier bring the freight for one of its members from Connecticut to a rail yard in the New York City area, at which point it is consolidated with a trailer load of freight from a point in New Jersey. Then, it would go on to Chicago where it would be deconsolidated and either move to points within the Chicago com-

mercial zone or be transported by motor carriers—common, contract, or private—to points within a reasonable distance beyond the commercial zone.

Approximately 30 percent of ITOFCA's traffic moves from and to points beyond the commercial zones of the cities where the rail yards are located.

Senator STEVENS. Thirty percent?

Mr. SINGER. Thirty percent.

Senator STEVENS. Thank you.

Mr. SINGER. We appeared here in connection with prior legislation, and at that time ITOFCA was solely a consolidator of volume or trailer load traffic. However, beginning in August of 1971, due to the request of its members, it now consolidates less-than-truckload shipments in exactly the same manner as a freight forwarder would handle the traffic.

Senator STEVENS. Are you able to make do by virtue of your volume agreements with the carriers that reserve space for you?

Mr. SINGER. No. We have to utilize the facilities that are available at the rates that are published. In that respect, we are in exactly the same position as a freight forwarder in the use of rail transportation.

The freight forwarders now have the advantage of using motor carriers on a contract basis, up to 450 miles, and beyond if it is not a volume movement. So, they already have the advantage of contract rates with the motor carriers whereas ITOFCA has to pay the published rates.

Senator STEVENS. Do you have a trucking subsidiary?

Mr. SINGER. No.

Senator STEVENS. You don't have ownership of any carriers at all?

Mr. SINGER. No. ITOFCA does not own any facilities, although they have substantial leased facilities to conduct their operations. As the statement points out, it has a number of employees to carry on its very substantial business which is tantamount, revenue-wise, to a \$45 million corporation.

Senator STEVENS. I understand that. You don't have any carrier facilities under lease or other basis?

Mr. SINGER. That is correct. We rely wholly upon the use of trailers furnished either by the railroads, railroad affiliates, leasing companies, or motor carriers.

Senator STEVENS. Let me explore one statement you made. You said you don't discriminate on the basis of size. What does it cost to join your association?

Mr. SINGER. The initiation fee is \$500, and the annual dues are \$200. On that basis, the member can use ITOFCA as much as it desires without any additional charge other than the actual charges for the transportation and a management fee. The management fee comes back to the member in proportion to its use of the service. In other words, the excess receipts resulting from the management fee and after deducting expenses are distributed to the members. For example, this year ITOFCA will refund some \$700,000 to its members. Since it has been in operation (1959), it has distributed some \$3 million to its members in excess receipts. Any profit, that is, excess receipts, resulting from the operation, inures directly to the benefit of the members.

In connection with the LTL operation, Mr. Chambers of Chipper Carloading Co. made certain allegations indicating that the LTL rates of ITOFCA were discriminatory and that we attempted only to attract the heavier and denser commodities. This simply is not true.

ITOFCA's LTL rates are based upon a terminal-to-terminal operations. ITOFCA's members are responsible for the motor carrier movement to and from the terminal point and the member can then avail itself of private carriage, contract carriage, or common carriage, dependent upon its desires, to move the traffic to and from the terminal point.

The experience of ITOFCA has been that instead of attracting the heavier and denser traffic, it actually is attracting light and bulky traffic which is normally not desirable for the freight forwarder. This is directly the opposite of Mr. Chambers' conclusions with respect to the operations of ITOFCA.

Senator STEVENS. If I were a member of your association, would I have to make an agreement to ship everything less than carload lot through you?

Mr. SINGER. You could ship all or none of it, and you would be in the same position. If you joined and made 20 shipments a year, you would be in the same position as if a shipper making 4,000 shipments. The member's charges would be based upon a terminal-to-terminal rate; and it would be responsible for paying for the motor carrier movements to and from the terminal points.

What ITOFCA tries to do—and the pricing in the less-than-truckload field is very difficult—is not to predicate its rates upon competition but to predicate them upon ITOFCA's actual costs of consolidating and handling the traffic at both origin and destination and a prorata share of the rail charges. Any benefits resulting from the use of the volume rail rates inure directly to the benefit of the members; and as indicated, any excess receipts are also distributed to the members.

Senator STEVENS. Very good.

Mr. SINGER. In addition, Mr. Allen points out that the operation is geared to faster service—through the use of piggyback services between major terminal points, the transit time on the small shipments have been cut substantially. The service therefore is extremely beneficial to the members, not only costwise but servicewise.

Senator STEVENS. As I understand it, you are in effect a nonprofit freight forwarder that is operating on a dues basis and saving your members money. It sounds to me like it is a very good plan.

What harm would this bill do to your organization?

Mr. SINGER. As I have pointed out in my statement, we feel that the inevitable result of this bill will be to reduce the revenues to the railroads in connection with freight forwarder traffic. We have given an example in our prepared statement of the extent to which motor carriers under plan I rates receive lower charges than are available to ITOFCA and have come to the conclusion, based upon all of the information available to us, that there could be a reduction of approximately 30 percent in the railroad-freight forwarder revenues in the event this bill is passed which could result in a loss in revenue to the railroads of some \$50 million. This has to come from some source, and ITOFCA is fearful that it will come from increased

transportation charges to it and other members of the shipping public.

Senator STEVENS. You don't believe that the result of this would increase the traffic sufficiently to offset that predicted loss to the railroads?

Mr. SINGER. The freight forwarders are now giving the railroads substantially all of the traffic that feasibly can move by rail. If that same traffic moves at reduced rates, the result would be less revenue which would have to be recouped from someone. That is where our fears lie. We can only conjecture as to the amount of the dissipation of revenue. However, it is a foregone conclusion that if this legislation is passed, there will be a reduction in revenue; and it is only a question of how much that reduction will be.

Senator STEVENS. As a member of the Post Office and Civil Service Committee, I think Uncle Sam is the biggest freight forwarder in the country by means of the Post Office. We find the problem continues to mount. It is not a problem of decreasing volume, but rather of increasing costs in conjunction with decreasing volume. I wonder why we cannot utilize the increasing volume in the country to bring about a reduction in rates, if they are properly consolidated and the proper advance agreements are made to ship only on the basis of preferential rates as excess traffic.

Mr. SINGER. Am I correct in understanding your question to be, "Would ITOFCA be satisfied if it also received the benefit of the reduced volume rates resulting from this bill?"

Senator STEVENS. Yes. In effect, I think you are freight forwarders and I wonder why it wouldn't apply to you. Even if it didn't, I wonder whether this isn't giving equality to the nonassociation freight forwarder that you have today by virtue of your assured volume coming from your members?

Mr. SINGER. You understand, Senator Stevens, that we fall under the same part IV of the Interstate Commerce Act that governs freight forwarders, except that ITOFCA's operations are conducted pursuant to an exemption pertaining to a nonprofit cooperative association of shippers. In most respects, the operations of the freight forwarder are substantially the same as those of shipper associations, except that shipper associations operate on a nonprofit basis and freight forwarders operate on a profit basis.

If this legislation would give preferential rates to the freight forwarders and the shipper associations also received the same preferential rates, then individual shippers would say—"Why should those two groups receive preferential rates. We want preferential rates." Then we would be back in the same position we are now, except that the railroads, who are in such dire circumstances, would suffer a substantial loss of revenue from the whole segment of the industry.

What the freight forwarders are asking for in this legislation is that they alone receive reduced rates. To the extent that those revenues are lost to the railroads, they have to be recaptured from all other members of the shipping public, including the very substantial operations of ITOFCA.

Senator STEVENS. I get your point, but I still wonder if there isn't a point at which the savings of a voluntary association cannot be made available to those who do not belong in terms of a consolidation

of freight into at least carload lots. That is the type of agreement I assume a railroad would insist on under this legislation.

Mr. SINGER. But you understand that under this legislation those agreements would not be available to ITOFCA.

Senator STEVENS. But you really don't need them because you are assured every time you move something, you will move a carload lot or you don't put it together.

Mr. SINGER. That is not correct. Under the LTL consolidation, ITOFCA moves out the traffic on a regular basis irrespective of the amount that is in the trailer. We do not hold the traffic to get a full load, but rather we provide an expedited service. ITOFCA assumes the same risks that a freight forwarder would assume. If there is insufficient traffic going to Houston or Dallas today, for example, the operation will be more costly to ITOFCA, and consequently there will be less funds to pass on to the members.

Senator STEVENS. What would you do if you lost money at ITOFCA on 1 year's operations? Would you assess your members?

Mr. SINGER. That is right.

Senator STEVENS. If you were a freight forwarder, you would go to the bank?

Mr. SINGER. That is right. The difference is when ITOFCA does have excess receipts, they pass those on to the members. The result of this legislation would be that there would not be as much in excess receipts to pass on to the members because the rates would be higher.

Senator STEVENS. We certainly thank you very much.

Mr. Allen, do you have anything to add?

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

Senator STEVENS. Thank you very much, gentlemen.

(The statement follows:)

STATEMENT OF CHARLES W. SINGER, GENERAL COUNSEL OF ITOFCA, INC.

My name is Charles W. Singer and my business address is 2440 East Commercial Blvd., Fort Lauderdale, Fla. I am a partner in the firm of Singer and Lippman, with offices in Chicago, Ill., Washington, D.C., and Fort Lauderdale, Fla., and am General Counsel for ITOFCA, Inc. [ITOFCA].

I was formerly employed by the Interstate Commerce Commission and the Civil Aeronautics Board as a Hearing Examiner and Trial Attorney, respectively, and have had a number of years of experience in representing clients in the transportation field.

Also accompanying me is John C. Allen, Jr., Vice President and Manager of Operations of ITOFCA. Mr. Allen has been associated with ITOFCA since its formation and is familiar with all aspects of its operations. He will be in a position to answer any questions which may arise concerning the operational aspects of ITOFCA.

ITOFCA is a non-profit shipper association operating pursuant to the exemption of Section 402(c) of the Interstate Commerce Act. A list of the members of ITOFCA is attached hereto as Appendix A. Collectively, the plants and other shipping facilities of these members extend throughout the United States and Canada. ITOFCA's operations are nationwide and include participation in International traffic.

Set forth in Appendix B attached hereto is a list of the members of the Board of Directors of ITOFCA and the companies they represent. Specific note should be made of the stature of the individuals and companies represented on ITOFCA's Board.

The Board of Directors of ITOFCA has specially authorized our appearance in opposition to the proposed legislation.

ITOFCA's primary operations are somewhat different from those of other shipper associations which might appear here. ITOFCA primarily consolidates trailerload shipments into carloads for movement in trailer-on-flat-car (TOFC) or

piggy-back service. Motor carriers are normally used for the short or relatively short movements to and from the rail ramp; and rail carriers are used for the line haul TOFC or piggy-back movement.

In addition, however, in August 1971 ITOFCA instituted a less-than truckload consolidation service for its members similar to the services offered by many shipper associations and substantially the same as the services offered by freight forwarders. Such services are now provided from Chicago to Dallas, Los Angeles, San Francisco, Oakland, Portland and Seattle; service to and from Houston is planned to be instituted in the near future; and service to and from Eastern points is under active consideration. The present services were instituted, and additional services are planned, responsive to requests of ITOFCA's members.

ITOFCA conducts substantial operations. During the last fiscal year ending June 30, 1971, ITOFCA shipped in excess of 75,000 trailers. The total transportation costs of ITOFCA and its members in connection with this service was \$39,000,000. Over \$32,000,000 was paid to the railroads for the services performed by them. It is evident from the above figures why ITOFCA and its members have a vital interest in the proposed legislation.

As a further indicia of the scope of the operations of ITOFCA, and its interest in the proposed legislation, it should be pointed out that at the present ITOFCA employs a total of 168 persons, operates a large office facility in Clarendon Hills, Ill., a suburb of Chicago, operates 14 additional offices located strategically throughout the country, and its members have invested in ITOFCA over \$2,600,000.00. If the proposed legislation was enacted it would have a substantial detrimental effect upon ITOFCA, and it is feared, would adversely affect the large segment of United States' industry represented through its membership in ITOFCA.

ITOFCA has appeared before this Subcommittee in connection with similar freight forwarder legislation in 1968 (S. 1786) and opposed S. 3803 in the 91st Congress, 2d Session which sought to permit railroads to publish preferential rates upon behalf of freight forwarders and others. ITOFCA also appeared and presented its views in connection with the investigation of the Interstate Commerce Commission in Ex Parte No. 266 *Investigation Into the Status of Freight Forwarders*. Despite the findings of the Interstate Commerce Commission to which ITOFCA took vigorous objections, ITOFCA does not feel that the preferential rate treatment proposed here is justified or consistent with the national interest.

More specifically, ITOFCA opposes the proposed legislation for the following reasons:

1. It discriminates against shipper associations and other members of the shipping public by affording preferential treatment to freight forwarders.
2. It will result in an unnecessary dissipation in railroad revenue at a time when these revenues are sorely needed.
3. The only result of the legislation will be to increase transportation costs of ITOFCA and other members of the public without any appreciable benefit to the public.
4. There is more important transportation legislation pending before Congress which should be considered first.

*1. Freight Forwarders Will Be Given Preferential Treatment to the Detriment and Prejudice of Other Shippers.*

The freight forwarders have always been considered as shippers in their relationship to the railroads. They are required to pay the tariff charges published by the railroads. No distinction is made in this respect between the freight forwarders, an individual shipper or a shipper association. *U.S. v. Chicago Heights Trucking Co.*, 310 U.S. 344 (1940).

The proposed legislation would place the freight forwarders in a favored or preferential position. They would be the only group of shippers who would be in a position to bargain with the railroads for rates lower than those applicable to other shippers and to enter into contracts with them concerning those rates. The only possible result is to place them in a highly preferential position.

Freight forwarders have been attempting to secure preferential treatment of this nature since prior to the start of Federal regulations of freight forwarders in 1942. Such matters were considered in connection with the initial legislation, again in 1956 and 1968 (S. 1786), and finally in 1969 (S. 3803). Congress wisely rejected, or failed to pass, any legislation of this nature. Despite the recommendations of the Interstate Commerce Commission in Ex Parte No. 266, which are contrary to the views expressed by its Chairman and General Counsel in connection with H.R. 10293 (the companion bill to S. 3803, 91st Cong., 2d Sess.), the present proposed legislation should be rejected.

When freight forwarder legislation was originally enacted a balance was drawn which required that the forwarders pay the same charges as all other shippers, but gave them the protection of the "commodities clause" of Section 411(b) whereby shippers were restricted against entry into the freight forwarding field. Individual shippers and association of shippers were thereby deprived of the right to engage freely in freight forwarding activities.

In 1950, this legislation balance was modified by permitting freight forwarders to contract with motor carriers with the proviso that when the line haul transportation is between concentration and break bulk points in truckload lots where such line haul transportation is for a total distance of 450 miles or more then the contract rates can be no lower than the tariff rates applicable to shippers generally. The legislation not only failed to solve the small shipment problem as will be later explained, but it created administrative chaos in the Interstate Commerce Commission in an effort to interpret the language of the amendment. See: *Milne Truck Lines, Inc.—Invest. of Collection of Tariff Rates*, 325 I.C.C. 128.

If the proposed legislation is enacted, completely eradicating the originally intended legislative balance, serious consideration would have to be given to further amendments in the Interstate Commerce Act giving shipper associations the right to engage in freight forwarder activities or to enter into contracts with rail and motor carriers. Shippers would thereby be given some measure of equal treatment.

The better course, however, and the course here urged by ITOFCA, is to reject the proposed legislation on the basis that it is discriminatory and contrary to the public interest.

### *2. Railroad Revenues Will be Dissipated by the Proposed Legislation*

There is no economic justification for the proposed legislation at this time. As Congress well knows, the major portion of the rail industry is in deplorable financial condition. The purpose of the legislation is to permit freight forwarders to bargain with the railroads for lower preferential rates and to enter into contracts with them covering those rates. The only result of such reductions would be to dissipate rail revenues and aggravate rail earnings and return on investment.

During 1969, Class A freight forwarders paid the railroads over \$85,000,000 in connection with TOFC services. For all purchased transportation, Class A freight forwarders paid the railroads \$170,775,000.

With this substantial volume of revenue, concentrated as it is in the hands of relatively few interests, the freight forwarders will be in a position, if the proposed legislation is enacted, to exert great leverage upon the railroads to reduce rates upon their behalf. While reference has been made in past freight forwarder presentations to the necessity for freight forwarder's to meet Plan I rates, there is no guarantee that the contract rates will not generate below the level of Plan I rates. Even if the rail-freight forwarder contract rates generate to the level of the Plan I rates, it would have a serious effect on rail revenues.

For example, ITOFCA has received information that the Plan I rates offered motor carriers from Chicago to St. Paul (when 100 trailers or more are tendered during a calendar month) are \$220.00 per car (two trailers). The effective rate available to ITOFCA (considering that the railroads are providing the trailers) is approximately \$315.00, or \$47.50 more per trailer.

On the basis of all of the information available to it, ITOFCA believes that a 30 percent reduction in the present rates applicable to freight forwarders would not be unrealistic if the proposed legislation is enacted. On the basis of TOFC services alone, this would have resulted in a loss of revenue to the railroads of over \$25,000,000 during 1969. On all freight forwarder purchased transportation during 1968, the railroads would have lost approximately \$50,000,000. It must be recognized that the proposed legislation would not apply solely to TOFC but to all traffic of the railroads.

No one can accurately predict what economic effect the proposed legislation would have upon the revenues of the railroads. It is evident, however, that it would result in reductions in sorely needed rail revenue.

Since 1967, the railroads have obtained general rate increases of over 40% and are now proposing further selective increases. Detention and other accessorial charges have also increased significantly.

At a time when the rail carriers are struggling against reduced earnings, this legislation would sanction reductions in rail revenue. Such a proposal is not consistent with the needs of the railroads or the shipping public.

It should also be recognized that general rate increases would not necessarily be applicable to the proposed rail-freight forwarder rates. They are not applicable

to rail-motor carrier rates or to Plan I TOFC rates. This would be an area of further dissipation in rail revenue.

ITOFCA submits that the depletion of rail revenues as a result of the proposed legislation is not economically sound and is contrary to the National Transportation Policy. The legislation must be rejected.

3. *No substantial benefit to the public will result from the proposed legislation.*

The plea will be made, as it has in connection with prior legislation, that the proposed legislation will be of benefit to the "small shipments" problem. The only realistic guide which is available in this respect is the experience of the shipper of "small shipments" where motor carrier negotiated rates are involved.

In 1950 Class A forwarders handled 4.2 million tons of small shipments of the total 87.0 million tons of such shipments via all modes. In December 1950, Section 409 was modified to allow negotiated rates between the forwarders and the motor carriers. If the forwarders passed on to the shippers any lower rates negotiated with the motor carriers a surge in the volume of small shipments handled by the forwarder would be expected. In 1964, the latest year where figures are available, the forwarders handled 4.4 million tons of a total of 98.3 million tons of small shipments. In that same period the Class I and II motor carriers increased their participation in handling small shipments from 53.4 million to 84.5 million tons. (Source: Table 1 (page 9), I.C.C. Bureau of Economics—Monthly Comment—May 1971)

That the comparison of 1950 with 1969 is realistic is indicated by the following details from the table:

Year	Total	Motor LTL class I and II	Freight forwarders class A
1950	87,047	53,405	4,204
1951	81,998	48,941	4,886
1952	80,232	49,615	4,997
1953	79,372	51,801	4,504
1954	74,569	50,279	5,223
1955	78,616	54,132	4,697
1956	80,392	56,963	4,584
1957	78,886	57,934	4,300
1958	74,359	56,272	3,962
1959	79,988	62,721	4,174
1960	78,031	62,144	4,100
1961	78,121	63,527	4,010
1962	82,788	68,541	4,311
1963	83,958	70,794	4,215
1964	86,194	73,048	4,413
1965	90,152	76,896	3,994
1966	95,501	82,048	4,501
1967	93,676	80,190	4,352
1968	96,617	83,223	4,503
1969	98,344	84,505	4,443

It is evident that whatever rate reductions were obtained by the forwarders were not used to reduce rates and induce a greater use of forwarder service.

Quite the contrary would appear to be the fact. For the year 1950 the average weight of a forwarder shipment was 444 pounds while in 1969 the average weight per shipment was 573 pounds. For the same years the statistics show 18,927,000 shipments received by forwarders in 1950 but in 1969 were only 15,519,000. (Source: Table 1 (page 1) and Table 3 (page 11) I.C.C. Bureau of Economics—Monthly Comment—May 1971.) The forwarders, since obtaining lower, bargained rates from the motor carriers have reduced the number of shipments handled and have increased the weight per shipment. Such a course is a compounding of the small shipments problem, not a solution to it.

