Y4
.C73/1
96-23/PT.4

Y4
C73/7
96-23
Pt. 4

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

GOVERNMENT
Storage

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

AND

S. 1400

TRUCKING COMPETITION AND SAFETY ACT OF 1979

OCTOBER 30, NOVEMBER 1, AND DECEMBER 3, 1979

Serial No. 96-23

PART 4

Printed for the use of the
Committee on Commerce, Science, and Transportation

1041

KSU LIBRARIES
A11900 956110

DOCUMENTS
JUL 29 1980
FARRELL LIBRARY
KANSAS STATE UNIVERSITY

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

AND

S. 1400

TRUCKING COMPETITION AND SAFETY ACT OF 1979

OCTOBER 30, NOVEMBER 1, AND DECEMBER 3, 1979

Serial No. 96–23

PART 4

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
62-322 O WASHINGTON : 1979

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

HOWARD W. CANNON, Nevada, *Chairman*

WARREN G. MAGNUSON, Washington
RUSSELL B. LONG, Louisiana
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
ADLAI E. STEVENSON, Illinois
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
HOWELL HEFLIN, Alabama

BOB PACKWOOD, Oregon
BARRY GOLDWATER, Arizona
HARRISON H. SCHMITT, New Mexico
JOHN C. DANFORTH, Missouri
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
JOHN W. WARNER, Virginia

AUBREY L. SARVIS, *Director and Chief Counsel*
WILLIAM RIS, *Staff Counsel*
WILLIAM M. DIEFENDERFER, *Minority Staff Director*
MATTHEW V. SCOCOZZA, *Minority Staff Counsel*

CONTENTS

Page

Opening statement by the Chairman 1173

CHRONOLOGICAL LIST OF WITNESSES

OCTOBER 30, 1979

Alder, Lee, executive vice president, California Grain & Feed Association .. 1203
Prepared statement 1204
Burford, Louis W., president, Western Traffic Conference, Inc 1247
Fields, C. H., assistant director national affairs, American Farm Bureau Federation 1191
Fleisher, Robert, vice president, Traffic Transcon Lines 1210
Gravelle, Richard D., California Public Utility Commission 1184
Prepared statement 1189
Hagedorn, John J., vice president, finance, Pacific Intermountain Express Co 1214
Prepared statement 1218
Imming, Bernard J., president, United Fresh Fruit & Vegetable Association 1194
Jaquay, Stuart F., president, Country Wide Truck Service, Inc 1251
MacFarlane, attorney general, State of Colorado 1174
Prepared statement 1179
Mack, Chuck, secretary-treasurer, International Brotherhood of Teamsters, Local 70 1228
Mitchell, Ray V., vice president, director of traffic, System 99 1224
Pearson, Z. L., Jr., executive director, Rocky Mountain Motor Tariff Bureau, Inc 1237
Prepared statement 1240
Rudy, Kenneth D., Columbine Carriers, Inc 1254
Shepherd, David, president, Alta Freight Systems 1261
Zimmer, Richard Jon, director of group traffic, Orion Industries, Inc 1256
Prepared statement 1259
Zwang, Darrell, director, California Cattlemen's Association 1198

NOVEMBER 1, 1979

Opening statement by the Chairman 1263
Ansotegui, Raymond, Builders Supply Co 1287
Aron, Mark G., Deputy General Counsel, Department of Transportation; accompanied by Karen Borlaug 1264
Prepared statement 1268
Beach, Richard, Kennametals, Inc.; accompanied by Kay Douglas 1291
Dini, Joe; accompanied by Frank McGowan, city manager, city of Yerington 1289
Fundis, Pete 1283
Gallagher, Tom, Nevada Farm Bureau 1285
Getto, Virgil 1316
Horn, William E., Silverpeak New Foote Mineral Co., Silverpeak, Nev 1303
Inwood, David, vice president of traffic, Wells Fargo, Reno, Nev 1294
Kellerstrass, Jack, terminal manager, IML Freight 1318
Kent, Hammy, Nevada Cattleman's Association 1315
Larwood, Frank, executive secretary, Greater Portland Shippers Conference 1273
Lund, W. P., assistant vice president and traffic manager, Sweet Candy Co 1300

Page

Noble, Lawrence, export traffic and sales manager, DFC Ceramics---- 1302
Robinson, Allan, executive vice president, System 99---- 1309
Sams, Chester, Garrett Freight Lines---- 1305
Stewart, David, director, commerce and legal affairs, Byrne Tucking, Inc ---- 1312
Tedford, Jack---- 1280
Varozza, Wayne, Delta Lines, Thunderbird Freight Lines, and California Motor Express---- 1307
Wallace, M. K---- 1298
Wells, Howard, Sr., chairman of the board, Wells Fargo---- 1296
White, Jerry, traffic counsel, Inland Freight Association---- 1273