When the I.C.C.'s Bureau of Economics released its study of the Role of Requested Motor Carriers in the Handling of Small Shipments it assessed various alternative solutions to the small shipments problem and had this to say:

"Of all the above alternatives, the nonprofit shipping associations would appear to be potentially one of the most beneficial to the small shipper." (p. 103, Statement No. 67-2)

Shipper associations are both large and small. ITOFCA has members who ship many trailerloads and others who ship only a few each year. Its members include some of the largest companies in the country and many smaller concerns. Any shipper who has a need for TOFC service can join ITOFCA. Service is provided

not only between major cities but virtually to all points which can be reached by a combination of rail TOFC and motor carrier service. Significantly, about 30% of all shipments handled by ITOFCA move by a combination of rail TOFC and regulated motor carrier service to or from points outside of commercial zones, as far distant as 200 miles from the rail ramp. This is true coordination of modes to achieve the benefits of expedited economical service to broad geographic areas.

ITOFCA aids its members with around the clock supervision of shipments and tracing of cars. It advises its members of rate, service, and tariff changes on a continuing basis. It makes recommendations on these matters. Where its members are affected it appears at public rate committee hearings, before the Interstate Commerce Commission or before Congress to represent their views. These are all services of particular value to the small shipper. They are all services which the freight forwarder does not provide.

Since ITOFCA's prior appearance before this Subcommittee in connection with S. 1786 (1968), it has instituted operations, at the request of its members, to provide a consolidation service on less-than-truckload shipments. This service has proven to be extremely beneficial to the members of ITOFCA and as indicated such service is anticipated to be expanded. In addition, many of the ITOFCA members effect their own consolidation of less-than-truckload shipment and have ITOFCA handle the consolidated load.

As the Commission's staff recognized in its study and as ITOFCA's operations demonstrate, the shippers association is more efficient than the freight forwarder. Those who handle the business most efficiently should be allowed the chance to do so and not be cut down by discriminatory legislation.

ITOFCA, on behalf of its members, paid the railroads approximately \$32,000,000 for transportation services during ITOFCA's fiscal year 1970-71. Of this amount, approximately \$2,000,000 was represented by increases resulting from Ex Parte 262. If 1/9th of that increase, or \$222,000, would have been dissipated as a result of the proposed legislation, the loss would have had to be recouped from some source, presumably through further increases in the rail rates. ITOFCA, on this basis, would be paying through increased rates the full amount of the rate reduction to the forwarders. This is not fair nor equitable.

Accessorial charges, such as trailer detention or trailer leasing, are areas where the forwarders could achieve substantial reductions in charges. This is crucial to ITOFCA and its members because charges for these services are becoming increasingly important due to the railroad efforts to isolate such items and burden them with drastic increases.

Shippers generally must bear the burden of any depletion in rail revenue and general increases in rates resulting therefrom. Not only have increased rates become economically intolerable but they have added materially to the inflationary trend of the country. At a time when we are attempting to reach economic stability, nothing should be done to add to the flame of inflation. We feel that passage of the proposed legislation would have that effect.

To place the shippers association in a disadvantaged position as against the preferred forwarder, as this legislation would do, will certainly not promote the shipper association as a solution to the small shippers' problem or aid in the development of intermodal services. That such associations are gaining acceptance is evidenced by the fact that between 1964 and 1969 shipper associations originated revenue by Class I rail carriers increased from \$67,544,000 to \$118,256,000, carloads increased from 166,000 to 226,000 and tons increased from 2,413,000 to 4,031,000. During the same period freight forwarder traffic originated by the Class I railroads remained substantially the same or decreased. (Source: Table 26, App. F, Report of I.C.C. Ex Parte No. 266)

Shipper associations serve large and small shippers alike. Since they are non-profit, all consolidation savings are passed to the shipper. The carriers earn full revenues and the shippers benefit both in service and savings.

ITOFCA does not believe that the proposed legislation will inure to the benefit of small shippers, but to the contrary will be used only to increase the earnings of the freight forwarder. No sham of this nature should be allowed as a basis for enacting the proposed legislation.

#### 4. *The Proposed Legislation Adversely Affects ITOFCA, Its Shipper Members and the Shipping Public Generally.*

The reduction in rail revenues which will result from this proposal must be recouped from other shippers. As indicated, ITOFCA believes that over \$50,000,000 a year or more in railroad revenues could be lost as a result of the proposed legislation.

The significance of this figure can be appreciated when it is realized that the railroads anticipated generating \$450,000,000 in revenue from the general increases, averaging 6% on all shippers, in Ex Parte No. 262. About 1/3 of that drastic increase in rail revenues could have been dissipated by decreases in the revenue derived from forwarder traffic.

5. *Congress has before it more important legislation than the instant proposal.*

As indicated previously, Congress has had before it on a number of occasions legislation similar to that proposed here and has consistently rejected or failed to pass it. In this particular session, it has before it, in addition to the instant proposal, transportation legislation which is of extremely greater importance than this legislation.

At best, the proposed legislation can be characterized as preferential to a particular segment of the industry. It will not solve any of the major transportation problems facing the Nation.

ITOFCA therefore feels that this legislation should be deferred until Congress has had an opportunity to review the major legislative proposals before it and decide what action, if any, should be taken in connection therewith. If, after affirming or changing the legislative policy with respect to transportation generally, the proposed legislation can again be considered in the light of such determination.

We do not feel that this is the proper time to consider it.

#### SUMMARY

ITOFCA, and its shipper members, oppose the proposed legislation for the following reasons:

1. Freight forwarders will be preferred to the disadvantage of shipper associations, their members, and other shippers.
2. Reduced rates for forwarders are inevitable which will deplete railroad revenues.
3. The reduced revenues will be recognized by the railroads by increasing rates to the shippers generally.
4. No real benefit to the public will result, but only a benefit to the forwarders.
5. Congress has before it more important legislation than preferential legislation for a small segment of the transportation industry.

Thank you for the opportunity of submitting this statement.

#### APPENDIX A

##### ITOFCA, INC.

##### MEMBERS

(May 8, 1972, total, 164)

Ace Hardware Corporation, Chicago, Illinois.  
 Acklands Limited, Toronto, Ontario, Canada.  
 Addressograph Multigraph Corporation, Cleveland, Ohio.  
 Advance Transformer Company, Chicago, Illinois.  
 Airco, Incorporated, New York, New York.  
 Alcan Aluminum Corporation, Cleveland, Ohio.  
 Allied Chemical Corporation, Morristown, New Jersey.  
 Allied News Company; Inc., Chicago, Illinois.  
 Allis-Chalmers Corporation, Milwaukee, Wisconsin.  
 Alton Box Board Company, Alton, Illinois.  
 Aluminum Company of America, Pittsburgh, Pennsylvania.  
 American Biltrite Rubber Company, Inc., Boston, Massachusetts.  
 American Flange & Mfg. Co., Inc., New York, New York.  
 American Hospital Supply Corp., Evanston, Illinois.  
 American Metal Climax, Inc., New York, New York.  
 American-Standard, Inc., New Brunswick, New Jersey.  
 American Synthetic Rubber Corporation, Louisville, Kentucky.  
 Amole, Inc., Dayton, Ohio.  
 Anaconda Company, The, New York, New York.  
 Anslu Company, The, Marinette, Wisconsin.  
 A-T-O Inc., Willoughby, Ohio.  
 Automatic Distributing Corporation, Houston, Texas.

H.R. Basford Company, San Francisco, California.  
 Beatrice Foods Company, Chicago, Illinois.  
 Bird & Son, Inc., East Walpole, Massachusetts.  
 Boise Cascade Corporation, Boise, Idaho.  
 Borden, Inc., Columbus, Ohio.  
 Bowman Products Division, Associated Spring Corporation, Cleveland, Ohio.  
 Brown & Williamson Tobacco Corporation, Louisville, Kentucky.  
 Brunswick Corporation, Chicago, Illinois.  
 Burlington Industries, Inc., Greensboro, N.C.  
 Cain & Bultman, Inc., Jacksonville, Florida.  
 California Television Corporation, Sacramento, California.  
 Ceco Corporation, The, Chicago, Illinois.  
 Celanese Corporation, New York, New York.  
 Chemetron Corporation, Louisville, Kentucky.  
 Chem Spray Aerosols, Inc., Houston, Texas.  
 Colgate-Palmolive Company, New York, New York.  
 Compac Corporation, Newark, New Jersey.  
 Consolidated Foods Corporation, Chicago, Illinois.  
 Continental Can Company, New York, New York.  
 Cooper Tire and Rubber Company, Findlay, Ohio.  
 Culligan International Company, Northbrook, Illinois.  
 Cuneo Press, Inc., The, Chicago, Illinois.  
 Diversey Corporation, The, Chicago, Illinois.  
 Dow Badische Company, Williamsburg, Virginia.  
 DeMert & Dougherty, Inc., Chicago, Illinois.  
 Dow Chemical Company, The, Midland, Michigan.  
 E.I. duPont de Nemours & Co., Inc., Wilmington, Delaware.  
 Ekco Products, Inc., Wheeling, Illinois.  
 Electrical Distributing, Inc., Portland, Oregon.  
 Electric Machinery Mfg. Company, Minneapolis, Minnesota.  
 Endicott Johnson Corporation, Endicott, New York.  
 Champion International, Hamilton, Ohio.  
 F. D. Farnam Company, Necedah, Wisconsin.  
 Fawcett Publications, Inc., New York, New York.  
 Flori Corporation, Phoenix, Arizona.  
 Florsheim Shoe Company, The, Chicago, Illinois.  
 Frito-Lay, Inc., Dallas, Texas.  
 Fruehauf Corporation, Detroit, Michigan.  
 General Electric Company, New York, New York.  
 General Foods Corporation, White Plains, New York.  
 General Motors Corporation, Detroit, Michigan.  
 General Telephone & Electronics Corp., New York, New York.  
 Georgia-Pacific Corporation, Stamford, Connecticut.  
 Gerber Products Company, Fremont, Michigan.  
 Globemaster, Inc., Houston, Texas.  
 Globe-Superior, Inc., Philadelphia, Pennsylvania.  
 W. W. Grainger, Inc., Chicago, Illinois.  
 Graybar Electric Company, Inc., New York, New York.  
 Harris Hub Company, Inc., Harvey, Illinois.  
 Hart-Greer, Inc., Birmingham, Alabama.  
 Hearst Corporation, New York, New York.  
 HMH Publishing Company, Inc., Chicago, Illinois.  
 Honeywell, Inc., Minneapolis, Minnesota.  
 Hooker Chemical Corporation, Stamford, Connecticut.  
 Hoover Company, The, North Canton, Ohio.  
 Household Products Division, Miles Laboratories, Inc., Chicago, Illinois.  
 Igloo Corporation, Houston, Texas.  
 Ingersoll-Rand Company, Los Angeles, California.  
 Inland Steel Company, Chicago, Illinois.  
 Interlake, Inc., Chicago, Illinois.  
 International Harvester Company, Chicago, Illinois.  
 International Telephone & Telegraph Corporation, New York, New York.  
 InterRoyal Corporation, New York, New York.  
 Jewel Companies, Inc., Melrose Park, Illinois.  
 Joanna Western Mills Company, Chicago, Illinois.  
 Johns-Manville Corporation, New York, New York.  
 Joslyn Mfg. and Supply Co., Chicago, Illinois.  
 Kaiser Aluminum & Chemical Corporation, Oakland, California.

Kayser-Roth Corporation, Burlington, North Carolina.  
 Kelley Industries, Inc., Houston, Texas.  
 Kennedy Manufacturing Company, Van Wert, Ohio.  
 Kohler Company, Kohler, Wisconsin.  
 Lancaster Colony Corporation, Columbus, Ohio.  
 Lawndale Industries, Inc., Aurora, Illinois.  
 Geo. H. Lehleitner & Co., Inc., New Orleans, Louisiana.  
 Lincoln Electric Company, The, Cleveland, Ohio.  
 Lorillard, a Division of Loew's Theatres, Inc., Greensboro, N.C.  
 Lovable Company, The, Atlanta, Georgia.  
 Marcor, Inc., Chicago, Illinois.  
 Marquette Mfg. Co. Div., Applied Power Industries, Inc., St. Paul, Minn.  
 Leo Maxwell Company, Inc., Oklahoma City, Oklahoma.  
 Mead Corporation, The, Dayton, Ohio.  
 Midas-International Corporation, Chicago, Illinois.  
 Midland-Ross Corporation, Pittsburgh, Pennsylvania.  
 Minnesota Mining & Manufacturing Company, St. Paul, Minnesota.  
 Mobile Oil Corporation, New York, New York.  
 Mogen David Wine Corporation, Chicago, Illinois.  
 Montgomery Elevator Company, Moline, Illinois.  
 Morton Norwich Products, Inc., Chicago, Illinois.  
 Munsingwear, Inc., Minneapolis, Minnesota.  
 Nalco Chemical Company, Chicago, Illinois.  
 Nashua Corporation, Nashua, New Hampshire.  
 National Distillers and Chemical Corporation, New York, New York.  
 National Starch & Chemical Corporation, New York, New York.  
 Nicholson File Company, East Providence, Rhode Island.  
 NL Industries, Inc., New York, New York.  
 Nor-Am Agricultural Products, Inc., Chicago, Illinois.  
 Old Peoria Company, Minneapolis, Minnesota.  
 Olivetti Corporation of America, Somerville, New Jersey.  
 Phillips Petroleum Company, Bartlesville, Oklahoma.  
 Pier 1 Imports, Inc., Fort Worth, Texas.  
 Pittway Corporation, Northbrook, Illinois.  
 Plumbing Products Division, Borg-Warner Corporation, Mansfield, Ohio.  
 Quaker Oats Company, The, Chicago, Illinois.  
 Ray-O-Vac Division, ESB, Inc., Madison, Wisconsin.  
 Rheem Manufacturing Company, Chicago, Illinois.  
 Richardson-Merrell, Inc., New York, New York.  
 Rich's Inc., Atlanta, Georgia.  
 Rubbermaid Incorporated, Wooster, Ohio.  
 Joseph T. Ryerson & Son, Inc., Chicago, Illinois.  
 SCM Corporation, New York, New York.  
 St. Charles Manufacturing Company, St. Charles, Illinois.  
 Seattle Hardware Company, Seattle, Washington.  
 Sherwin-Williams Company, The, Cleveland, Ohio.  
 Simplicity Pattern Company, Inc., New York, New York.  
 R & G Sloane Manufacturing Co., Inc., Sun Valley, California.  
 A. O. Smith Corporation, Milwaukee, Wisconsin.  
 Specialty Manufacturing Company, The, St. Paul, Minnesota.  
 Standard Packaging Corporation, New York, New York.  
 Stauffer Chemical Company, New York, New York.  
 Stewart Company, The, Dallas, Texas.  
 Superior Continental Corporation, Hickory, North Carolina.  
 Swimrite, Inc., Van Nuys, California.  
 Sybron Corporation, Rochester, New York.  
 Joe Thiele, Inc., San Antonio, Texas.  
 Thompson-Hayward Chemical Company, Kansas City, Kansas.  
 Time Incorporated, Chicago, Illinois.  
 Toro Manufacturing Company, Minneapolis, Minnesota.  
 Toten Corporation, The, Countryside, Illinois.  
 Triangle Publications, Inc., Philadelphia, Pennsylvania.  
 True Temper Corporation, Cleveland, Ohio.  
 Union Carbide Corporation, New York, New York.  
 Upjohn Company, The, Kalamazoo, Michigan.  
 Walgreen Company, Chicago, Illinois.  
 Jim Walter Corporation, Tampa, Florida.

Washington Mills Company, Winston-Salem, North Carolina.  
 West Chemical Products, Inc., Long Island City, New York.  
 Western Electric Company, Inc., New York, New York.  
 Westernhouse Electric Corporation, Pittsburgh, Pennsylvania.  
 Weyerhaeuser Company, Tacoma, Washington.  
 Whittaker Corporation, Los Angeles, California.  
 Woodward, Wight & Company, Ltd., New Orleans, Louisiana.

## APPENDIX B

ITOFCA, Inc. 1971-72

## OFFICERS

President: L. B. Harmon, Director of Traffic, Kaiser Aluminum & Chemical Corp., 300 Lakeside Drive, Oakland, California 94604, Phone: 415-271-3451.  
 Vice President: James F. Day, Director of Traffic, Minnesota Mining & Mfg. Co., 3M Center, Bldg. 224-1E, St. Paul, Minn. 55101, Phone: 612-733-1366.  
 Treasurer: Julius S. St. Amant, Chairman of Board & Secy-Treas., Geo. H. Lehleitner, & Co., Inc., P. O. Box 52409, New Orleans, Louisiana 70150, Phone: 504-821-4110.  
 Secretary: Kenneth J. Sutherell, General Manager of Traffic, Sherwin-Williams Co., 101 Prospect Ave. N.W., Cleveland, Ohio 44101, Phone: 216-566-2666.

## DIRECTORS

Anderson, Gordon R., General Traffic Manager, Dow Chemical Company, 2030 Abbott Rd. Center, Midland, Michigan 48640, Phone: 517-636-4554.  
 Boyd, Don A., Commerce Counsel, E. I. duPont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Delaware 19898, Phone: 302-774-4932.  
 Fenaroli, Al J., Manager Distribution Services, Union Carbide Corporation, 270 Park Avenue, New York, New York 10017, Phone: 212-551-3364.  
 Gamble, James M., General Traffic Manager, International Harvester Company, 401 N. Michigan Ave., Chicago, Illinois 60611, Phone: 312-527-0200.  
 Hillenbrand, George C., Jr., Traffic Manager, Time Incorporated, 330 E. 22nd Street, Chicago, Illinois 60616, Phone: 312-326-1212.  
 Kocher, Edward W., General Traffic Manager, Joslyn Mfg. and Supply Co., 155 N. Wacker Drive, Chicago, Illinois 60606, Phone: 312-782-3600.  
 Lacey, Hugh F., General Traffic Manager, Joseph T. Ryerson & Sons, Inc., P. O. Box 8000A, Chicago, Illinois 60680, Phone: 312-762-2121.  
 McElroy, George A., General Manager Traffic & Transportation, The Ceco Corporation, 5601 W. 26th Street, Chicago, Illinois 60650, Phone: 312-242-2000.  
 Noonan, William P., Director of Transportation, Western Electric Company, 222 Broadway, New York, New York 10038, Phone: 212-571-3795.  
 Reed, John R., Traffic Manager, W. W. Grainger, Inc., 5959 W. Howard Street, Chicago, Illinois 60648, Phone: 312-775-4400.  
 Stewart, Thomas C., Director Physical Distribution and Traffic, Johns-Manville Corp., Greenwood Plaza, Denver, Colorado 80217, Phone: 303-770-1000.  
 Wilkinson, William A., Traffic Manger, Vick Mfg. Division, Richardson-Merrell, Inc., P. O. Box 8155, Philadelphia, Pennsylvania 19101, Phone: 215-643-4000.

Senator STEVENS. Mr. Fender. Good morning, sir. Again, you may present your statement in any manner that you wish to do so, Mr. Fender.

**STATEMENT OF JOE G. FENDER, NATIONAL CONFERENCE OF  
 NONPROFIT SHIPPING ASSOCIATIONS**

Mr. FENDER. I would prefer, if I may, to have my statement appear in full in the record, and simply at this point, summarize its content.

Senator STEVENS. You will add to my education here this morning. Your statement will be printed in full in the record. And I will be happy to have your comments.

Mr. FENDER. Thank you, sir. The group that I appear for was represented at the House hearings on this matter by Mr. Fred Tolan,

and I understand that he appeared before this group yesterday. I am before you not because I think that Fred Tolan's presentation was inadequate in any way. It would have contained certainly a great deal more information than I can impart to you with my short statement, but I did want to appear before this committee on behalf of those I represent to evidence our great, great concern about this proposed legislation.

In my statement I identify those associations belonging to the national conference for which I appear. You will see that we have groups in Arizona, in Texas—we have an association in Dallas, and another at Houston, Tex.; we are at El Paso—Minneapolis, Minn.; Tampa, Fla.; Memphis, Tenn.; Cincinnati and Toledo; Salt Lake City, Utah; and Great Falls, Mont.

The member associations of the national conference are bona fide nonprofit groups. I feel that my appearance before this committee in the last analysis is not on behalf of shipping associations as such, but the members that they serve in their operations. So, I feel that I speak to you for a number of companies at each of these cities where our membership groups are located.

At the time that the ICC made its investigation in *ex parte 266*, our group, the national conference, submitted a study of the traffic that was handled by its members, and you will see that study attached is an appendix to my statement. I think it is a fair and accurate statement that the associations that I speak for are engaged predominantly in the consolidation of small shipments traffic.

Also, I heard your questions to others who have preceded me, and I can say without any reservation that the groups that I represent, these member associations are composed not only of large companies, but of small companies as well.

I direct your attention to the group that is located at Great Falls, Mont., for example, and I think it will be obvious to you that anyone consolidating freight at a point like that would necessarily be representing small companies as well as handling relatively small shipments of freight.

Senator STEVENS. You had better come up our way if you want to handle some small shipments.

Mr. FENDER. I am familiar with up your way. It was my good fortune to do some work up there shortly after Alaska was admitted as a State. I think probably you have small shipments and large shipments, too, moving up that way.

Senator STEVENS. That's right.

Mr. FENDER. I was interested to learn at that time, too, that they not only move by truck and air, but in some instances by dogsled.

Senator STEVENS. We have motorized those dogsleds now. You ought to see some people hauling freight on these enormous barges with a snowmobile out in front.

Mr. FENDER. I recall a conversation with a contractor—as I say, it was shortly after Alaska was admitted as a State—he told me it wasn't just with dogsleds, but dogs pulling his sleds in his operation.

Senator STEVENS. Has your national conference discussed what the impact of this bill really would be on your members?

Mr. FENDER. Have we what, sir?

Senator STEVENS. Have you discussed in any meetings of your association the impact of this S. 1896 on the members of your national association?

Mr. FENDER. Yes, sir; we have. This is my personal view and the view of those I represent, that if this legislation is passed, in the end it will spell the end of nonprofit shippers associations such as those I represent, and traffic which they handle now will ultimately go over to regulated freight forwarder service.

Speaking now not for the association as such, but for the members of our association, it is our view if that should come to pass, the members will lose control over freight costs to the extent that they had it through their nonprofit associations and in the end the net result will be an increase in shipping costs of less than carload shipments to the shipping public.

Speaking again and concluding the statement of position on behalf of the association and their members, I would say this, that we are opposed on principle to legislation such as this which by its terms will permit the railroads to discriminate in the charges as between shippers and shipper associations on the one hand, and regulated freight forwarders on the other.

And finally, speaking for the members of our individual shipping associations, I would say it is their position that they are unwilling, and feel that it would be foolish for them, to exchange the present good service and control over their less-than-carload shipments, which they presently have through their associations, for the extremely doubtful benefits that they might realize under this proposed legislation.

Senator STEVENS. Thank you very much. I appreciate your presenting a statement on behalf of your association.

(The statement follows:)

STATEMENT JOE G. FENDER FOR THE NATIONAL CONFERENCE OF NON-PROFIT SHIPPING ASSOCIATIONS

Mr. Chairman and Members of the Subcommittee: I appear in this matter on behalf of the National Conference of Non-Profit Shipping Associations. This group was represented before the House Sub-Committee by Mr. Fred H. Tolan, who stated the position of the National Industrial Traffic League and his other clients, including our group, as follows:

(a) Freight forwarders should pay for the transportation services of underlying carriers at the published and filed tariff rates of those carriers, such rates being open and available to all shippers generally for similar services and under similar transportation conditions.

(b) No "through" rates, nor divisions of such rates shall be established between freight forwarders and their underlying carriers.

(c) No "contract" rates shall be established between freight forwarders and their underlying carriers.

As general counsel for the National Conference, I subscribe to all the representations of Mr. Tolan to this Committee. I appear for the sole purpose of adding certain information pertinent to our group and to discuss one or two considerations that others may not have emphasized.

The National Conference is non-profit in nature as are its member shipping associations. Those associations at this time include the following:

Arizona Shippers Association, Inc., P.O. Box 17600, Tucson, Ariz. 85710.

Dal-Worth Shippers Association, 212 North Good Latimer, Dallas, Tex. 75226.

Dayton Shippers Association, 12 North Ludlow, Dayton, Ohio 45402.

El Paso Shippers, Inc., P.O. Box 299, El Paso, Tex. 79943

Freight Shippers Association, 202-9th Ave. South, Minneapolis, Minn. 55415.

Great Falls Shipping Association, Inc., P.O. Box 2165, Great Falls, Mont. 59401.  
 Gulf Freight Association, P.O. Box 702, Tampa, Fla. 33601.  
 Houston Merchants Shippers Association P.O. Box 4188, Houston, Tex. 77014.  
 Memphis Freight Bureau, 701 McCall Building, Memphis, Tenn. 38103.  
 Queen City Shippers Association, N-106 Union Terminal, 1301 Western Avenue,  
 Cincinnati, Ohio 45203.  
 Toledo-Maumee Valley Shippers Association, Inc., P.O. Box 534, Toledo, Ohio  
 43601.  
 Utah Freight Association, P.O. Box 1409, Salt Lake City, Utah 84110.

Each of these associations is located in the city which its name indicates. Activities of each association consists of the consolidation of small shipments to a carload basis for the sole purpose of saving freight charges. The associations arrange for the consolidation of their shipments at origins such as New York, St. Louis, Philadelphia, Boston and Chicago and distribute to merchants in the city where the association is located. Associations of this type are not characterized by widely distributed membership as sometimes exists with associations of origin shippers. Members of the National Conference are bona fide cooperatives. They have no interest in the subject legislation apart from the interest of their membership so that in the final analysis I appear not for the associations but for their several hundred member companies in Dallas, Memphis, Minneapolis, Salt Lake City and elsewhere.

In 1970 the National Conference, cooperating with the Interstate Commerce Commission in its studies in Ex Parte 266, *Investigation into the Status of Freight-Forwarders*, submitted a study of traffic of certain of its members which is believed to be representative of traffic of all members. A tabulation of that study is attached hereto as Appendix 1. It shows that average weight of shipments handled by member associations ranged from 193 pounds to 968 pounds and that the overwhelming preponderance of all shipments was less than 500 pounds. It is fair to say that the traffic of these associations consists almost altogether of small shipments.

Other parties who have appeared in opposition to the subject bills have made the point that the financial condition of the railroads is such that they cannot afford to reduce their rates to freight-forwarders as the proposed bills would permit. It does not follow that the railroads will not reduce rates for the sole purpose of eliminating shipper cooperatives and benefitting the commercial forwarders. I base this observation in part on statements made by James Souby who appeared before the House Sub-Committee hearings on H.R. 10293 at the last session of Congress. He expressed the desire of the railroads to work with the freight forwarders as their most important "allies," referring to the forwarders as ". . . in reality the less-than-carload lots are arms of the railroads today . . ." (legislative hearings, TR 31-32). The bill which this witness was supporting at that time would, by its express terms, permit the railroads to discriminate in their charges between freight forwarders and other shippers. On the face of it, it is difficult to see why railroads appear in support of the bills which are here proposed which provide for negotiation of freight rates between forwarders and the railroads at less than tariff level unless such negotiations and ultimate reductions were contemplated. Should this occur, shippers will inevitably pick up the bill for the reductions with increases in their railroad rates on other traffic. Obviously, the railroads cannot finance such reductions with their present revenues. Reduction to the forwarders will come back to shippers in increased costs.

Conceivably, the railroads could strengthen the forwarders and ultimately eliminate shipping associations without cutting present rates. They could do this by permitting rates available to freight forwarders under existing tariffs to remain at their present level but on a negotiated basis. Shipping associations could then be phased out by gradual increase of the legal tariff rates which they are required to use for their consolidations. These are the freight all kinds rates now available to freight forwarders and associations alike and used by both of them. The railroad might also accomplish destruction of shipping associations immediately by cancelling their present freight all kinds rates as provided in their tariffs. Other rates remaining for use of shipping associations might or might not be found by the Interstate Commerce Commission to be unreasonably high. They could not be found to be discriminatory by reason of the existence of a lower basis of rates for freight forwarders as the terms of the pending bills are understood by our group. By whatever means the railroads might proceed under the subject bills to provide rates at one basis for freight forwarders and another for the general public, the end result to shippers other than forwarders will be an ultimate increase in the

rates on non-forwarder traffic and the eventual destruction of non-profit shipping associations.

The National Conference has operated since 1957, and I have represented Houston Merchants Shippers Association since 1950. During that period of time, it has been within my knowledge that users of the service of the Conference associations have found it to be satisfactory and a reasonably effective device for controlling the costs of transportation of their less-than-carload shipments. Although it is implied and possibly stated expressly by some who appeared before this committee that any savings which the forwarders might realize by negotiating their rates would be passed on to the shipping public, there is nothing in the proposed legislation which assures that result or even makes it likely. Furthermore, during the period between 1959 and 1970, the freight-forwarders' return on their investment from operations ranged from a low 14.47 cents to a high of 58.30 cents. During that entire period, the freight forwarder rates trended upward. Operating earnings were not passed on to the shipping public but to the forwarders' stockholders to the extent that profits were distributed.

There is no reason to believe that savings would be handled any differently if the bills here proposed should be enacted. The shippers who pay the freight bill, insofar as I speak for them through their associations, are, without exception, unwilling to relinquish the present good service and control which they have had over their freight costs through their associations based on representations of the forwarding industry. Even if forwarders' savings were passed back to the users of the forwarders' service, they would necessarily be charged back by the railroad in the form of rates on other traffic because of the inability of the railroads to absorb any substantial reduction in their revenues at this time; and shippers, at best, would break even.

In short, the legislation here proposed is special interest legislation favoring the freight forwarder at the expense of the shipping public and the Congress should not enact it.

## APPENDIX 1

## NATIONAL CONFERENCE OF NONPROFIT SHIPPING ASSOCIATIONS, INC.—PERCENTAGE COMPARISON OF SMALL SHIPMENTS WITH TOTAL HANDLED BY INDIVIDUAL ASSOCIATIONS

[Based on actual count for periods shown]

Association reporting and location	Reporting period August 1969		Average weight of shipments (in pounds)	Percent of shipments weighing less than 100 lbs.	Percent of shipments 100 lbs. to not more than 500 lbs.	Percent of total shipments not more than 500 lbs.
	1st week only	Entire month				
Gulf Freight Association, Tampa, Fla.	×	-----	193	50	25	75
Memphis Freight Bureau, Memphis, Tenn.	-----	×	253	61	28	89
St. Louis Shippers Association, St. Louis, Mo.	-----	×	510	36	40	76
Dal-Worth Shippers Association, Dallas, Tex.	-----	×	192	70	20	90
Houston Merchants Shippers Association, Houston, Tex.	-----	×	138	70	12	82
El Paso Shippers Association, El Paso, Tex.	-----	×	400	38	34	72
Utah Freight Association, Salt Lake City, Utah.	-----	×	606	30	42	72
Great Falls Shipping Association, Great Falls, Mont.	×	-----	968	19	49	68

Senator STEVENS. Mr. Owen good morning, sir. We are happy to have you here this morning.

## STATEMENT OF CHARLES W. OWEN, PRESIDENT, CITY TRANSFER, INC.

Mr. OWEN. Mr. Chairman and members of the committee—I don't see the other members right now—my name is Charles W. Owen and I am the president of City Transfer, Inc., of Santa Fe Springs, Calif.

My company is a local and short-haul carrier serving the four counties comprising the Los Angeles Basin area, the San Francisco and Oakland bay areas and all points and places along Highway 101 and its 5-mile laterals between these two basin areas. City Transfer grosses approximately \$5 million annually, over half of which comprises interlines with transcontinental air and surface forwarders, motor carriers and air carriers. Our association with all modes of transportation keeps me well acquainted with the general traffic flow and its ever-changing characteristics.

Since my last testimony before this committee in September of 1968, I have seen an alarming acceleration of the deterioration of the rail forwarders traffic. One large and old forwarder customer ceased doing business and another is down to 30 percent of normal and appears on his way out.

In my opinion, this deterioration is the result of relentless culling of freight and shippers by the transcontinental motor carriers and the shippers associations who are highly discriminating in their selection of members.

Shippers who have only a few shipments per week, and shippers who only ship minimums, are left to the rail forwarder and the large shippers are joining the associations—there are only a few left who haven't. The associations cull the volume and dense freight and leave the balance for the common carriers.

The transcontinental motor carriers can't find any trailers for this light and bulky traffic so we have to take it back and get it rerouted to a freight forwarder. I can furnish documented evidence of this practice.

The costs of handling minimums and light and bulky traffic is prohibitive, and the average size and weight per shipment of the forwarders traffic that we handle is much lower than motor carrier shipments. The short-haul carrier such as City has to increase his 409 contracts and use tractors and trailers instead of bobtails to pick up and deliver the freight.

The railroad, which is the forwarders' only available bridge, has his rates fixed on a per trailer and a per railcar basis and these two factors are squeezing the very life out of these common carriers. Why the motor carrier wants him out of business is beyond my comprehension. I should think they would want them kept around to haul what they don't want. They won't be, if the trend continues. The shippers associations have recently entered the L.T.L. field and they too may have their members confronted with higher costs for the culled-out freight.

What is left over may cost more later on. The forwarder is denied the privilege of using the Nation's highways and the rail rates exceed the motor carriers' over the road costs. If all the freight now being line hauled over the highways was switched to rail piggyback, the railroads could meet or beat the motor carriers' costs and increase their own profits. I think you would find little argument on this point with the railroads. In the interest of safety, inflation, and air pollution, it should be worth considering that this legislation could be the leading step in that direction.

Motor carriers now have and are exercising their privileged position of contractual arrangements with the railroads. The arguments of favoritism, privilege and economic advantage belie the motor carriers' true motivation in this procedure, which obviously is to keep

the exclusive advantages they now enjoy. The contract rates between motor carriers and railroads are not published, but are known to me in California because I am a participant. In my case, and others known to me, the rates are considerably lower than the published tariff rates, and those rates which are offered to the forwarder. There is economic justification for these rate differentials due to the service proffered. The service offered by the railroad to the forwarders, however, would be identical or even less than that proffered to the motor carrier under the contract. Most of the forwarders are adjacent to the piggyback yards and the switching that is involved in the boxcars is very minimal.

The American Trucking Association spokesman was charged with the responsibility of opposing this legislation, and in so doing has chosen to attack section 409 of the Interstate Commerce Act as a vehicle to accomplish this. When the A.T.A. agenda referring to this legislation—and I am referring back to 1968—was referred to the State trucking associations and conferences for instructions to their delegates to the executive board, there was no reference to section 409 of the Interstate Commerce Act, and therefore I must challenge the executive board's order—if such an order existed—to Mr. Beardsley, to include an attack of this nature in opposition to this legislation. I am referring to Mr. Beardsley's statement on S. 3714—and on checking his most recent statement today, which is the same—wherein he stated,

In addition, we believe the time is long past due when forwarders should be divested of the privileged position they enjoy by virtue of sec. 409 of the Interstate Commerce Act.

The "we" here certainly couldn't include the hundreds of carrier members participating in 409 contracts and who I assure you don't consider it a privileged position.

This so-called privileged position came from the long ago past when forwarders were victimized—before 409 contracts were authorized—by having to pay the local ICC tariff rates for their out of terminal area pickup or deliveries. Since the tariffs were engineered to produce revenue for handling of individual shipments, they produced 30 to 40 percent more revenue than what is required for one-time handling of multiple shipments to and from a forwarder's facilities.

Today the assembly and distribution tariffs filed with the ICC—not secret as stated—are comparable to the forwarders' 409 contracts and in some cases being utilized by shippers' associations at lower rates than 409 contracts being paid by the forwarders.

Senator STEVENS. You lost me there. Please explain what you mean by the quote:

The assembly and distribution tariffs filed with the ICC are comparable to the forwarders' 409 contracts and in some cases being utilized by shippers' associations at lower rates than 409 contracts being paid by the forwarders.

Mr. OWEN. You want me to explain that?

Senator STEVENS. Yes.

Mr. OWEN. I do explain it a little later, but I would rather explain it now.

Senator STEVENS. If you explain it later, that is all right.

Mr. OWEN. I would prefer to elaborate now. A. & D. tariffs are not commonly known to the average layman. These tariffs are usually filed directly with the ICC instead of with the local tariff bureau. However, some of them are filed with the bureau. Mine is. What I am say-

ing here is when I deliver freight for U.S. Freight or Republic Freight or one of these forwarders, I have a 409 contract which is a freight, all kinds, schedule of rates which we also file with the ICC. Assembly and distribution tariff is what is used by the associations, and this very seldom gets in the hands of the public, and these can be designed to where only one shipper and one association can even use the tariff. And the people who deliver the traffic are what I commonly refer to as gypsies. They are quite often owner-operators under an umbrella of someone else's authority which they pay them a 5-percent fee for, or something, which pick up and deliver this traffic under nonunion conditions, work 12 hours a day, with which I cannot compete. So some of these A. & D. tariffs are lower than what I charge the forwarder. I could not do the work for the forwarders for these rates. Do I make myself clear?

Senator STEVENS. Yes. I understand that now. Thank you.

Mr. OWEN. These A. & D. tariffs can be filed on an individual basis and can be tailored to fit only one customer or association, which in my opinion is improper if not illegal, and should be investigated by the ICC and formally complained thereto by the motor carriers.

The above facts—easy to corroborate—should be considered in evaluating Mr. Beardsley's statement, "I am referring, of course, to their right to make contracts with motor carriers whereby forwarder traffic is handled at much lower rates than that of similar traffic of other shippers." This statement is either intentionally misleading or the author is lacking in knowledge prevalent to the movement of transcontinental freight.

The ATA should bring forth at least one of the "we's" that they are representing in Mr. Beardsley's statement as a witness who can be questioned by this committee. The comparison that should be made, is that between the Transcontinental Tariff Bureau Divisions and the forwarders' short-line 409 contracts, and review the privileged position enjoyed by the motor carriers in setting their divisions—lower than 409 contracts in California—with no recourse for the short-line carrier. At least with the forwarder we can negotiate a compensatory contract rate—synonymous with interline—or go to another forwarder. I am here referring to shipments which we originate, not necessarily those which they give to us.

Unfortunately for us our shippers route some of their freight by specific trucklines due to requests from consignees and we have no choice but to interline-it at the division set by the motor carrier bureau—usually at a loss. If we discriminate with our customers, we lose all their business, as they usually want only one pickup carrier for all their traffic.

Many of Mr. Beardsley's quotations from old ICC case histories—1938, 1950, et cetera—pertained to facts existing even beyond those dates—some of this data was accumulated from engineers prior to that—and using quotations therefrom in relation to today's transportation systems is ridiculous. We should be talking about a new transportation mode which I refer to as to the "transcontinental motor carriers" who have emerged by acquisition and merger of many short lines into coast-to-coast and border-to-border giants. These giants have put the forwarders out of the short-line business—25 to 1,000 miles—by their ability to transport their line hauls over the highways and

contracts with railroads for less than the only available rates to the forwarders.

I have no argument with the motor carriers' right to make contracts with the railroads, but if we—the motor carriers—are to be allowed to retain this privilege, the freight forwarders should be given the same right. Failure to do one or the other is grossly unfair to a great industry and the many shippers they have been serving for over 100 years.

Due consideration and the devastating results that will ensue should be given before again ignoring this proposed legislation.

I sincerely thank you for the privilege afforded me to express my views and stand ready to furnish any documentation to back up any and all statements that I have made.

Senator STEVENS. Thank you very much.

Off the record.

(Discussion off the record.)

Senator STEVENS. On the record.

I have a question regarding page 5 of your statement. Would you be bound by a tariff because of the action of the motor carrier bureau? Are you saying you have to interline under the provisions set by the motor carrier bureau, which is usually at a loss?

Mr. OWEN. I happen to be the chairman of a group of 30 carriers in the State of California. We call it the California Carriers Division Committee. I have been fighting for 8 years for increases in the division through the Rocky Mountain Motor Tariff Bureau. We have no voice there. We go on hands and knees, ask for increases in our division to offset some of our increased costs. We are repetitively ignored. In fact, if we don't stay on top of them, they reduce our rates constantly.

Senator STEVENS. It sounds to me like the same thing I hear from our local telephone companies in Alaska, they don't get enough out of the interstate rates. Are you saying that you don't get a fair share of the total trip from coast to coast on cargo which originates in Santa Fe?

Mr. OWEN. The local costs are rising at a much faster pace than the transcontinental rate. My cost for drivers is 50 to 60 percent, whereas their cost for labor is more close to 25 percent. My costs are rising faster than theirs.

Senator STEVENS. Do you think this bill would help the small motor carrier?

Mr. OWEN. It would help me. I can't speak for all carriers, but I am involved in all modes of transportation. I think that it would do just what I said in my statement.

Senator STEVENS. Fine. Thank you. You have made a very forceful statement and I appreciate your appearing today.

Mr. OWEN. Thank you.

Senator STEVENS. Mr. Parr?