DECEMBER, 3, 1979

Opening statement by the Chairman---- 1321
Bender, Frank, president, Bender Warehouse Co.; Larry Gerberi, western distribution manager, Salomon North America; Donald Visger, western operations manager, Pacific Western Systems; John Prine, supervisor of transportation, Toto Purchasing and Supply; Roy E. Olson, vice president, America Paper Institute; D. S. Adams, director of support services, Champion International; Ted Hermann, president, Pacific Freeport Group; Albert L. Leniz, secretary-treasurer, Teamster's Local No. 533; and Glade Hall---- 1409
Prepared statement of Mr. Bender---- 1412
Attachment ---- 1413
Questions of Senator Cannon and the answers thereto---- 1416
Prepared statement of Mr. Olson---- 1420
Questions of Senator Kennedy and the answers thereto---- 1423
Prepared statement of Mr. Visger---- 1425
Prepared statement of Mr. Gerberi---- 1427
Questions of Senator Cannon and the answers thereto---- 1429
Prepared statement of Mr. Hermann---- 1434
Questions of Senator Cannon and the answers thereto---- 1436
Questions of Senator Cannon to Mr. Prine and the answers thereto--- 1438
Prepared statement of Mr. Leniz---- 1440
Crew, Eugene, attorney, Broad, Khourie & Schulz; Bryce, Rea, Jr., counsel, Motor Common Carrier Associations; and William Q. Keenan, attorney, Arsham & Kennan---- 1360
Prepared statement of Mr. Crew---- 1363
Questions of Senator Kennedy and the answers thereto---- 1366
Prepared statement of Mr. Rea---- 1372
Prepared statement of Mr. Keenan---- 1381
Questions of Senator Kennedy and the answers thereto---- 1401
Kennedy, Hon. Edward M., U.S. Senator from Massachusetts---- 1322
O'Neal Hon. A. Daniel, Chairman, Interstate Commerce Commission---- 1323
Prepared statement---- 1325
Attachment ---- 1332
Question of Senator Kennedy and the answer thereto---- 1335
Shenefield, John H., Assistant Attorney General, Antitrust Division, Department of Justice---- 1336
Prepared statement---- 1338
Attachment ---- 1345
Questions of Senator Kennedy and the answers thereto---- 1349

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Bozich, A. T., president, Clark Tank Lines, Letter of December 10, 1979-- 1445
Clark, Noel A., statement---- 1442
Enlund, E. Stanley, president, Chicago Association of Commerce and Industry, letter of November 13, 1979---- 1443

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

Agricultural Transportation

TUESDAY, OCTOBER 30, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
San Francisco, Calif.

The committee met at 10:30 a.m., in the Ceremonial Courtroom, Federal Building, 450 Golden Gate Avenue, Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearings will come to order.

First: I want to remind our guests here today, the audience, that there is no smoking, drinking, or eating permitted in the courtroom here.

This morning marks the first field hearing for the Senate Commerce Committee on the issue of Federal regulation of the trucking industry.

Since the beginning of the year we've held a number of hearings in Washington on the subject. Today's hearing will focus primarily upon a subject that is of great importance to California and other Western States, agricultural transportation.

Some people have pointed to transportation of fresh fruits and vegetables, which are exempt from Federal regulation, as proof that regulation is not needed in the rest of the trucking industry.

Others have argued that chaotic and unstable conditions exist in agricultural transportation that would crop up in the rest of the industry if it was unregulated.

Today, we will explore these arguments.

Of course, for many witnesses here today this will be their only opportunity to address the committee on this subject. Thus, some witnesses will discuss issues other than agricultural transportation.

In any case, we have a very crowded schedule today so I urge the witnesses to keep their statements as short as possible with a 10-minute maximum limit. And we will have some questions.

The entire statements will be made a part of the record in full for those who desire to summarize from them.

Our first witness today is the Honorable J. D. MacFarlane, Attorney General, State of Colorado.

General MacFarlane, we're happy to have you here before the committee and you may proceed, sir.

STATEMENT OF J. D. MacFARLANE, ATTORNEY GENERAL, STATE OF COLORADO

Mr. MacFarlane. Chairman Cannon, thank you very much for the opportunity to meet with you this morning and participate in this rexamination of the effects of regulation on the trucking industry.

For the record, I might note that we have provided your committee staff with copies of longer testimony than I am going to give this morning because of the time constraints, my remarks will be, in effect, a summary of that written testimony.

The Chairman. All right, sir, your longer statement will be made a part of the record in full.

Mr. MacFarlane. Thank you, sir.

Trucking plays an extremely important part in our Nation's economy, moving more than three out of every four tons of the country's freight. Consequently, there are few industries whose practices impact more directly on the average consumer since a significant portion of the purchase price of every consumer item is its transportation cost.