**STATEMENT OF GILBERT J. PARR, GILBERT J. PARR ASSOCIATES,  
TRANSPORTATION CONSULTANTS; ACCOMPANIED BY GILES MOR-  
ROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE**

Mr. PARR. Mr. Chairman, with your permission, could Mr. Giles Morrow, general counsel of the Freight Forwarders Institute, be seated with me?

Senator STEVENS. Certainly. We will be happy to have you both.

Mr. MORROW. My name is Giles Morrow. I am general counsel of the Freight Forwarders Institute.

Senator STEVENS. Thank you. It is a pleasure to have you before the committee this morning.

Mr. PARR. My name is Gilbert J. Parr. I am president of the transportation consultant firm of Gibert J. Parr Associates.

Mr. Chairman, I have a rather lengthy statement. With your permission, if it could be placed in the record, I will then merely highlight some of the facts in the statement.

Senator STEVENS. That will be done.

Thank you very much, Mr. Parr.

Mr. PARR. In my statement, I deal with the financial results of freight forwarder operations in 1966 to 1971. I have used the year 1966 as the base year since that is the year where there were not too many rate increases and inflation hadn't reached the level as it has today.

It will be seen that the net income decreased from 2.6 percent of the revenues in 1966, to only 1.1 percent in 1971, and there was a deficit in the year 1970.

I show that in 1971 there were 18 freight forwarders which had no net income or a very small amount of net income.

Senator STEVENS. You also show an increase in the number of class I freight forwarders despite the fact that there are losses.

Mr. PARR. Yes, sir.

Senator STEVENS. I notice that in 1968 your highest number of losses occurred, which indicates that over a third of your people had losses or zero income.

Can you tell me why there are more people entering the field when one-third of them are not making any money?

Mr. MORROW. Senator, I might point out that this table doesn't deal with the class B freight forwarders. A class A freight forwarder becomes class A when he gets \$100,000 a year revenue. It just means that more forwarders hit the \$100,000-a-year gross mark.

Senator STEVENS. They are getting bigger and losing more money?

Mr. MORROW. Correct. Exactly, sir.

Mr. PARR. In my statement I speak about the rate of return which has been used by some parties, that is, the sum of net investment in transportation property and net working capital, and also as another measure of the financial stability of the freight forwarder based on the rate of return on stockholders' equity.

I point out in the next three or four pages why both of these financial measures are improper, and on page 8 I state that the operating ratio basis is a preferable one for freight forwarder operations.

For example, for the freight forwarder, net investment represents only 5 percent of their revenues.

The motor carriers' investment amounts to 22 percent, and the rail carriers' 240 percent.

So, you can see that a rate of return for the freight forwarder would not mean anything, that you would have to have another standard. That standard which the ICC has used in the past for motor carriers is a ratio of revenues to expenses.

I point out that in 1966 the ratio was 97.5, and this had risen to 98.8 in 1971.

Senator STEVENS. What does that really mean?

What does the 98.8 mean?

Mr. PARR. It is the ratio of the revenues to the expenses. In other words, the only amount that you have left is that 1.2 percent.

Senator STEVENS. And that is the excess of revenues over expenses?

Mr. PARR. Yes, sir.

Senator STEVENS. Thank you.

Mr. PARR. I also discuss the freight forwarder operations and highlight some of the reasons why they are in the poor financial shape as they are today.

For example, in looking at the table on page 9, while the revenues have increased 38 percentage points over 1966, pickup and delivery and transfer service has increased 47 percent, the total operating expenses have increased 54 percent, net revenue from operations per ton is only 73 percent of the 1966 figure, and net income after taxes per ton is only 60 percent of the 1966 figures.

I refer to the fact that there has been a reduction in the tons per employee, and while the compensation per ton has increased 40 percent, the tons per employee has decreased by 16 percentage points.

This is accounted for, in my opinion, by the lesser amount of traffic that the freight forwarders are handling, plus the higher wages and so on.

I show that there has been an increase since 1966 in the weight per shipment, but that there has been a very substantial increase in the cost per ton, a much greater increase in the cost per ton than in the weight per shipment.

Normally, you would think when the weight per shipment increases that the cost would decrease, but that hasn't happened in this instance.

Also, I discuss the scope of the freight forwarder operations and the traffic pattern of off-line traffic. Most of this data comes from information I submitted in *ex parte 266* and *ex parte 266*, sub 1. I point out that the freight forwarder serves 50 States, and that they have numerous terminals located throughout the country.

There was some charges made that 10 points represented 67 percent of the terminations. That was based on an erroneous analysis of some figures which the freight forwarders submitted in docket 266, sub 1 at the request of the ICC.

I also show that a 3-day study made by freight forwarders at 88 terminals and covering more than 22,400 off-line shipments develops the importance of the off-line traffic and it showed that 90 percent of the off-line freight forwarder shipments weighed less than 1,000 pounds, it showed that 79 percent of the shipments weighed less than 500 pounds, and 24 percent weighed less than 100 pounds.

There has been some question about the freight forwarder average weight per shipment being much higher than the motor carriers' small shipment, but in order to measure the cost, you must compare the freight forwarders' average weight per shipment with the motor carriers' total weight per shipment. For example, I show in the various regions the motor carriers' average weight per shipment ranges from 888 in the Rocky Mountain to 2,078 in the Central.

The size of those shipments means lower costs which motor carriers could absorb some of the losses on a small shipment, if there are any, whereas a freight forwarder has no other place to go.

I also show a comparison of the increase in the motor carrier costs with the section 409 charges. There has been allegations made that the freight forwarders weren't paying adequate amounts for these contractual charges.

It will be seen that the motor carriers' costs have increased from 38 to 50 percent, year 1972 compared to 1971. However, the increase in section 409 charges, which are paid by the freight forwarders to the motor carriers, range from 44 percent to 86 percent.

Now, I discuss a very important matter, and that is whether or not the freight forwarder traffic is compensatory as it concerns the making of a contribution to the carriers' overhead.

There have been allegations that the so-called rail revenue contribution study made by the Cost Section shows that the freight forwarder traffic is moved by the rail carriers at a substantial loss. That is not the fact.

I should first explain that these rail revenue contribution studies have been made since 1949. I was Chief of the Cost Section of the ICC at the time these studies were inaugurated. So I am intimately acquainted with the studies themselves.

I have used these studies many times, the rail contribution studies. However, in those instances where there are special operating characteristics, that is, the traffic has different than territorial average, I made special studies. I made studies on pulp wood, wood chips, lumber, construction aggregates, a half dozen others. I have used as a framework this rail revenue contribution, but reconstructed it to reflect the actual operating characteristics.

That means switching factors at origin and destination, tare weights, empty return haul, movement in way trains and through trains and many other items.

The latest study of the Cost Section is statement 1S3-71, and it was introduced in *ex parte* 270. The Cost Section is today making another study based on 69, which they will likewise introduce in 270.

I have been asked by the freight forwarders to make a proper revenue contribution study for them for possible submission in that case. However, since this is such an important matter, I have attempted in the following pages to reflect some of the actual operating characteristics of the freight forwarder traffic based on my knowledge of the freight forwarder operations.

I also explain that the unit cost used by the Cost Section in pricing out the freight forwarder traffic is inflated since the Cost Section gave favorable consideration to five commodities, and the difference between the territorial cost and the actual cost is transferred to the other body of traffic. So I point out that freight forwarder traffic in my opinion, has as favorable or more favorable characteristic than these five commodities which the Cost Section gives special consideration to.

They are iron ore, copper ore, bituminous coal, lignite coke, and railroad equipment moving on its own wheels.

The Cost Section was able to make those adjustments. They were made when I was with the Cost Section, because certain railroads handled iron ore. So, if we stratify the costs by substituting those railroad costs for the territorial average, we get a much closer figure to the actual cost.

The same is true of coal. There used to be a group of railroads known as the Pocahontas Region Railroads, and they had much lower costs. So the Cost Section has made for a number of years, these adjustments in these five commodities. They haven't made adjustment in other commodity. For one reason, they just don't have the figures available, and they look for the freight forwarders and others—the shippers and so on—to make studies to prove that the territorial average figures are not representative.

Now, I point out that the switching at origin and destination for the freight forwarder traffic is much less than territorial average, showing what the territorial average is and what it should be.

The same is true of freight train car expenses.

The same is true of percent circuitry involving linehaul costs and the interchange switching expense.

The Cost Section uses an interchange every 400 miles. They treat that on a car-mile basis. I point out that the freight forwarders' actual number of interchanges are one-fifth of that.

In other words, there is almost a 2000-mile haul for each interchange.

The same is true of the inter- and intra-train switching.

I also point out that the territory unit costs used by the cost section in the absence of specific data which we will have when we make the study of the freight forwarders, that they use a 50-50 percent figure, they treat it as if 50 percent of the haul is in the originating territory and 50 percent of the haul is in the terminating territory.

The significance of that is that there is such a wide variation in the costs in various regions. The costs in the South are 31.4 percent less than the costs in the East, and the costs in the West are about 5 percentage points less.

So, I deal there with my partial restatement, if you please, of the actual cost of handling the freight forwarders, using as many actual operating characteristics that I could manage to assemble in the time allotted.

When the *ex parte* 270 study is made, it will have all of the factors fully substantiated. But I am satisfied that the figures that I have given here are conservative.

I also pointed out the fact that about two-thirds of the freight forwarder traffic is being handled in TOFC service. Therefore, it is very important to measure the costs on the TOFC traffic.

I explain that traffic moves in ramp-to-ramp service, or plan 2½ service in the East, but in the West it moves on plan 4 service, and in connection with the plan 4 service, the freight forwarders pay in addition to the linehaul freight the ramping service, which amounts to about \$19.35 per loaded car. They pay for the movement of the trailer, and it amounts to about \$51 for a movement, say, to the west coast, car expense, which amounts to \$87 or \$88, and there is a switching charge.

On an interterritorial movement there is a switching charge involved at either St. Louis or Chicago, and the freight forwarders pay that switching charge, which amounts to \$15 to \$20 per car.

Now, the significance of these figures are that the cost section study in the rail revenue contribution study considers only the line-haul rate. All of these accessories charges paid by the freight forwarder are not shown in this study.

Of course, if that is pointed out to the cost section and the commission, they would readily acknowledge that is a fact. So, that is another reason why these figures in the rail revenue contribution study are not correct.

I have placed a dollar mark on the difference between the actual operating characteristic of the traffic compared to the territorial average operating factors which were utilized by the cost section, and I show there that there would be a reduction of \$255,000 in the variable costs and \$276,000 in the fully allocated costs, and translating these or restating the contribution in the rail revenue study, it would change the figure of 99.1 percent—in other words, in this study it is shown for U.S.-to-U.S. movement that freight forwarder traffic does not pay its variable costs by 0.9 of 1 percent, and doesn't pay its fully allocated costs by 10 percent.

I show that if these adjustments are made—and these are partial adjustments and no adjustment for these additional amounts paid for TOFC service—it would change that factor of 99.1 to 126 percent.

In other words, instead of being a deficit, the traffic would yield a substantial margin above the variable costs, namely 26 percentage points.

Senator STEVENS. How much would the rates have to be increased to do that?

You are talking about increased revenues?

Mr. PARR. No, sir.

I have left the revenues alone as I have explained. I have reduced the costs by the amounts that I just mentioned: \$255,000 variable costs and \$276,000 of fully allocated costs.

Senator STEVENS. I see.

Mr. PARR. It would change the revenue to fully allocated costs from 90.5 which is a deficit figure of 9.5 percent, to 114 percent.

I conclude by saying that this does not take into consideration these additional charges paid by the freight forwarders on plan 4 traffic handled in the West and that the analysis that we are now making of the waybill studies show that the cost section has used billed weight in computing the costs rather than actual weight.

The unit costs of the railroad, whether per gross ton-mile per car-miles, are based on wheel report data which is based on the actual weight of the shipment. However, the cost section has utilized in these studies the billed weight.

There is a substantial difference, we have found, in the billed weight versus the actual weight. In other words, the billed weight for the freight forwarders, particularly in TOFC service, shows a substantial excess over the actual weight—sometimes as much as 40 percent.

Obviously, the unit cost is based on the actual weight. In pricing, the actual weight should also be used.

Senator STEVENS. Mr. Parr, that was a very fine statement including a great deal of informative background. What is going to happen to the freight forwarders if this bill passes? What is going to happen to them if it doesn't pass?

Mr. PARR. Sir; maybe I sound too gloomy, but they are hanging on the cliff, so to speak; 1.5 percent margin above their expenses—you can't live long on that sort of deal. So, they need some help. I think, No. 1, anything that will increase their volume will help. Any effi-

ciencies that they can make will help. I look to the freight forwarders working with the railroads more closely than they have because they will be partners in this enterprise that they will effect economies in operation which will save the railroads money as well as save the freight forwarders money.

So, I think that needs to be done.

I think the traffic volume just must increase. Shipper association traffic is increasing by leaps and bounds as I point out in my statement, whereas the freight forwarder traffic is going down each year.

So, the freight forwarder must find some way to increase its volume of traffic.

Senator STEVENS. Is there any alternative to this bill by which we can still increase the volume of traffic?

Mr. PARR. I wouldn't know, sir. I am sure that Mr. Morrow will tell you that they work closely with the railroads now, but whether this would permit a little closer contract with the railroads in connection with it, I think it would be possible.

Senator STEVENS. As I understand it, this bill would permit a rate reduction for freight forwarders through negotiation with the railroads; that is one of the objectives; is that right?

Mr. PARR. Well, I would say a rate adjustment. I don't know, sir, whether the rates would remain the same or there would be a reduction. But I would say that railroads and the freight forwarders would keep an eye out as to the cost, and if the freight forwarders wanted a rate 10 percent below the present rate and the railroad said, well, we just can't handle it—the railroads are getting more cost oriented all the time.

As Mr. Jervis Langdon told you, they know pretty well what their costs are. So, I view it as an adjustment in the rates.

Now, how much lowering it would make, I wouldn't have any idea, if any.

Senator STEVENS. From your experience, could you tell me if it would be possible to bring about a rate reduction for freight forwarders through negotiation without discriminating against other shippers?

Mr. PARR. Well, you know discrimination is being practiced every day in the week. Big shippers are having these trainload rates, and so on. There is a certain amount of discrimination in many, many rates charged by the railroads and the motor carriers.

Mr. MORROW. Would the Senator permit a comment from me on this?

Senator STEVENS. Certainly. I would be happy to have your comments on any of these.

Mr. MORROW. Senator, you used the words "other shippers" and I think that is where we get off the track in talking about a rate reduction for freight forwarders and its effect on other shippers. The freight forwarders are not in the category of other shippers. To the railroad they are the same as any other carrier. They give traffic to the railroads that is not the ordinary run of shipper traffic on which the railroad has bill of lading responsibility to each and every shipper in the lot. The forwarder has processed the freight, he has billed the freight, he is going to trace it for his shippers, he is going to collect the charges, if he is lucky to get all of them, he does everything in connection with all these shipments that any other carrier giving interline freight to a railroad does.

You simply cannot compare the forwarder traffic with shipper traffic and come out with anything that is meaningful at all. The motor carriers, since piggybacking started, have had a right to give their piggyback trailers to the railroads under one of several plans. Plan I, so called is simply a contract deal whereby the railroad contracts to haul trailers for the motor carriers on the basis that they negotiate.

Senator STEVENS. How would you gentlemen answer the charge by ATA that the forwarder skims the traffic in the high density runs?

Mr. PARR. I would say the results of their operation indicate to the contrary. They are not making any money on it. Certainly it would indicate to me that it can't be that high rated traffic.

Mr. MORROW. I think the House Committee got from the ICC a list of complaints of shippers about the service, and it shows, of course, that there are numerous and continuing complaints about motor carrier service, particularly on small shipments. It is true, as has been stated repeatedly on this record, that the freight forwarders have had to condense their service, to go into the longer hauls because they can only handle traffic where their costs permit them to, and that is the reason why they have literally priced themselves out of many fields. But the freight forwarders do serve all of the territories where they publish competitive rates.

Senator STEVENS. The ICC questioned the traffic patterns of freight forwarders. Do you think it was fair to question the traffic patterns of freight forwarders?

Mr. MORROW. The traffic pattern is certainly not what we would like it to be, and I think the Commission has probably accurately summarized the situation. That is precisely why we are before the Congress now asking for this legislation. We want to get back into the shorter hauls. We want to serve greater distances from all of our terminals. We are now providing the full range of service that our costs permit, and we are getting dangerously close to the margin. Many forwarders are over the margin now. As we discover that our costs simply will not permit us to go into an area, we just have to adjust our prices so that the shippers no longer use our service.

Senator STEVENS. As I understand it, the cooperative associations do support the expansion of the terminal areas for freight forwarders.

Is this one of your goals in addition to this bill or is it part of the same package?

Mr. MORROW. I guess you could say it is a part of the same package. It is not an alternative. It is just simply an additional thing that we have needed for a long time. We have long felt that our terminal areas are too restricted. The Commission when we were regulated simply imposed on the freight forwarders the same terminal areas that the motor carriers had. That is as large a terminal area that the motor carriers want incidentally. They don't want to go further out. Airlines have much larger terminal areas, steamship lines and other carriers do. Railroads have switching districts which are larger than the motor carrier terminal areas. The nature of our operations are such that I am confident we can demonstrate and have demonstrated on the record that is before the Commission for decision that we need larger terminal areas for improved operations and greater economies.

I think that will help, but this bill is necessary also.

Senator STEVENS. Will expansion of the terminal areas for freight forwarders bring about economy of operation?

Mr. MORROW. Definitely, it will. Mr. Parr's testimony will support this. We have to use a line-haul motor carrier when we get outside the terminal area, that is to say we have to use a motor carrier who doesn't specialize in gathering up shipments around a city. He is coming in from some place else. In many cases he is not at all interested in picking up a shipment in Rockville or some place outside our terminal area. He has got a full load. He can't adjust his operations to the operations of a freight forwarder.

Now, Mr. Owen testified he does specialize in that type of an operation, and that is fine. In this area he does a great job. But there are many places where we simply today can't get common carrier service to go out into the outlying areas for our shipments at any price, including their published rates. If we can have a larger terminal area, it means we can take our own trucks, and we do use our own trucks in many cities, and send them out there for it, or we can make contracts with local draymen who today can't go any further out for us than the terminal area.

Senator STEVENS. What is the present limit of your terminal area?

Mr. MORROW. It is based by and large on a formula, the maximum extent of which is 5 miles beyond the city limits of the larger cities. It reduces down. In about a dozen or more cities the ICC fixed the terminal areas by metes and bounds. You can say that 5 miles is about the average.

Senator STEVENS. How extensive is the practice of freight forwarders having their own handling equipment within their terminal areas?

Mr. MORROW. It is quite extensive. I am connected with United States Freight Co., and I think in some 12 or 15 cities we provide our own pickup and delivery service. In many cases, we don't exclusively use our own trucks. We use them in many cases where we simply can't hire somebody else to do it. They handle the cats and the dogs for us.

Senator STEVENS. When you go beyond the limit of your present terminal area, you not only have difficulty in securing transportation, but you have another cost factor involved; is that your point?

Mr. MORROW. That is correct. As Mr. Owen pointed out, the costs of these local carriers are rising and they simply have to look to us to make up their costs for them. That increases our expense. Every time they get a labor increase, for example, it is passed directly on to us in the charges we pay them for collecting our shipments.

Senator STEVENS. We thank you gentlemen. It was a very extensive statement, Mr. Parr.

Mr. PARR. Thank you.

(The statement follows:)

#### STATEMENT OF GILBERT J. PARR

Mr. Chairman, and members of the Sub-Committee, my name is Gilbert J. Parr. I am a Transportation Consultant and President of the firm of Gilbert J. Parr Associates. My offices are located at 5530 Wisconsin Avenue, Washington, D.C. 20015.

I appear at the request of the Freight Forwarders Institute for the purpose of presenting up-to-date evidence concerning the financial condition of the freight forwarders; the standards which should be used to measure their revenue needs; to reply to erroneous allegations made, from time to time, by various parties relating to these matters, and other data.

Before discussing these matters, I wish to briefly outline the studies I have made in the recent past in connection with the freight forwarders' financial condition, operations and other matters.

In Ex Parte 266—Investigation Into The Status of Freight Forwarders instituted by the Interstate Commerce Commission, I submitted an analysis and criticism of the statement submitted by William C. Taft on behalf of the National Industrial Traffic League. It is on the basis of findings in Ex Parte 266 that the I.C.C. supports the pending legislation.

A number of matters covered in Mr. Taft's statement were also discussed by the N.I.T.L. witness at the hearing in S. 3714, a predecessor to the present bill. I also prepared a study for the purpose of Ex Parte 266, Sub. 1, Investigation Into The Scope of Freight Forwarder Terminal Areas. My study was introduced before the Interstate Commerce Commission in that proceeding. It covered, among other matters, an analysis of the revenues, expenses, net income for all member companies of the Freight Forwarders Institute for each year from 1966 through the second quarter of 1971; comparisons of increases in Section 409 charges with increases in motor carrier costs; the results of a three-day off-line traffic study showing the increases in the charges made by the motor carriers since 1966 for the handling of freight forwarder traffic originating and terminating off-line; the percent of freight forwarder shipments by weight brackets; the miles per shipment; the shift of industries from terminal areas and the establishment of industries beyond the present terminal areas and other data.

A discussion of each phase of my study follows:

#### FINANCIAL RESULTS OF FREIGHT FORWARDER OPERATIONS—YEARS 1966–1971

The financial results of all Class I Freight Forwarders show that since 1966, there has been a severe continuing erosion in income. The group as a whole showed only a small net income in the years 1967–1969 and 1971, but showed a net loss in 1970. The percent of net income to the total revenues shrank from 2.6 percent in 1966 to 1.1 percent in 1971, and in 1970 it was a negative figure of 0.2 percent. The six-year results are shown in the following table:

Year	Total revenue (millions)	Net income (loss) after taxes	
		Amount (millions)	Percent of total revenue
1966	\$530.0	\$13.8	2.6
1967	522.6	7.7	1.4
1968	564.6	6.0	1.0
1969	595.5	7.0	1.0
1970	598.5	(1.3)	(.2)
1971	590.0	6.7	1.1

(See Appendix A for complete comparative revenue and expense statements)

The year 1966 is used as a base year in all of the financial comparisons discussed in this section since it reflects the most recent experience not complicated by major rate revisions or severe cost increases.

Even in the "better" years of 1966 and 1967, the freight forwarder industry was perilously close to breakeven or zero profit. A low return on revenue is potentially disastrous to the industry for as the return on revenue approaches zero, relatively small fluctuations in volume or costs may result in substantial net losses. This is a risk factor which must be considered in evaluating the status and prospects of the industry.

Since 1966, the number of companies showing deficits in net income has increased substantially. In 1966 there were eight companies with net losses and in 1970, 15 companies.

An analysis of individual companies' financial statements over the same six year period reveals even a darker picture of the industry's financial condition. In each year from 1967 to 1971, forwarder companies with net losses or nil earnings (less than one half of one percent of revenue) accounted for, on average, 39 percent of the total tonnage received by all Class I forwarders. In 1966 this percentage was only eight percent. In 1970, the percentage reached an incredible 50 percent—18 companies handling 50 percent of the total forwarder traffic lost over \$9 million. In the "recovery" year of 1971, 18 companies accounting for 43 percent of volume, lost over \$6 million. The table below shows volume/loss data for the six year period:

Item	Year					
	1966	1967	1968	1969	1970	1971
Number of Class I forwarders.....	61	65	64	65	65	69
Number of forwarders with net losses.....	8	15	17	14	15	12
Number of forwarders with net incomes of less than ½ percent....	1	4	6	3	3	6
Total forwarders with losses or nil incomes.....	9	19	23	12	18	18
Combined net loss, forwarders with net losses or nil incomes (millions).....	\$1.8	\$3.5	\$4.0	\$4	\$9.3	\$6.0
Combined tons received, above forwarders (millions).....	.4	1.5	1.9	1.1	2.1	1.6
Combined tons received, all class I forwarders (millions).....	4.5	4.4	4.5	4.4	4.2	3.7
Percent of tons received, forwarders with net losses or nil income....	8	34	42	25	50	43

Note: 5-year average equal 39 percent.

Source: Transport Statistics, 1966-70, statement Q-950 (QFF), 1971 (both Interstate Commerce Commission publications).

#### CRITERIA TO BE USED IN MEASURING THE FINANCIAL CONDITION OF FREIGHT FORWARDERS

In the past, it has been stated that the proper financial measurements to be used for determining the "profitability" of the forwarder industry were:

1. The rate of return on the sum of net investment in transportation property and net working capital.

2. The rate of return on stockholders' equity.

The first of these measures has no precedence in financial analysis and grossly overstates the industry's profitability. There are two fatal flaws in this method:

1. While non-transportation property is excluded from the rate base the income generated by these assets is included in the return (net income).

2. There is no basis for including net working capital in the rate base.

Net working capital<sup>1</sup> is, at best, only a measure of liquidity and has no bearing on the rate base for measuring profitability. Indeed some forwarders have had negative net working capital during the 1966-1971 period:

#### Number of companies with negative net working capital<sup>1</sup>

1966.....	9	1969.....	8
1967.....	11	1970.....	10
1968.....	8	1971.....	(2)

<sup>1</sup> Source: Transport Statistics, 1966-1970.

<sup>2</sup> Not available.

Following this ludicrous measure of profitability these companies, in a desperate liquidity crunch, would show relatively higher return than companies that had positive net working capital. Further, as any one company's liquidity—its ability to meet current obligations—decreases, its "return", as measured by this method, would increase. This would be an absurd result.

The second measure of profitability—return on stockholders' equity—does not accurately depict industry profits. As shown above, a substantial number of forwarder companies had losses during the six year period. This reduced the equity of those companies and resulted in an artificially high combined return. Also, in each year, some companies had negative or zero stockholders' equity:

#### Number of companies with negative or zero stockholders' equity<sup>1</sup>

1966.....	11	1969.....	11
1967.....	12	1970.....	13
1968.....	13	1971.....	(2)

<sup>1</sup> Source: Transport Statistics, 1966-1970.

<sup>2</sup> Not available.

The computation of an industry return on equity that includes a significant number of companies with zero or negative equity is completely unsound. Return on equity cannot be calculated for companies without net income or without equity. Likewise, a meaningful calculation cannot be made for an industry containing a large number of such companies. If these companies are eliminated from the totals

<sup>1</sup> Current assets (cash, accounts receivable, etc.) less current liabilities (accounts and notes payable, current portion of long term debt, etc.).

the calculation would likewise not be meaningful, for only the stronger companies would remain to represent the industry.

While the return-on-equity measure is appropriate for some individual companies, it tells only half of the story. The forwarding companies are relatively highly leveraged. That is, they employ a great deal of debt in their capital structure. In 1970, for instance, equity represented only 49 percent of total capital, debt, 51 percent. Thus, the return on equity is approximately double that on total capital (equity plus long term debt).<sup>2</sup> This high "leverage" introduces a risk factor to investors in forwarding companies in that earnings must cover fixed debt service regardless of how well or poorly a company fares. This risk factor together with the poor profit performance (net income to revenue) and loss of volume in the industry over the past five years, means that in order to attract capital, the return on equity *must* be high. Also, the very nature of the industry—high debt leverage and relatively low capital need<sup>3</sup> results in fairly high equity returns, even when profits are just above breakeven. This does not mean, however, that high return on equity (and meager or nil net incomes) tells us that a forwarding company is financially strong and enjoying good "profits."

The best, if not the only, way to measure the profitability of this industry, is net income as a percent of revenue. The I.C.C. and other regulatory agencies, employ a method which is similar in concept to that of operating ratio (revenues to total operating expenses, rents and taxes). An operating ratio of 95 percent is equivalent to a net income on operations, after taxes, of five percent, thus the lower the operating ratio, the higher the profitability.

The Interstate Commerce Commission employs an operating ratio of 93 percent for motor carriers and 95 percent for water carriers. However, the forwarders' operating ratios have not been lower than 97.5 percent in the last six years. The six year average ratio is 98.6 percent with a trend toward higher ratios in more recent years:

Operating ratios for class I freight forwarders

1966	97.5	1969	98.7
1967	98.2	1970	99.7
1968	98.8	1971	98.8

(6-year average=98.6)

Certainly, no transportation industry that is 1.2 percent (on an operating ratio basis) away from profitless operations can be considered financially healthy and "highly profitable".

DISCUSSION OF FREIGHT FORWARDER OPERATIONS—YEARS 1966-1971

The worsening financial plight of the freight forwarders since 1966 has resulted from a number of circumstances. There has been a reduction in tonnage with relatively higher increases in expenses. The tons decreased from 4.5 million in 1966 to 3.6 million in 1971. The 1971 figure was almost 600,000 tons less than in 1970. In the following table is shown the indices of revenues and expenses per ton for the period 1966 to 1971. The 1966 figures are shown as an index of 100.

INDEXES OF REVENUES AND EXPENSES PER TON

[1966=100]

	1966	1967	1968	1969	1970	1971
Revenue	100	102	106	114	121	138
Purchased transportation:						
Line haul and miscellaneous <sup>1</sup>	100	100	105	111	117	131
P. & D. and transfer	100	104	110	116	128	147
Total	100	101	106	113	120	134
Operating expenses	100	108	112	122	139	154
Net revenue from operations	100	81	72	74	13	73
Net income after taxes	100	58	43	51	(c)	60

<sup>1</sup> Includes rail, motor, water, and "Other."

<sup>2</sup> Negligible.

<sup>3</sup> For all transportation companies of comparable size to the average forwarder company, equity comprised 63 percent of total capital, debt, only 37 percent.

<sup>4</sup> The freight forwarders' net investment amounts to about five percent of their revenues, the motor carriers' investment amounts to 22 percent and the rail carrier's to 240 percent.

Source: Statistics of Income, 1967, Department of Treasury Internal Revenue Service, 1971.

Referring to the above table, it will be seen that the revenue per ton increased from 1966 to 1971 by 38 percent. The line haul purchased transportation cost (rail, motor, water and other) showed a slightly lower increase, however, the purchased transportation cost for pickup and delivery and transfer service increased by a greater percentage, i.e., 47 percent. The operating expenses per ton increased by 54 percent in 1971 compared with 1966. As a result of these relatively greater increases in costs as compared with the increase in revenue, the net revenue from operations per ton, i.e., the difference between revenues and the sum of purchased transportation costs and operating expenses, decreased in 1971 to 73 percent of the figure for the year 1966.

The same downward trend is shown in the index for net income after taxes per ton. In 1967, the average declined to only 58 percent of the amount shown for 1966 and in subsequent years dropped still further, producing a negative index in 1970. In 1971 there was an improvement over 1970, however, the aggregate profit in 1971 amounted to only \$6.7 million.

The forwarders' revenues have increased somewhat since 1966, but this reflects only increased rates because the volume of traffic handled has shown a downward trend since 1966:

Year	Revenues (millions)	Tons (thousands)
1966.....	\$530.0	4,501
1967.....	522.6	4,352
1968.....	564.6	4,503
1969.....	595.5	4,443
1970.....	598.5	4,206
1971.....	590.0	3,628

Although the percentage of fixed and variable operating costs is not precisely known, it is certain that this decrease in traffic volume has resulted in increased operating costs when measured as a percentage of revenue or on a per-ton basis, i.e., lower volume reduces the base over which fixed costs can be absorbed. Also, reduced volume at individual terminals can reduce efficiency and drive-up unit costs. This impact can be measured, in part, by analyzing the change in labor productivity. (Based on Annual Reports of Freight Forwarders Institute member companies.)

	Year 1966 (22 Cos.)	Year 1970 (26 Cos.)
Tons (thousands).....	3,572	3,369
Total compensation (thousands).....	\$50,585	\$66,901
Compensation/ton.....	\$14.16	\$19.86
Increase in compensation/ton.....		1.40
Total employees.....	7,446	8,314
Tons/employee.....	480	405
Decrease in tons/employee.....		1.16

<sup>1</sup> Percent.

As is seen from the above table the compensation per ton increased 40 percent in 1970 (the latest year for which figures are available) compared to 1966 and the productivity of the employees measured in tons per employee decreased by 16 percent.

The size of the average shipment handled by the freight forwarders increased from 510 pounds in 1966 to 650 pounds in 1971, however, despite this increase, the cost per ton has increased substantially faster than revenue per ton:

Year	Weight per shipment (pounds)	Cost <sup>1</sup> per ton
1966.....	510	\$112.68
1967.....	523	115.99
1968.....	536	121.74
1969.....	573	130.32
1970.....	625	141.78
1971.....	650	158.93

<sup>1</sup> Purchased transportation, operating expenses and transportation taxes.

It is seen that while the average weight per shipment increased from 510 pounds in 1966 to 650 pounds in 1971, or by 28 percent, the cost per ton, however, rose from \$112.68 in 1966 to \$158.93 in 1971, an increase of 41 percent. This contrasts with the revenue per ton increase of 38 percent previously shown for the same time span.

It is evident from the foregoing analysis of financial and operating statistics that the freight forwarders are in dire need of additional traffic and revenue.

SCOPE OF FREIGHT FORWARDER OPERATIONS AND TRAFFIC PATTERN OF OFF-LINE TRAFFIC

The freight forwarders' operations are scattered throughout the United States, Hawaii and Alaska. A study prepared by 19 members of the Freight Forwarder Institute shows that in 1971 they operated 521 terminals in all but two of the 50 States. A continuing waybill study prepared by the Freight Forwarder Institute shows that in 1969 60 percent of the freight forwarder tonnage originates in locations outside of the freight forwarders' terminal areas and that 56 percent of the tonnage terminates in locations outside of the terminal area.

In past proceedings some parties have alleged that 82 percent of all freight forwarder traffic originates at 10 points and 67 percent terminates at 10 points. Their statements were based on returns to a questionnaire submitted by the freight forwarders at the direction of the I.C.C. in I.C.C. Docket Ex Parte 266. The data had no relationship to the actual origins and destinations served by the freight forwarder since the data requested by the I.C.C. and supplied by the freight forwarders related to shipments moving to and from *markets* or concentration points and not from and to individual origins and destinations. To illustrate, one company in that study reported that for shipments moving to Portland, Oregon there were actually shipments for 96 cities all over the State included in the total. Thus, for just one company there were 95 more shipments terminated than would be shown in the study. If all of the companies reporting the data had included *all* of actual origins and all of the actual destinations, there would be thousands of cities included.

In Ex Parte Docket No. 266, Sub. 1, an investigation instituted by the I.C.C. into the scope of freight forwarders' terminal areas, a three-day study was made by 14 freight forwarders at 88 terminals and covering more than 22,400 off-line shipments. Off-line traffic embraces those freight forwarder shipments which originate and/or terminate at locations outside of the freight forwarder terminal areas. Motor carriers move the traffic from these points to the terminal at contractual or other basis of rates. The importance of the off-line traffic is seen from a study made in the year 1969 which showed that 53 percent of the shipments and 55 percent of the tonnage originated at off-line points while 43 percent of the shipments and 37 percent of the weight terminated at off-line points. The study was made to obtain, in addition to the operating characteristics of the traffic, i.e., weight of shipment, average length of haul, distribution of shipments by weight brackets, etc., the increase in Section 409 charges in 1971 versus the charges in effect in 1966.

The three-day traffic study showed that 90 percent of the off-line freight forwarder shipments weighed less than 1,000 pounds. The study also showed that 79 percent of the shipments weighed less than 500 pounds and 24 percent weighed less than 100 pounds.

The average weight for all off-line freight forwarder shipments picked up, shown by the study, was 606 pounds. For shipments delivered the average was 426 pounds and for both pickup and delivery combined the average was 524 pounds. These average weights are in contrast to the average weight per shipment in various motor carrier regions as shown in I.C.C. statistics:

Region:	Average weight per shipment (pounds)	Region:	Average weight per shipment (pounds)
Central.....	2, 078	Pacific.....	973
Middle Atlantic.....	1, 820	Rocky Mountain.....	888
Middlewest.....	1, 311	Southern.....	1, 151
New England.....	1, 192	Southwest.....	1, 057

Source: I.C.C. Bureau of Accounts Statement 2C3-69.

The study also showed that the distance the motor carriers handled the freight forwarder traffic from the pick-up points to the forwarder terminals was 89 miles and for delivery service the average was 76 miles.

The foregoing demonstrates the fact that the freight forwarders, contrary to evidence submitted in prior proceeding, are basically transporters of small shipments. The fact that the freight forwarders have lost the short-haul traffic because of their inability to find carriers to handle this traffic for them—at rates which will permit the freight forwarders to handle the traffic at a compensatory level—results in the weight per shipment being higher than it normally would be. If the freight forwarders are permitted to enter into agreements with the railroads it would, in my opinion, result in both the railroads and the freight forwarders handling more of the traffic. The freight forwarder would be able to maintain control of the traffic from the time it was picked up until the time it was delivered. This would improve and speed up the service, reduce claims and generally improve the service and make it more attractive to the shippers.

It has been stated that this would mean that the traffic would have to be diverted from Shipper Associations or from the motor carriers. In fact it will be diversion back to the forwarders who originally handled the traffic. The fact remains that the freight forwarders must, in order to remain a viable industry, obtain a greater share of the traffic than they are now handling. In 1970 (the latest period for which data are available) the tons of freight forwarder traffic originated and transported by Class I railroads showed a *decrease* of ten percentage points under 1966. During this same period the tons of shipper association traffic originated and transported showed an increase of 51 percentage points. For motor carriers the tons transported in 1969 showed an increase of eight percent over the tons transported in 1966. Thus, the freight forwarders are not retaining their present traffic or obtaining their fair share of new traffic.

The criticism was made by various parties, at the prior proceeding, that the freight forwarders were not paying rates to the motor carriers which would permit the motor carriers to handle the traffic at a profit. This is not the fact. In the 1971 study it was found that the charges paid by the forwarders to the motor carriers increased, 1971 over 1966, by 44 percent for pickup service and by 56 percent for delivery service. Even higher increases were shown for shipments below 500 pounds and for shipments below 100 pounds. For shipments below 500 pounds, the corresponding increases in motor carrier charges were 55 percent for pickup and 65 percent for delivery, for shipments below 100 pounds, the increases amounted to 64 and 72 percent, respectively, for pickup and delivery service. These percentage increases in charges are compared with the increases in motor carrier costs 1971 versus 1966. The Section 409 charges obtained from the three-day traffic study were compared with present-day motor carrier costs, separately, for various regions. The motor carrier costs were obtained from studies prepared by the Cost Finding Section of the Interstate Commerce Commission and from data submitted by the motor carriers to the I.C.C.'s Suspension Board as justification for rate increases. The increases in the motor carriers' Section 409 charges outstripped by substantial margins the increases in costs. The figures are shown in the following table:

PERCENT INCREASE 1971 VERSUS 1966

	Motor carrier costs	Sec. 409 charges
Middle Atlantic.....	40	58
Central region.....	42	46
Southern.....	38	44
Southwest region.....	50	86
Pacific region.....	42	50

In summary, the freight forwarders must obtain additional revenues or be forced to drastically reduce their services or cease operations.

#### *Compensatory Nature of Freight Forwarder Traffic*

It is important to know if the freight forwarder traffic is handled by the rail carriers at a profit or at a loss. The Cost Finding Section of the Interstate Commerce Commission has made studies over the past 20 years showing a comparison of the costs and the revenue for freight forwarder traffic as well as other classes of traffic. These studies are entitled "Rail Revenue Contribution by Commodity and Territory". I am entirely familiar with these studies since I was Chief of the Interstate Commerce Commission's Cost Section from 1939 to 1950. These studies have been used by me in the past and I also have made special studies for the purpose of substituting actual operating characteristics of the traffic for territorial figures as is later explained.

In its latest Rail Revenue Contribution study, based on operations in 1966, Statement No. 183-71, it is shown that freight forwarder traffic fails to cover the variable costs by  $\frac{1}{2}$  of one percent and fully allocated costs by 9- $\frac{1}{2}$  percent. This statement has been used in the House hearing on the bill here involved as proving that the freight forwarders are receiving special consideration from the railroads in the matter of rates. This is not the case as is now shown.

The Cost Finding Section's Rail Revenue Contribution studies utilize territorial average figures in pricing-out all traffic except iron ore, copper ore, bituminous coal and lignite, coke, and railroad equipment moving on its own wheels. The Cost Section states that certain classes of commodities have individual characteristics which vary from the territorial average conditions reflected in its studies.

The five aforementioned classes of commodities were found to have special operating characteristics and, thus, the Cost Section made adjustments to reflect them in developing the costs. No adjustments were made in connection with freight forwarder traffic since there were no special study data available to the Cost Finding Section. I have, as well as the railroads and other parties, made special studies to determine the costs based on actual operating characteristics of certain traffic. Such studies have been approved by the Interstate Commerce Commission and State regulatory agencies in a number of rate investigations.

I made an analysis of the territorial factors utilized by the Cost Section in pricing-out the freight forwarder traffic and found these territorial figures do not reflect the actual operating characteristics of this traffic, since forwarder traffic has as favorable, or more favorable, operating characteristics than the special group of commodities which the Cost Section has priced out at lower than territorial average costs. A discussion of why the Cost Section's study does not correctly portray the contribution made by the freight forwarder traffic to the railroads' overhead burden follows:

#### *Unit Costs*

In pricing-out the freight forwarder traffic, the Cost Finding Section utilizes unit costs, i.e., terminal cost per carload, car-mile cost, gross ton-mile cost, etc., which costs are approximately 10 percent higher than the unadjusted unit costs in Official territory and two percent higher than Western district unadjusted unit costs. These percentage mark-ups result from the use of lower-than territorial costs for the special group of commodities. In other words, the difference between the cost based on territorial average figures and the lower cost actually used for the five commodity classes previously mentioned is charged to all other traffic movements so that the entire expenses incurred by the railroads are accounted for.

This adjustment is not proper in connection with the pricing-out of freight forwarder traffic, since, as previously stated, the freight forwarder traffic has as favorable, or more favorable, characteristics than the group of commodities which has received special consideration. At the least, *territorial average unit costs* should have been used to cost the freight forwarder traffic. If this had been done, it would have reduced the variable and fully allocated costs<sup>4</sup> for a one-percent sample of all U.S. to U.S. freight forwarder traffic movements in 1966 by almost \$80,000.

#### *Switching at Origin and Destination*

The territorial cost scales used in Cost Section's study, "Statement 183-71", shows that the territorial origin and destination switching of traffic loaded in box cars is based on 25.4 minutes per loaded car and a cost of \$18.82 in the East; 24.0 minutes per loaded car and a cost of \$16.06 in the West and 18.0 minutes per loaded car and a cost of \$10.24 in the South. There is no doubt that the switching of freight forwarder traffic at both origin and destination is much less than the territorial average figures used by the Cost Section. This results from the fact that usually the freight forwarder facilities are adjacent to the railroads' train yards and large blocks of traffic are usually switched at one time. Numerous studies I have made show that when these conditions are present the costs are from one-third to one-half of the territorial average costs. If we assume that the cost of switching the

<sup>4</sup> The variable costs are computed at 80 percent of the freight operating expenses, rents and taxes. They also include an allowance for the cost of equity capital invested in transportation property plus interest on borrowed capital invested in transportation property. This allowance for the cost of equity capital plus interest on borrowed capital is applied to 50 percent of the road property and 100 percent of the equipment used in freight service. Fully allocated costs cover the variable costs plus constant costs representing the remaining body of operating expenses, rents, taxes (other than Federal Income taxes) and allowance for the cost of equity capital and interest on borrowed capital which are not included in the variable costs. These constant costs are assigned to the various commodities on pro rata ton and ton-mile basis regardless of kind or class.

freight forwarder traffic is only one-half as much as the territorial average it would mean a reduction in variable costs based on the 1966 traffic level of \$21,013 and the same reduction in fully allocated costs.

#### *Freight Train Car Expenses*

The freight train car expenses for box cars are based, in the East, South and West on 3.8 days per loaded car with a cost in the East of \$8.90, in the West with a cost of \$9.65, and a cost of \$8.14 per car in the South. The figure of 3.8 days is not representative of the actual detention of the cars at the freight forwarder facilities. This results from the freight forwarder efficient loading and quick release of the cars. I believe that the actual expense would be one-half of the territorial average. Again, based on the 1966 level of traffic the reduction in variable costs would amount to approximately \$11,653 and a similar reduction in the fully allocated costs.

#### *Percent Circuity*

In developing the line-haul costs for all types of car, the Cost Section inflated the costs to reflect a circuity allowance of 13 percent. A study (Statement No. 68-1) made by the Cost Section, but not used in the 1966 revenue contribution study, shows that freight forwarder traffic incurs circuity of only 6.9 percent. If the actual circuity is used it would reduce the variable line-haul cost based on the 1966 traffic movements by \$46,936 and the fully allocated costs by \$55,596.

#### *Interchange Switching Expense*

The Cost Section, in its study, treats interchange switching expense on a per car-mile basis. This results in arbitrarily charging to the freight forwarder traffic an interchange switching expense about every 400 miles. The average haul of the freight forwarder traffic in 1966 was 1,364 miles thus the Cost Section method would charge 3.4 interchanges to the freight forwarder traffic. A study made by one freight forwarder at my request shows that the actual number of interchanges on its principal movements amounted to only one-fourth of the territorial average. Considering the fact that the interchange cost in the East amounts to \$13.15 per loaded or empty car, in the South to \$8.54 per car, and in the West to \$12.46 per car, there is a significant overstatement of costs. Using the more reliable figure of one-fourth of the territorial average there would be a reduction of \$58,489 in the variable costs and a reduction of \$66,149 in the fully allocated costs.

#### *Inter- and Intrain Switching Expenses*

The Cost Section arbitrarily charges to the freight forwarder traffic an intertrain or intrain switching for every 200-miles of haul. The Cost Section would charge to the freight forwarder traffic on the average 6.8 handlings. The freight forwarder traffic moves in expedited service and, again, based on my knowledge of railroads' operations, the trains handling the freight forwarder traffic would usually be switched only one-half as much as the territorial average traffic.

The cost in the East for an intertrain handling (switching, plus freight train car expenses) is \$4.12 per loaded or empty car, in the South \$2.42 per car, and in the West it is \$2.09. If the costs are based on the more realistic figure of one-half of the territorial average it would result in a reduction in variable costs of \$37,151 per car and a reduction of \$41,885 per car in the fully allocated costs.

#### *Territorial Unit Costs Used in Computing the Costs*

The Cost Section arbitrarily charges the freight forwarder traffic for interterritorial movements as if 50 percent of the movement is in the East and 50 percent in the West. Similarly, on interterritorial movements between the South and the West and the South and the East, the costs are computed as if 50 percent of the haul is in the originating territory and 50 percent of the haul is in the terminating territory.

In connection with the interterritorial movements between the East and the West, only approximately 25 percent of the movement is in the East and 75 percent is in the West. This results in overstating the costs for these territorial movements since the cost in the East is higher than the cost in the West. For example, for a movement in a box car with a load of 20 tons for a haul of 1,000-miles, the cost in the East is 10.6 percent higher than the cost in the West. Thus, on an East-West territorial movement the costs would be overstated by three percentage points (75.4 cents divided by 77.4 cents minus 100).

For the interterritorial movements between the South and the East the box car costs in the South are 31.4 percent less than the costs in the East. It may be that the use of a 50-50 percent weighting of the costs in the respective territories

would only result in a small distortion in the costs; however, this can only be determined by an actual study. The same is true for the interterritorial movement between the South and West.

The fact remains that because of the disparate nature of the costs in the various territories it is imperative to measure the precise relative movements performed in each territory.

*The Overstatement in the Cost in the Cost Section Study of Moving Traffic in TOFC Service*

Two-thirds or more of the freight forwarder traffic moves in trailers-on-flat-cars (TOFC service).

In the East freight forwarder traffic moves in Plan 2½ Service (ramp-to-ramp). The rates charged the freight forwarder by the railroads include amounts for the use of the car and trailer, the ramping and deramping and tying and un-tying of the trailer.

In the West the traffic normally moves in Plan 4 Service. This is similar to Plan 2½ Service except that the freight forwarders provide the car and trailer at their own expense and pay ramping and deramping charges and, in connection with interterritorial movements involving the West, the switching charges at the gateway. The railroads' cost for performing ramping service amounts to \$19.35 per loaded trailer including an allowance for empty. The trailer rental at the terminal, i.e., covering the loading and unloading of the trailer amounts to \$21.94 per trailer, i.e., based on three days one day at origin, one day at destination, and one day for the empty, and at \$6.00 per day increased for general overheads.

In addition, the freight forwarders pay for the line-haul movement of the trailer based on \$6.00 per day increased for general overhead for each 450 actual miles of haul per day or fraction thereof. Thus, for an 1800-mile haul the freight forwarder would pay the equivalent of \$51.18 per trailer. In addition, the freight forwarder pays the car expense which, for an 1800-mile haul, would amount to \$87.84 (1800-miles multiplied by four cents per mile increased for general overheads of 21.886 percent) thus, for a movement within the West of a freight forwarder shipment the freight forwarder would pay additional charges of \$180.31 per trailer. In addition, where an interterminal movement is involved, the freight forwarder would pay a charge for switching at the interchange point, usually Chicago, or St. Louis. Charges for this service would amount to \$15 to \$20 per car.

The significant fact is that in the Cost Finding Section's study only the line-haul charges are included. All of the additional charges paid by the freight forwarders for ramping, car and trailer rental, and switching are excluded. Thus, on traffic moving in TOFC service within the West, the Cost Section's study would not include all of the charges paid by the freight forwarder and, as a result, it would understate the contribution made by the freight forwarder traffic moving in Plan 4 Service in the West. This would be a significant understatement of the contribution since the Plan 4 traffic moving in the West constitutes 41 percent of the total TOFC movements.

In summation, the Cost Finding Section's Rail Revenue Contribution studies, the latest of which is designated as Statement No. 1S3-71, grossly overstates the rail cost for handling freight forwarder traffic and also, in connection with TOFC traffic moving within the West, understates the revenue. In the above there has been shown, in those instances where possible, the amount of overstatement in the costs. In summary, the figures are:

	Amount of overstatement	
	Variable costs	Fully allocated costs
1. Used of inflated unit costs.....	\$79,972	\$79,972
2. Switching costs at origin and destination.....	21,013	21,013
3. Freight train car costs at origin and destination.....	11,653	11,653
4. Interchange switching expense.....	58,489	66,149
5. Inter-intratrain switching expense.....	37,151	41,885
6. Erroneous circuitry factor.....	46,936	55,596
7. Total, above items.....	255,214	276,268

Based on the partial adjustment of expenses shown above for the movements in 1966, it will be seen that downward adjustments of \$255,214 should be made in

the variable costs and \$276,268 in the fully allocated costs. The net result of this partial restatement of the costs is to change the ratio of revenues to variable costs shown in Statement 1S3-71 from 99.1 percent to 126 percent, and the ratio of revenues to fully allocated costs from 90.5 percent to 114 percent.

Even these adjustments are not adequate. The revenues should be increased to reflect the additional charges paid by freight forwarders for the movement of TOFC traffic within the West. In addition, a study now being made of the freight forwarder traffic movements shows that additional overstatements of the cost are made in the Burden studies because of the use of billed weights for costing purposes rather than the actual weights utilized in computing the unit costs. It has been found that the billed weights substantially exceed the actual weights; thus, the costs charged to forwarder traffic are erroneously inflated for tonnage which does not actually move via rail.

## APPENDIX A

## COMPARATIVE STATEMENT OF REVENUE AND EXPENSES 1966-71 FREIGHT FORWARDERS HAVING GROSS REVENUES OF \$100,000 OR MORE PER YEAR

[In millions]

Line No.	Year					
	1966	1967	1968	1969	1970	1971
1 Forwarding revenues.....	\$526.8	\$518.8	\$560.7	\$590.6	\$594.3	\$581.4
2 Incidental revenues.....	3.1	3.8	3.9	4.9	4.2	8.6
3 Total revenues.....	530.0	522.6	564.6	595.5	598.5	590.0
4 Purchased transportation.....	345.9	336.9	367.7	384.4	387.4	374.9
5 Operating expenses.....	160.7	167.3	179.8	193.8	207.6	200.7
6 Transportation tax accruals.....	.6	.7	.7	.8	1.0	1.1
7 Total operating expenses excluding Federal income tax.....	507.2	504.8	548.2	579.0	596.0	576.7
8 Operating ratio (percent) after Federal income tax <sup>1</sup> .....	(97.5)	(98.2)	(98.8)	(98.7)	(99.7)	(98.8)
9 Net revenue from forwarder operations.....	22.8	17.8	16.5	16.5	2.5	13.3
10 Other income.....	1.1	3.0	5.4	5.0	5.0	6.4
11 Miscellaneous deductions from income.....	.3	3.9	6.0	4.9	6.7	5.0
12 Fixed charges.....	.5	.6	.4	1.1	1.5	1.5
13 Income taxes.....	9.3	8.4	9.4	8.5	.5	6.5
14 Net income (before extraordinary and prior period items).....	13.8	7.7	6.0	7.0	(1.3)	6.7

<sup>1</sup> Line 7 plus Line 13 equals line 3.

Source: Transport statistics in the United States, years 1966-70. Statement Q-950 (QFF) for year 1971 (both I.C.C. publications).

Senator STEVENS. Mr. Cobert.

**STATEMENT OF RONALD N. COBERT, GENERAL COUNSEL, AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.**

Mr. COBERT. Senator Stevens, gentlemen: I know the hour is late and this subcommittee would like to conclude very shortly. I would request that my statement be included in the record, and I would ask permission to make certain brief statements regarding our position here today.

Senator STEVENS. We thank you for your consideration.

Mr. COBERT. One other brief matter. Inasmuch as I did know that the committee would be in short session today, we did have some other organizations that I represent, and I did not request the people to be here, but I have submitted statements which are basically the same statements that were submitted before the House subcommittee on the same matter.

I would request that these statements also be inserted into the record. They are the statement of Levin J. Canter, secretary of Baltimore Shippers & Receivers Association; a statement of J. William Harrell, who is the chairman of the legislative committee of the American Institute for Shippers' Associations; a statement of Anthony A. Sicilia, who is the assistant general manager of United Shippers Association; and finally a statement of Mr. Robert L. Marden of the National Association of Shippers' Agents.

Senator STEVENS. Not only your statement but all the statements of the people you represent will be placed in the record.

Mr. COBERT. With respect to the American Institute of Shippers' Associations, we as the National Conference of Nonprofit Associations for which Mr. Fender just testified, are a trade association, and our organization represents approximately 21 shippers' associations, some of whom are large and some of whom are very small.

Senator STEVENS. Are these all nonprofit organizations which you refer to such as the one represented by the first gentleman who appeared before us, Mr. Fender?

Mr. COBERT. Yes, they are. They are all nonprofit shippers' associations. They are operating pursuant to section 402(c)(1) of the Interstate Commerce Act.

I would like initially to correct perhaps what may be a misunderstanding by one of the gentlemen, Mr. Owen, who presented some testimony just a few minutes ago. He indicated that shippers' associations were just recently entering the LTL field. Senator, I am not sure whether or not that is your understanding. However, that is simply not true. We can trace the history of shippers' associations in this country all the way back to the turn of this century, and shippers' associations have operated continuously since that time. They have during this entire period of time handled less than truckload freight, less than carload freight, and to my knowledge, ITOFCA, was perhaps the only shippers' association in the country that until recently handled only truckload shipments. So, I want to have the record very clear on that point.

Along with the testimony which I have submitted, I have submitted, and which is attached to my testimony, a statement of Merrill J. Roberts. This is a statement by Mr. Roberts on behalf of the American Institute for Shippers' Associations and other association interests submitted to the ICC in the *ex parte 266* case. I would recommend that the subcommittee read Dr. Roberts' statement. It is a very authoritative statement on the question as to whether or not this legislation is good.

The American Institute basically opposes this legislation for two reasons. We feel that the costs to the members of shippers' associations could in fact increase, as Mr. Singer very lucidly elaborated to this subcommittee. Secondly, we feel very strongly that by enactment of this legislation, the Congress will in effect be placing in the hands of the railroads a very dangerous tool—a very dangerous tool to discriminate against associations and perhaps eliminate the only alternative which shippers have today to reduce their freight costs.

For example, recently I heard William Moore, the president and chief executive of the Penn Central Railroad discussing the future possibilities of putting into the tariffs multiple trailer rates. Obviously, such rates could be of extreme benefit to any type of organiza-

tion or company that would consolidate such as a freight forwarder or a shipper's association.

Let's assume this legislation is passed and the Penn Central or any other railroad decides to put in these multiple trailer rates and refuses to give shipper associations the right to utilize those rates or any other shippers who ship traffic under similar circumstances. Let's assume that the Nation's railroads decide—we are not saying they will—but let's assume they decide we think we ought to deal only with freight forwarders and not with anybody else.

So, therefore, they decide to eliminate all consolidation rates except those rates which would be applicable to freight forwarders. In essence, this legislation will place that tool in the hands of the railroads.

Senator STEVENS. Why don't we turn that around: What if the Congress decided to treat shipper associations and freight forwarders the same and pass this legislation?

Mr. COBERT. At one time, Senator, previously, when the matter was before the House a couple of years ago, the American Institute for Shippers' Associations did submit an amendment to the legislation which would place shippers' associations in the same position as freight forwarders with respect to the same type of legislation which is here today.

We felt at that time that shipper associations and freight forwarders, always being on the same plane since the turn of the century, should remain on that same plane and that if the freight forwarders were to have the benefit of these type of rates and type of operations under contract, that the associations should have the same privilege.

We still feel that there is some merit to that position. However, our initial reaction is that this legislation, however, is just simply bad legislation, and we would not even want to see shipper associations and freight forwarders discriminating against our members or other shippers who might have the ability to ship traffic under the same and similar circumstances. If, however, you are going to pass bad legislation, then include the shipper associations in there since it will give us something. That is obviously true.

There are a few other matters which I think should be borne in mind. I think that this legislation would if passed hurt the small motor carrier. I disagree with Mr. Owen concerning what he said about the passage of this legislation helping the small motor carrier. As a matter of fact, it has probably been the shipper associations and not the freight forwarders who have been the salvation of the small short-haul motor carrier. Because of the combination of rates which the association on its nonprofit basis was able to put into the overall package in presenting it to its shippers, it became feasible for the small short-haul carrier to participate in the traffic. So, if you eliminate once again the shipper associations or if you give someone the tool to eliminate the shipper associations, you may as well be hurting that small short-line carrier. Shipper associations take tremendous advantage today of the short-line carriers in all areas of the country.

I dispute also the statement by Mr. Owen regarding the gypsy carriers. I have never heard anything so ridiculous. The shipper associations take advantage of local cartage companies operating under section 203(b)(8) of the Interstate Commerce Act the same way as any other shipper in interstate commerce takes advantage of that type

of a company. When that shipment goes outside the commercial zone, the shipper association will in fact utilize the services of a carrier regulated by the Interstate Commerce Commission. We are not like the freight forwarders. We do not have our own equipment on the streets as a general proposition. The shipper associations are utilizing common carriers through all aspects of their operations.

Senator STEVENS. Do I understand that your association does in fact support the concept of expanding the terminal area?

Mr. COBERT. That is another point.

Senator STEVENS. Why? If you do not have your own trucks, why do you favor that?

Mr. COBERT. The point there is this. First of all, the American Institute for Shippers' Associations did not submit any statement pro or con in the *ex parte 266*, sub 1 proceeding.

We obviously are aware of other shipper association interests that have contended this is a good thing for the freight forwarders. You must remember this. The shipper associations are nothing more than the shippers themselves.

If this is going to benefit the freight forwarder, the shipper associations are not necessarily opposed to it, because it is the shippers themselves that are the shipper associations, and if there is some benefit to the shippers here, we would be silly to oppose something that would benefit our own members. That is the reason why AISA, the trade association that I represent, did not take a contrary position in that particular sub 1 proceeding. That is why certain shipper association interests supported that concept.

But we are here today telling you that this legislation is dangerous; it is dangerous to not only the associations but it is dangerous to their members.

I want to correct another concept that was put out here, Senator Stevens. I have been representing shipper associations for about 11 years now. I have been to many board of directors meetings in which membership applications have come up for approval. In only a very few instances have I ever seen a membership application not approved. And in those instances, it was because of circumstances totally unrelated to the small size of the company or to the type of freight which they ship. This is my experience.

Shipper associations on the whole do not have the type of arrangements, for example, like ITOFCA has where it costs \$500 to join and \$200 a year.

Many associations that I have represented have represented the small shipper, the ma and pa stores in areas where the fellow with the one shoe store and the fellow with the one dress store decides it is costing him too much to move his freight by freight forwarders and motor carriers and he wants to do something about it. So, he and a few other of his friends start a shipper association up. When they start this shipper association, they decide we do not want to charge exorbitant membership fees; perhaps they do not charge any membership fees, and these shippers control the organization.

So, this is what we are talking about here today. We are talking about the possibility that this legislation is going to stop that small guy from having perhaps the only alternative that he may have to curtailing the high rates.

Senator STEVENS. Thank you, very much.

We will keep the record open until Wednesday of next week in case anyone has any additional testimony to submit. It will be put in the record subject to approval of the chairman.

Other than that, this hearing is adjourned.  
(The statements follow:)

STATEMENT OF RONALD N. COBERT, GENERAL COUNSEL, AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.

Mr. Chairman, members of the Subcommittee: My name is Ronald N. Cobert, and I am General Counsel for the American Institute for Shippers' Associations, Inc., (AISA). Active membership in AISA is confined to shippers' associations, and its members are among the largest in the nation.

The bill before your Subcommittee today would permit freight forwarders to negotiate lower rates with the railroads than the railroads charge shippers' associations and the general public. Additionally, this bill could have the effect of eliminating the benefits of consolidation to anyone other than the forwarders. As will be developed later on in this testimony, AISA feels that this is an unwarranted discrimination. Throughout its existence, AISA has opposed all legislation which is deemed inimicable to the interest of shippers' associations. We continue this policy by opposing the bill under consideration today.

Before proceeding with an analysis of the legislation, it should be pointed out that annexed to this statement is the "Verified Statement of Facts and Expert Testimony of Merrill J. Roberts, Submitted by Shippers' Associations." This statement was submitted on behalf of Dr. Roberts to the Interstate Commerce Commission in *Ex Parte 266, Investigation into the Status of Freight Forwarders*. A review of the statement will reveal that Dr. Roberts is eminently qualified to testify on transportation matters and more specifically as to freight forwarding. Dr. Roberts has been a professor at several of the nation's finest universities and has been recently involved in studying intermodal freight problems. I urge the Subcommittee to consider carefully Dr. Roberts' analysis of the situation which now confronts us. I am sure that Dr. Roberts would be available at a later time should the Subcommittee desire to question him.

I.—SHIPPERS' ASSOCIATIONS

The physical operations of a shippers' association are, in most respects, identical to those of freight forwarders. Thus, to grant to the forwarder industry any benefits not accorded to shippers' associations would be to work a discrimination in the forwarder's favor. The very purpose of the Interstate Commerce Act and the National Transportation Policy is to prevent discrimination which is not warranted.

Clearly shippers' associations are a "transport mode"—in the sense that these associations are a manner or particular form of transportation. The *beneficial* impact by associations on the transportation system is well established based on known statistical data and the *Roberts* testimony. One can hardly quarrel today with the benefits of shippers' associations to the shipping world. These associations have saved the shipping public millions of dollars in shipping costs while at the same time protecting the tariff rates of Common Carriers by rail and motor. Shippers' associations are essential and vital to the national transportation picture representing the last frontier of savings for many small manufacturers and retailers. These associations have served as dynamic vehicles to the opening of new markets for many companies. At the same time associations have generated in many instances new markets for both motor carriers and railroads. Today, any action which impairs the operations and flexibility of shippers' associations is in fact detrimental to the national economy. Any action which will allow discriminatory practices against associations will clearly impair the associations' operations and flexibility.

II.—THE PUBLIC INTEREST

A. *Small Shipments*

It is the contention of AISA that the only justification that can be offered for the type of discrimination these bills set forth is that the discrimination is required by the public interest. Therefore, the relevant inquiry is, "On which side of these bills does the public interest lie?" It is our position that the public interest would be severely disserved by the passage of these bills. What is being weighed here is whether a heavily concentrated industry, oligopolistic or monopolistic in character

be rewarded at the expense of small shippers and the consuming public. Obviously the answer is in the negative.

The fact of the matter is that this bill, S. 1896, will serve only to make small shipments more expensive. This can hardly be considered an improvement.

The average shipment weight of the freight forwarders has been steadily increasing. (Roberts Statement at 5). From 1968 to 1969 only 12 percent of the tonnage and a fifth of the revenues were accounted for by shipments under 300 pounds. (Roberts Statement at 5). Compare this with the performance of the members of AISA. Shipments of under 500 pounds ranged (with one exception), among members of AISA from 60 to 95 percent of their shipments. (Roberts Statement at 16). At any rate, as is made clear by Dr. Roberts' Statement, the associations are the "small shipment people." Moreover, as Dr. Roberts points out, the forwarders have been retreating from small shipments. (Roberts Statement at 26). Furthermore, the association's emphasis is not only on small shipments, but on serving small "shippers" as well. (Roberts Statement at 17).

### *B. The Effect On Shippers*

This bill will have the effect of allowing freight forwarders to coerce the railroads into lower rates. We say coerce because of the heavy concentration of power among the few giants of the freight forwarding industry. It goes without saying that the railroads are already in dire financial straits. Putting pressure on them to decrease some rates, will force them to increase others. The most logical place to start would be the shippers' association, due to its similarity of operation to the freight forwarder.

Over 3000 shippers, both large and small, which underlie the membership of AISA, may well be seriously hurt by passage of this legislation if the railroads enter into any contractual arrangements with the forwarder, and, as a result, shippers' associations are forced to pay higher tariff rates. We don't believe that this is what Congress wants to accomplish.

### *C. Industry Concentration*

The freight forwarding industry is highly concentrated to the point where danger to the public ought to be seriously considered. In 1968, 9 of the 89 Class A forwarders received 71 percent of the total revenues. (Statement at 21). United States Freight alone generated 40 percent of the revenues. (Statement at 22). Moreover, these 9 companies are under common control with a total of 10 motor carriers, 113 industrial concerns, 11 water carriers, 31 local cartage companies, 24 brokers, and 51 other forwarders. Nevertheless, in the face of this much economic power the associations have continued to grow while the forwarders have virtually stagnated. (Roberts Statement at 19 and 20). The reason for this growth, obviously, is the savings and other benefits which accrue to small shippers from association membership.

## III.—CONCLUSIONS

The legislation involved here is styled as an aid to small shippers. In reality, it could well have the effect of severely damaging the small shippers' ally, the Association, at the expense of aiding concentrated industrial giants. This is a distinct possibility. Passage of the bill will in no way aid the small shipper.

The conclusion is obvious. The public interest cries out against this bill. Passage will only harm the small shipper. The eventual result, of course, will be increased costs being passed on to the consumer. Thus, the consumer will also be hurt at the expense of industry giants. Increased costs, of course, are inflationary and directly contrary to governmental policy.

Ironically, all this would be done under the guise of aid to the "small shipper".

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### STATEMENT OF LEVIN J. CANTER, SECRETARY OF BALTIMORE SHIPPERS & RECEIVERS ASSOCIATION, INC.

Mr. Chairman, Members of the Subcommittee: My name is Levin J. Canter. I am Executive Secretary of Baltimore Shippers and Receivers Association, Inc. (BSR) of Baltimore, Maryland. I have been authorized by the Association to testify in opposition to S. 1896.

Baltimore Shippers and Receivers Associations, Inc. is a non-profit membership association incorporated under the laws of the State of Maryland. We are an association of nearly 500 Baltimore and national shippers and operate under Section 402(c)(1) of the Interstate Commerce Act. Roughly 75 percent of our

member companies have less than 100 employees. We arrange for the movement of freight in interstate commerce for our members on a non-profit basis for the purpose of securing economical transportation through volume rates. The Association, which has been in existence for over 23 years, ships freight between points in the State of Maryland and points throughout the United States. The Association arranges for the movement of diverse commodities through the instrumentalities of rail, motor, and water carriers. Baltimore Shippers and Receivers Association, Inc., as do all other shippers' associations, operates physically in a manner similar to freight forwarders.

In order for many of BSR's members to compete in national markets, they must be able to cut transportation charges to the minimum. BSR's member shippers, especially the many small ones, can do this only through use of the Association. For every dollar BSR pays in transportation charges, its members pay less than two dollars. Set these figures against the average freight forwarder, who charges the shipper 4 dollars for every dollar it spends on line haul transportation, and the inescapable conclusion is that many of BSR's members find use of the freight forwarder industry financially impossible, particularly to distant markets.

The resultant savings from use of BSR's services have contributed to the well-being of the State of Maryland and the ability of Baltimore based industries to compete in distant markets such as various West Coast Cities. The numerous members of BSR strongly fear that the passage of S. 1896 will substantially impair the health of Baltimore based industries, in that rail rates to other shippers will inevitably go up if forwarder rates with railroads are lowered.

This legislation, if passed, would allow the freight forwarders to negotiate lower-than-published rates with the nation's railroads. Because of the precarious financial situation of the nation's railroads, any decrease in revenues received simply must be made up. The only way this can be done would be to raise the rates applying to freight shipped under similar circumstances, i.e., that shipped by shippers' associations. If such lower rail rates are negotiated, BSR will bear the brunt of the subsequent increase in rates in the Baltimore area. This is discrimination in its basest form, for the traffic moved by BSR is the same as that moved by the forwarders. The provisions in these bills which exclude these lower rates from being considered unjust discrimination or undue preference fly directly in the face of the spirit of the Interstate Commerce Act, for that is exactly what such rates would be—discriminatory and preferential.

BSR has assisted small shippers, as well as those with larger volumes, for over twenty years. Last year alone BSR's gross income was over \$3 million with total tonnage moved of 81,455,000 pounds. These figures are indicative of the need Baltimore area shippers have for BSR. Many of our members, manufacturers of shoes, work clothes, drugs, paint, rubber goods, and plumbing supplies, simply could not pay the rate increase which would result from rail/forwarder negotiated lower rates. Neither could they resort to forwarders, for even if forwarders paid *nothing* for rail transportation, the maximum saving would be only 25 percent, still too high for these shippers. The net effect of the passage of these bills, then, is to fatten the wallets of a few forwarder conglomerates while denying access to many markets to thousands of small shippers, both in Baltimore and across the country.

Baltimore industry has relied on BSR for many years. These bills threaten to curtail the substantial savings enjoyed by Baltimore companies and which savings, in many instances, have contributed to market development, competition, and reduced consumer costs.

STATEMENT OF J. WILLIAM HARRELL, CHAIRMAN, LEGISLATIVE COMMITTEE,  
AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATION, INC.

Mr. Chairman, Members of the Subcommittee: My name is J. William Harrell and I am presently serving as Chairman of the Legislative Committee of American Institute for Shippers' Associations, Inc. (AISA) which is a trade association representing the interests of shippers' associations throughout the United States. Through its member associations, AISA represents the interest of in excess of 3500 shippers and retailers using shippers' associations throughout the country. The purposes of AISA include the promotion and protection of shippers' associations and the mandate to act as representative of and spokesman for its members before the Congress of the United States and the Interstate Commerce Commission.

I am authorized on behalf of AISA to oppose S. 1896.

This proposed legislation has been the subject of various discussions throughout the preceding year among shippers' associations interests. In May of 1971, the American Institute for Shippers' Associations, Inc., at its eleventh annual meeting in Washington, D.C., voted to oppose the proposed legislation. AISA has also opposed similar regulation over recent years. The practical effect of this legislation is devastating and will now be considered.

The regulated forwarder which, because of the amount of traffic they control, will be able to force the railroads to give them rates and service benefits below those that will be available to the general shipping public, a sizable portion of which is represented by non-profit shippers' associations. This reduction is the clear intent of the legislation now before the Subcommittee. If the rails, in negotiation with the forwarders are induced to reduce forwarder rates, then there must be a corresponding increase in the charges to non-forwarder traffic. This increase would be required due to the financial situation in which the nation's railroads find themselves. This situation is so extreme that the Interstate Commerce Commission found it necessary to grant the railroads a 2.5% emergency rate increase as recently as February 2, 1972.

The traffic which would have to bear the burden of decreased rates to forwarders is, of course, that traffic which moves in identical circumstances, i.e., that of shippers' associations. In response to this, the freight forwarders claim that the increased volume of forwarder freight moved by rail as a result of this bill will ultimately lower rail freight rates for all shippers. This is simply not possible. Freight forwarder traffic accounts for only 1.5 percent of the total revenue for railroads. Even a 100 percent volume increase would clearly not permit a reduction in all freight rates charged by railroads. Their delicate financial balance will allow but one result—an increase in charges paid by other shippers.

In addition to the increased burden placed on shippers as a result of negotiated lower rates between railroads and freight forwarders, there would be still another serious consequence if S. 1896 and the other similar bills are passed and signed into law. Shippers' associations generate about two-thirds as much revenue for railroads as does forwarder traffic and that percentage is increasing (Between 1964 and 1969 shipper association payments to railroads went from \$67.5 million to \$118.3 million, an increase of 75%, while payments by freight forwarders to railroads actually declined).

Much of this association traffic is attributed to small shippers (the majority of shipments thus handled average less than 500 pounds) who can only compete in rail-served markets because of the advantages of shippers' associations' non-profit operations. The resultant increase in charges paid by shippers' associations to railroads due to lowered forwarder rates would bar many of these shippers from the market. This would actually cause a net decrease in revenues received by railroads, a situation both they and shipper can ill afford.

The freight forwarders may intimate that the resultant lower rates to forwarders will benefit the shipping public as the savings will be passed on in the form of lowered forwarder charges. Even if this statement were true, it would be misleading because due to the freight forwarders' method of operation, transportation charges only amount to one fourth of the total charge for the forwarder service, thus a reduction in those transportation charges would generate, at best, a saving to the shipper proportionately insignificant to the total forwarder bill. However, historically, the freight forwarders have *not* passed back to the shipper any benefits from rate innovations or reduced rate plans, especially in connection with small shipments.

In connection with this legislation the forwarders have again consistently failed to give any assurance that any savings will be returned to the shipping public. But even if the forwarders did return any reduction, the railroads would still suffer from depleted revenues and be forced to increase their rates to other shippers in order to subsidize the forwarders. We must assume, therefore, that the association would be forced to pay at least some increase which must then be passed on to the member. These three bills do nothing more than give the largest freight forwarder conglomerates an opportunity to make more money at the expense of the railroads and the consumer. These two giants, United States Freight and Acme Fast Freight (and affiliates), account for approximately 67 percent of all forwarder revenue. The preferential treatment sought by these companies becomes very suspect when Acme's financial situation is scrutinized. Acme, accounting for 26 percent of all forwarder revenue, also accounts for most of the industry's deficit. In 1960-1969, most forwarder traffic was handled at a profit considered substantial by the I.C.C. (Ex Parte 266, 339 I.C.C. 711 (1972)). Acme and its affiliates were notable exceptions. The point of this discussion is to show the Sub-

committee that these three bills will benefit an industry which, in reality, needs no such benefit. If Acme needs assistance, it should itself seek it. What these bills will do is merely fatten the coffers of USF, Acme and a handful of large corporations which control 85 percent of the entire forwarder industry.

In addition to providing the forwarder with increased profits and the consumer with increased costs, this legislation, if passed, could create a situation whereby the entire traditional rate-making procedures will undergo a change over an extended period of time. Privileges that exist today for all types of consolidated traffic may disappear and only freight forwarders will be left with those consolidation benefits. If this should occur, the public will be left with only the freight forwarder to look to for transportation of small shipments. If so-called "competition" is in the public interest, the Congress by passage of these bills, will be stifling the ability of the shipping public to choose alternative methods of getting goods to market. Moreover, the unjust discrimination in favor of freight forwarders which this bill seeks to add to the Interstate Commerce Act is in direct contravention of the spirit of that Act. The resulting special privilege to the forwarder would go far in lessening the Act's effectiveness in enforcing its safeguards against unjust discrimination and undue preference in the pricing of railway freight rates.

The supporting freight forwarders claim that S. 1896 will improve the position of the small shipper by putting freight forwarders in a better position to counter the alleged deleterious effect which shippers' associations have on small shippers. The evidence, however, clearly shows that it is the forwarders who have the adverse effect on such shippers. Approximately 25% of freight forwarder shipments average less than 500 pounds. It is to these shipments, the smallest, which forwarders have assigned arbitrarily excessive minimum rates, despite the fact that it costs the forwarder no more per pound in a consolidated rail car to move a 20 pound shipment than one weighting 500 pounds. It is precisely because of these freight forwarder practices that small shippers bonded together and formed shippers' associations. In order to compete effectively in the marketplace, these shippers had to reduce transportation costs to a minimum. If the freight forwarders were the only available means, many of these shippers would soon find themselves out of business, or at best, in a very restricted market. Even if forwarder charge reductions to shippers were guaranteed by the passage of this legislation, because of the forwarders 4 to 1 ratio of forwarder rates to transportation charges, the cost to the small shipper would still be prohibitive.

The Association's ratio of operating costs to transportation charges is less than 2 to 1 and there is no incentive to make these charges arbitrary or excessive because of the Association's non-profit status. According to the Interstate Commerce Commission in Ex Parte 266, while only 25 percent of freight forwarders handle shipments of less than 500 pounds, the average weight of shipments handled by most shippers' associations is less than 200 pounds, with a clear majority of all shipments weighing less than 500 pounds. It seems, from this evidence, that freight forwarders are anything but the friend of the small shipper.

The conclusion to be drawn from the above facts is that it appears that railroads have come to rely more and more on shippers' associations for movement of small shipments by rail. It has also been made clear that for every one dollar a freight forwarder pays out to the railroads, their customers spend \$4.00. This is set against shippers' associations which pay to the railroads over one dollar of every two paid to it by the members. This fact, when clearly analyzed, indicates that, no matter what reductions may be negotiated between forwarders and railroads, the shippers' plight with respect to small shipments will not be alleviated. Rail rate reductions are, therefore, clearly not the answer and would obviously disrupt the present transportation balance.

The forwarding industry consistently spends more for operating expenses and motor transportation than it does for rail transportation. Even if the forwarder obtained rail transportation free, the largest saving it could pass on to the shipper would be 25 percent. On the other hand, shippers' associations provide efficient service by both rail and motor carrier, for small shippers at a cost which is consistently more than 25 percent under freight forwarder level. The answer to the forwarder's plight, if one exists, clearly lies in the area of cutting operating costs rather than seeking rail rate reductions. The effect such rate reductions would have is to benefit the freight forwarder conglomerates at the expense of everyone else—the consumer, the shipper and the railroads.

In summary, the legislation now before this Subcommittee is detrimental to the railroads, to the consumer, and the shippers' associations; the last being the very type of organization that are most benefiting the shipping public and con-

tributing to the lowest possible consumer costs. The only benefit resulting from the passage of S. 1896 would be to increase the profits of a few corporations which virtually control all freight forwarder operations.

STATEMENT OF ANTHONY A. SICILIA ASSISTANT TRAFFIC MANAGER; UNITED SHIPPERS ASSOCIATION, INC.

My name is Anthony A. Sicilia, and I am Assistant General Manager of United Shippers Association, Inc. of Chicago, Illinois. (United). I have served in this capacity for three years. In these three years, I have been active in the management of the day-to-day operations of the association. I hold a B.A. degree from Marquette University. In addition, I hold a J.D. degree from Northwestern University, and am licensed to practice law in the State of Illinois and the District of Columbia. I am a lieutenant in the Judge Advocate General's Corps, United States Navy. I am authorized to make this statement on behalf of United.

United has been in existence since April of 1944. Presently, membership totals approximately 400, the great majority of which are small shippers. For the year ending December 31, 1971, United moved approximately 85,000,000 pounds of freight in approximately 2,500 trailers.

United is vehemently opposed to the legislation under consideration by your Subcommittee today. The irony of this legislation lies in the fact that, it is our contention, the small shippers will be hurt as a result of this legislation.

A cursory perusal of the membership list of United will reveal the smallness of its members. Moreover, their shipments are small. A bit of historical review will reveal that the very *raison d'etre* of the associations is the small shipper.

Shippers' associations began as an outgrowth of virtual forwarder and motor carrier refusal to handle "fluff" or light, bulky freight. The virtual refusal resulted from assessment of high penalties to this type of freight. In addition, the small shipper was neglected due to the low profitability of his shipments.

The neglected shippers, thus, out of frustration and necessity, began to form associations. Now the freight forwarders are coming before this Subcommittee claiming to be the champion of these same small shippers. Therein lies the irony.

It is only through the association that these manufacturers are able to get their goods to market. Without the association, they could not do this due to the above considerations. (penalties and neglect). Thus, the shippers' associations help to promote local commerce by stimulating manufacturers to move their goods in national commerce. Of course, additionally, interstate commerce is also stimulated. Now these shippers can get these goods to market.

What's more, this freight is moved at rates 20 percent lower than those charged by the forwarders with comparable or better service. If this legislation is passed, the forwarders will be enabled to extract lower rates from rail carriers. There can be no question of this in view of the fact that the forwarder industry is so heavily concentrated among such a small group. United States Freight alone, in 1968, generated more than 40 percent of the total forwarder revenues.

The result of this will be a loss of revenue to the railroads. Due to the depressed economic condition of the railroads some way will have to be devised to make up for this lost revenue. It is United's fear that this will be done by increasing the rates charged to other consolidators. Therefore, United would have to pay higher rates.

Moreover, nowhere, do the forwarders propose to reduce rates. Nowhere does the bill require this. Moreover, historical and statistical analysis reveals that forwarders do not pass back lower rates. History has shown that increased revenues always lead the forwarders to put the money back in their own pockets. Moreover, statistical analysis bears this out. Only one quarter of the average forwarder's expenses is made up of railroad rates. Thus, even were railroad rates cut down to nothing, this would only lead to a reduction of forwarder rates of one-fourth. Railroad rates, of course, will never be negotiated down to zero. In addition the forwarders will not desire to pass the savings to their patrons. Thus, the likely result is that savings will not be passed back.

Compare this with the result that would obtain if an organization such as United were given these privileges. United, like all other associations pursuant to Section 402(c) of the Interstate Commerce Act, is a non-profit association. Any savings which United could negotiate would be passed back to the members, not gobbled up by a corporate oligopoly. This, arises from the very definition of an association. This is United's policy.

The point is, the proposed legislation would allow for a pocketing of funds by the forwarders at the expense of the neglected shippers who move freight through the association, and therefore at the expense of the consuming public.

The benefits to be derived from shippers' associations are attested to by their steady growth of tonnage. Moreover, that fact that freight forwarder tonnage has stagnated over the last 20 years shows that this is not freight which the forwarders would move. Rather, this is "junk" freight to the forwarders. Thus, the associations *have not diverted* freight from the forwarders. This fact is further borne out by the financial picture. That is, the forwarders have remained profitable, over this period.

In conclusion, this legislation can in no way accomplish the goal which its title pictures. That is it will not improve the small shipment picture. Rather it will distort and blacken it. Therefore, the members and directors of United vehemently oppose this discriminatory legislation, in view of the fact that it cannot accomplish its ostensible purpose. Moreover, it could nullify all of the benefits which the neglected shipper has gotten through the association. All of this will be done under the guise of aiding the small shipper.

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STATEMENT OF ROBERT L. MARDEN, NATIONAL ASSOCIATION OF SHIPPERS' AGENTS, INC.

Mr. Chairman, members of the Subcommittee. My name is Robert L. Marden and I am a member of the Board of Directors of the National Association of Shippers' Agents, Inc. (NASA). In addition, I am President of Trailer Train, Inc., a shippers' agent, located in Chicago, Illinois and operating pursuant to Section 402 (c) of the Interstate Commerce Act.

The National Association of Shippers' Agents, Inc. has twenty-three (23) members who are shippers' agents, operating pursuant to the aforementioned section of the Interstate Commerce Act. This trade association, with headquarters in Washington, D.C., voted at its last annual meeting to oppose the legislation which is before this Subcommittee.

The members of NASA are basically consolidators of trailer loads, operating in terminal areas throughout the United States. These agents will match volume shipments for both large and small companies in order to give these companies the benefits of volume rates. The shippers' agent, however, performs its services only within the terminal city in which it operates. For example, in the instance of a consolidator of piggyback trailers, the shipper or beneficial owner of the freight will arrange for the distribution of his trailer at destination.

NASA opposes this legislation since we believe passage of any one of these bills will not aid the small shipper and will, in fact, harm the larger shipper. NASA contends that this bill will hurt the full trailer shipper who is not necessarily a large company. The majority of the accounts of a shippers' agent can be classified as small companies.

During recent years, the shippers' agent industry has grown at a rapid rate and the reason for this growth is the savings which the agents pass on to these small and large shippers, who are basically allowed to match their trailer loads through agents. It is important to note that the cost factors oper to agents are the same as open to the regulated freight forwarders. If the agents can operate successfully, so can the freight forwarder.

The proposed legislation would have the effect of allowing freight forwarders to negotiate lower rates with the railroads. The NASA members know well the severe economic problems which beset the railroad industry. Indeed, they also know the economic clout which is wielded by some of the forwarders and their affiliated companies.

The fact of heavy concentration in the freight forwarding industry will enable certain of the forwarders, at least, to negotiate lower rates with the rail industry. Because these will be the largest forwarders, accounting for the bulk of the industry revenue, the impact will be substantial. Furthermore, because of the depressed economic state of the rail industry, the railroads will have to find some way to make up for the lost revenue. NASA is concerned that the railroads will look to consolidators to make up this loss. The result of this legislation would then be higher costs to the agents, who would, in turn, raise their costs to their clients (shippers), who would, in turn, increase the price of their goods. This would, of course, be inflationary, and that inflation is contrary to any meaningful public policy of today goes without saying.

Moreover, the proposed legislation could have a more far-reaching destructive effect. The increased rates to the agents will likely result in some diversion of traffic from the agents. Depending on the severity of the diversion, some established agents could be severely harmed while some fledgling agents could be

destroyed. Therefore, this legislation could be a severe blow to the growing, valuable industry deserving of protection. In addition, it could result in increased costs to the consumer.

Moreover, NASA contends that any benefits to be obtained from these bills are both speculative and improbable. This legislation will not in reality aid the smaller shipper. It is unlikely that forwarders would pass negotiated lower rates back to the small shippers. History has shown this. In addition, the mathematics of the forwarding industry lead to the same conclusion. Rail expenses are a relatively small portion of total forwarder expenses. Thus, little of the savings *could* be passed back.

I urge this Subcommittee to reject the positions taken by those who advocate approval of the legislation.

(Whereupon, at 12:32 p.m., the hearing was adjourned.)



## ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

CALVERT COUNTY ECONOMIC DEVELOPMENT CORP.,  
*Prince Frederick, Md, June 21, 1972.*

HON. J. GLENN BEALL, JR.,  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR BEALL: Thank you for your letter of June 15. The following information may prove to be of some value to the committee in their deliberations in regard to S. 2628 which has to do with through routes and joint rates of motor common carriers. A very serious problem for local business firms has been the complete absence of through rate service from points beyond the State of Maryland. This has resulted in very high rate structures for local business firms and constitutes an obstacle to the economic development of the area.

Last year we conducted a survey of local motor freight users and over twenty-five percent of the respondents complained of high rates. These firms primarily were those which have goods coming in from out of state and are required to pay two separate freight bills on their merchandise. The following specific examples may serve to illustrate the problem.

A carton of steel filing cabinets weighing 1,314 lbs. from York, Pennsylvania cost \$45.07 from York to Baltimore, Maryland and \$43.10 from Baltimore to Prince Frederick, for a total freight cost of \$88.17. This works out at nearly \$15 per file cabinet in freight alone.

The freight charge for a 52 lb. carton of envelopes from Richmond, Virginia to Baltimore was \$8.55 and \$9 from Baltimore to Prince Frederick.

A shipment of bird feeders weighing 306 lbs. coming from Goshen, Indiana to Huntingtown, Maryland was billed as follows: \$61.52 from Goshen to Baltimore and \$40.76 from Baltimore to Huntingtown.

A 170 lb. shipment from Saybrook, Ohio to Baltimore cost \$9.70. The company was charged an additional \$9.45 freight from Baltimore to Huntingtown.

Examples of this nature abound. The results are higher prices to local customers and low profits to local businessmen. To the best of my knowledge there is no local carrier offering joint rates with interconnecting lines. I hope that the committee will consider these factors and act favorably on S. 2628 which would, after all, only make it possible for the Interstate Commerce Commission to require joint rates after customary hearings and procedures have taken place and carriers have had an opportunity to present their arguments.

I would like this letter added to the Hearing Record on the bill if you feel it would be proper and of interest to the subcommittee members.

Yours very truly,

KEITH CORNELISON,  
*Executive Director.*

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### STATEMENT OF CHARLES A. WASHER, TRANSPORTATION COUNSEL, IN BEHALF OF THE AMERICAN RETAIL FEDERATION

The American Retail Federation, in representing its 78 state and national retail associations, has long been interested in maintaining a healthy, privately owned transportation system permitting the maximum amount of economic competition within and between the various modes of transportation. Consistent with this policy the Federation has opposed any legislation which permits freight forwarders to pay the underlying carriers for services on any other basis than the lawfully published tariff rates and charge applicable to other users of the same transportation services under like conditions. The Federation has testified before this subcommittee in previous Congresses on such measures and again urges rejection of S. 1896, or any other similar proposal that would permit the freight forwarders to negotiate for rates on a contractual basis with the railroads.

There are many reasons for the Federation's objections and although these may have been expressed to the subcommittee on the previous bills it may be well to summarize them as follows:

(1) The contracts to be negotiated are not limited to rates alone, for they cover "the utilization" of the rail services by the forwarders. This may include the use of freight houses, supply of equipment, payment of charges, and matters other than rates.

(2) Since the bill provides that the "agreements" shall be deemed to be within the meaning of the Sec. 5a exemption there will be no anti-trust protection as to these new agreements for rates or services.

(3) Eliminating such a large amount of traffic from effective regulation and allowing it to be subject to competitive bidding will not be in the long-run interests of the railroads who are seeking legislative relief for their financial problems.

(4) Because the forwarder rates are on a parity with motor carrier rates none of the benefits of the lower costs to be gained through contract rates will be passed on to the forwarders' customers.

(5) There has been no evidence that there is any inadequacy in the existing rate-making procedures or regulations to prevent cost-saving characteristics of freight forwarder traffic, if any, from being reflected in appropriate railroad rates.

It should be pointed out that the Federation is not opposed to contract rates as such and generally has supported the establishment of contract or volume rates by common carriers under certain circumstances as being beneficial to both the carrier and the shipper. The Federation is opposed to any exclusive right to contract without any Commission regulation for any particular user or class of user of transportation services.

It is the considered view of the Federation that the bills that have been presented for consideration to allow the forwarder-rail contract privilege have always excluded regulation by the Interstate Commerce Commission. It is possible that a proposal to amend Sec. 6 of Part I for this purpose could be drafted making the right of the railroads to undertake contracts with parties regulated under Parts II, III, or IV; (a) limited to rates only; (b) valid upon filing with the Commission with retention of suspension and investigative authority; and (c) subject to other portions of the Act requiring, among other things, that the rates or provisions be just, reasonable, non-discriminatory, and not preferential. None of the bills before you is so limited.

S. 1896, to the contrary, uses the present Sec. 409 as a means to extend contractual rates to railroads and is particularly repugnant since it clearly would place the resultant agreements beyond any I.C.C. control other than the regulations and simple rules relating to the form and filing of the contracts. This has been clearly evidenced by the experience under the existing Sec. 409 although it comes somewhat of a startling surprise to find that the Commission overlooks this history.

The Commission doubts that the exercise of the right of contract between a forwarder and a common carrier would ever result in providing the service at less than the cost of providing that particular service and feels, if this situation did arise, that it has corrective powers under the terms of Sec. 409. This view has been expressed by the Commission in a decision and in testimony before the other branch of the Congress. The view, in my opinion, is unfounded and is due to misinterpreting one of its proceedings and overlooking another.

In Ex Parte 266, *Investigation Into The Status of Freight Forwarders*, 339 I.C.C. 711, the Commission states (Page 794):

"Forwarders are already authorized to negotiate rate with motor carriers, yet we are offered no proof that the latter have been pressured by the forwarders to operate generally at a loss. Indeed, in one case where it was shown that the section 409 contract did not cover the motor carrier's cost, the contract was disallowed by us. *Milne Truck Line, Inc., Investigation-Tariff Rates*, 325 I.C.C. 128 (1965)"

The decision in the Milne case supports no such conclusion. The question at issue in that proceeding was whether the service actually provided, including pickup and delivery, on shipments averaging 20,500 pounds, between Los Angeles and Tucson, a distance of 512 miles, was, in fact, truckload or less-than-truckload service. This determination was necessary because, under Sec. 409, the rates for truckload, line-haul shipments of over 450 miles may not be less than the published tariff rates. The decision holds that the Commission may consider factors other than rates for such a determination and did not reject the Sec. 409 rates because of being below cost.

Earlier this year, in testimony on a similar bill before the other branch of the Congress, the Commission spokesmen again indicated, in response to questioning, a belief that they could investigate and suspend below cost rates in such cases without a plaintiff although no example was cited. That this is an incorrect appraisal was demonstrated by the futility of the Commission's initial effort.

Under the receipt of forwarder-motor carrier contracts filed under the provisions of the newly enacted Sec. 409, and in the belief that the rate levels and some of the services might be unreasonable and inequitable, the Commission instituted an investigation of some 50 contracts. Evidence necessary to arrive at any determination was not introduced by the forwarders or the involved motor carriers on the grounds that the jurisdiction of the Commission extended only to the filing of the contracts or the application of standards as to the particular parties of interest in the individual contracts. Lacking this necessary power over the rates the investigation was finally dropped. This was I.C.C. Docket MC-C-1394, instituted May 7, 1952 and is unreported. Following this frustration the Commission, beginning in 1954 and continuing for several years thereafter, sought remedial legislation from the Congress that would place Sec. 409 contract rates subject to their effective control. This was not done and that control is absent today. It would be absent from the forwarder/rail contract rates under Sec. 409.

The fact of de-regulation of these rates and services is an important one. The Commission support of the proposed legislation is premised as follows; it is not known what the results of the new contract rate-making freedom will be, therefore, enact it for a period of three years so that they may study the effect, then permanent legislation can be recommended. The fallacies of this reasoning are that the Commission assumes it has control over the rates which it hasn't and that the bill is for a permanent, not temporary, change in Sec. 409.

Your Committee is presently considering legislative proposals that will have a fundamental effect upon all of our basic forms of common carrier transportation including the degrees by which regulation or competition should be the determining factor in carrier rate-making. At stake may be the very existence of our privately owned rail system. It is possible that one result will be to allow the railroads a greater freedom in pricing their services—not only for freight forwarders alone but for all types of shippers and users. Passage of S. 1896 will be damaging to the efforts to find sound solutions. The American Retail Federation urges you to reject any proposals to permit freight forwarder/railroad contract rates. Thank you for being permitted to submit these views.

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STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Members of the Committee:

My name is Paul Rodgers. I am the Administrative Director and General Counsel of the National Association of Regulatory Utility Commissioners, commonly known as the "NARUC."

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States and of the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of carriers and utilities. The mission of the NARUC is to improve the quality and effectiveness of public regulation in America.

More specifically, the NARUC contains the State officials charged with the duty of regulating motor carrier and railroad transportation within their respective States and, as such, they have the obligation to assure the establishment and maintenance of such transportation service and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates and charges that are just and reasonable.

The members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on S. 2628, a bill to authorize the Interstate Commerce Commission to require the establishment of through-routes and joint-rates by common carriers.

S. 2628 was introduced at the request of the Interstate Commerce Commission and proposes the following amendments to Section 216(e)(e) of the Interstate Commerce Act [49 U.S.C., Sec. 316(e)(e)]:

(1) Section 1 of the bill would permit the ICC upon receiving a complaint or upon its own motion to establish after a full hearing, through-routes and joint-rates between more than one trucking line or between truckers and rail, water or express carriers subject to the Interstate Commerce Act. Truckers and other carriers now are permitted to establish "reasonable" through-routes and joint-rates on their own initiative. This section would permit the Commission, insofar as is consistent with the public interest, to give reasonable preference to the carrier, originating traffic on a through-route, in the allocation of lines and interchange points in cases where there is considerable overlap of routes served by two par-

ticipating carriers. The section places upon the carriers the duty to establish just and reasonable regulations and practices for the administration and operation of through-routes and the duty to devise just and reasonable division of fees which would not prejudice any participating carriers.

(2) Section 2 of S. 2628 would authorize the Commission, upon complaint from any carrier, State board, organization or body politic, or upon its own initiative, to conduct an investigation and hearing into the justness and reasonableness of the administrative rules, route arrangements, fare structure or fee distribution connected with through-routes and joint-rates. Upon completion of such a hearing, the Commission may prescribe just and reasonable rules, practices, rates or fares.

Section 2 of the bill also requires carriers participating in a through-route to promptly settle their accounts with each other. In the event of delinquency, the Commission would be authorized to suspend or cancel the operation of the through-route under rules to be prescribed by the Commission. This section also requires the Commission to take into consideration the financial fitness of the carriers that would participate in a through-route before ordering the establishment of such routes.

Section 2 of S. 2628 further provides that if the Commission suspends operation of a through-route pending the outcome of an investigation taken on behalf of a participating carrier who has requested that the through-route be cancelled, the burden of proof shall lie with the protesting carrier when it is opposed by other participating carriers.

Finally, section 2 states that nothing in the bill would permit the Commission to regulate fares for intrastate transportation or any connected service for the purpose of removing discrimination against interstate commerce.

The NARUC vigorously supports enactment of S. 2628.

The NARUC has long supported similar legislation in the past to increase ICC authority with regard to the establishment of through-routes and joint-rates between motor common carriers of property and common carriers of other modes.<sup>1</sup>

We believe this legislation is sorely needed to better unify our national transportation system.

S. 2628 represents a substantial compromise designed to overcome many of the objections voiced in the past by segments of the transportation industry to this concept of regulation.

Briefly, the following are the four major differences between S. 2628 and its predecessor S. 2245, introduced in the 91st Congress at the request of the ICC, but not passed.

(1) Section 1(c) of S. 2245 would have amended Section 216(c) of the Interstate Commerce Act [49 U.S.C., 316(c)] to make it automatically obligatory for all motor carriers to establish through-routes and joint-rates. In contrast, section 1(c)(1) of S. 2628 would amend Section 216(c) of the Interstate Commerce Act to require the ICC to establish through-routes and joint-rates on a case-by-case basis where the need arises in the absence of voluntary establishment of such procedures by the motor carriers themselves.

(2) Section 2(2) of S. 2245 would have amended Section 216(e) of the Interstate Commerce Act [49 U.S.C. 316(e)] to authorize the ICC to establish through-routes and joint-rates on a temporary basis in emergencies without a hearing. In contrast, S. 2628 does not contain a counterpart provision.

(3) Section 2(3) of S. 2628 would amend Section 216(e) of the Interstate Commerce Act to require the ICC, when considering whether to order the establishment of a through-route, to take into consideration the financial fitness of all the carriers involved. There was no such provision in S. 2245. The S. 2628 provision would protect financially stable carriers from having to rely for payment for services rendered upon other carriers with a shaky fiscal structure who might go out of business before such payment was made.

(4) Section 2(2) of S. 2628 would amend Section 216(e) of the Interstate Commerce Act to oblige the Interstate Commerce Commission to take into consideration the promptness with which originating carriers pay to coordinating carriers their share of the fees in the event that a participating carrier petitions for suspension or cancellation of a through-route. This provision is designed to ensure that originating carriers on a through-route have a strong incentive to promptly pay coordinating carriers for service and thus maintain a smooth operating system. This concept was not included in S. 2245.

<sup>1</sup> 79th NARUC Annual Convention Proceedings, pp. 522-523, (1967), reporting convention resolution supporting S. 751, 90th Cong.; and NARUC testimony presented on May 16, 1967, to Senate Committee on Commerce in support of S. 751, 90th Cong.

The last two of these four features, in slightly different language, were included in S. 3626, introduced in the 91st Congress at the request of the trucking industry, but not passed.

We believe these four features should overcome the major objections previously raised to the passage of this legislation.

The prime beneficiaries of this legislation would be originators of small shipments, persons who ship infrequently, and those wishing to ship commodities such as furniture that may be difficult to package and handle. The bill would also greatly benefit smaller population centers and areas distant from the Nation's large cities and main traffic patterns.

Studies have documented the steady decline over the past few years in the willingness of truckers to accept all but high-profit, easily handled freight. This has enabled many truckers to enjoy the benefits of regulation and avoid the statutory obligations imposed upon them as common carriers. As a result, small shippers have been neglected.<sup>2</sup>

Also well documented has been the reluctance of many small shippers to complain when carriers reject cargoes on a selective basis for fear of economic retaliation through cancellation of through-routes so that "In some instances a complete loss of through service may result."<sup>3</sup>

The ICC has further noted the steady decline in interline services.<sup>4</sup> Thus, small shippers and those in less populous communities are left to seek for themselves combined routes by which to ship their goods. This means they pay more and suffer greater inconvenience in order to obtain the same service that could be supplied more cheaply and efficiently on a through-route.

This inconvenience and added cost comes in having to seek out more than one carrier on a route and conduct separate transactions with each. It comes in having to suffer added handling and paperwork costs, and it comes in having to endure greater obstacles in tracing a lost shipment or determining responsibility for loss or damage.

It would seem in this age of advancing transportation technology, exemplified by innovative use of such techniques as containers and piggybacks, that the service afforded to small shippers and small towns should be on the increase rather than declining. Local and short haul carriers provide a vital and needed service in the towns and smaller communities of America's rural areas. We believe they should be maintained wherever practicable.

We believe enactment of legislation in the pattern of S. 2628 is needed to strengthen and better coordinate our national transportation system and to maintain for small shippers and rural communities a viable role within the economic framework of America.

Thank you for your attention.

<sup>2</sup> *The Role of Regulated Motor Carriers in the Handling of Small Shipments*, Interstate Commerce Commission Bureau of Economics, Statement No. 67-2, November 1967, page 1, No. 7.

<sup>3</sup> *Small Shipments Problem*, Report of the Ad Hoc Committee of the Interstate Commerce Commission, November 30, 1967, p. 3.

<sup>4</sup> *Ibid.*, p. 4.