The point I wish to make today is a very simple one. We would all be a lot better off if there were more competition and less regulation in the trucking industry. I believe the truth of this proposition can be readily demonstrated by reference to the impact of tucking regulation in my home State of Colorado. My remarks in this regard are based on a recent study, which I have with me and will make available to the committee, entitled "The Social Cost of Motor Common Carrier Regulation in Colorado."

In Colorado, the social cost of trucking regulation is conservatively estimated at $6.8 million per year. This social cost takes the form of freight rates which are higher than they would be absent regulation. One reason for this is that regulatory restrictions, such as those necessitating empty backhauls and the use of circuitous routes, force carriers to operate less efficiently than they otherwise could. Perhaps the major reason, however, is that regulated carriers, being exempt from the antitrust laws, are able to fix uniform shipping rates, an action which would be a crime in most other industries. This legalized price fixing inexorably leads to higher rates because there is no competitive stimulus operating to keep prices low.

Various statistical studies bear out the fact that regulation involves a social cost. One interstate study quantitatively compared the performance of 25 nonregulated carriers of agricultural products with the performance of a number of regulated carriers in the same region. The average revenue per ton-mile for the nonregulated carriers was 53 percent lower than for common carriers of general freight and 41 percent lower than for common carriers of special freight. The cost per ton-mile incurred by the nonregulated carriers was also less, by 60 percent and 46 percent, respectively. Thus, although nonregulated carriers charged shippers less, they were more profitable than regulated carriers.

Similarly, during the 5 years after deregulation of truck transportation of fresh, dressed, and frozen poultry, freight rates fell by 33 percent and 36 percent, respectively, and then stabilized there.

Moreover, the quality of service improved as delivery and pickup schedules were brought more into conformity with customers' needs.

Additionally, within 1 year after motor carriers of frozen food were deregulated, rates averaged 19 percent lower than in the year just prior to deregulation.

A sophisticated and broadbased study was also made of the experience in Canada, where motor carriers are regulated in certain Provinces and unregulated in others. The study indicates that revenue per ton-mile averaged 10 to 12 percent higher for regulated carriers than for unregulated carriers. That study, like the agricultural products study, indicates that carriers' profits were slightly higher in nonregulated Provinces, despite the lower freight rates. The study also indicates that had regulation not been applied to U.S. common carriers, their revenues per ton-mile would have been reduced by 6.73 percent.

In light of the foregoing studies, the most conservative percentage estimate of the social cost of trucking regulation in Colorado and, for that matter, in the United States, is that shipping rates would be 6.37 percent lower, absent regulation. Based on 1976 Colorado intrastate revenue for the trucking industry in excess of $101 million, the social cost of trucking regulation in Colorado is $6.8 million annually. In other words, the bill for freight shipped by truck within Colorado in 1976, would have been nearly $7 million less if the carriers had been deregulated.

The irrationality of the present regulated system is reflected by the fact that rates frequently bear no functional relationship to the actual cost of the services provided. A recent study of freight rates in nine States in the Rocky Mountain region found that rates for a given commodity class are often higher for shorter distances than they are for longer distances in the same direction, even though they follow the same route. This Western States study concludes that regulated rates are frequently irrational and inconsistent because they are determined by regulation rather than competition.

The following examples illustrate this point. The study examined rates for a given commodity from Dallas to various points in Colorado. In the southeastern corner of Colorado, a group of towns were charged $8.22 per hundred pounds for shipments from Dallas, whereas another group of towns just north of the first group on the same highway and farther from Dallas were charged $7.53 per hundred pounds.

In the southwestern portion of Colorado, a group of towns in the vicinity of Alamosa was charged $11.75 for shipments from Dallas. Beyond this group and farther from Dallas, again, are two groups of towns charged lower rates. One group, located around Salida, was charged $10.98. The other group, located around Grand Junction, was charged $11.50. There exist no logical reasons—such as mountains or bad roads—for the foregoing differentiations. They are due solely to the regulatory scheme.

The Western States study also found that rates for services between an interchange point and the final destination are frequently different for trips with different origins, regardless of the fact that the portion of the trip from the interchange point to the final destination is exactly the same. For example, the cost of shipping goods from

Trinidad, Colo., to Allenmine, Colo., a small community west of Trinidad, was more than 20 percent higher if the trip originally started in Dallas than if it originally started in Los Angeles. The physical journey from Trinidad to Allenmine is, of course, the same in both instances.

Thus, the adverse economic consequences of regulation are very real. Nevertheless, the trucking industry itself favors the current regulatory scheme and seeks to justify its continuation by arguing that deregulation would lead to a deterioration in service to smaller communities in rural areas. It is asserted that rural service exists only because carriers are obligated to serve such areas and such service must be cost-subsidized by excessive profits from other routes.

In fact, however, the so-called common carrier obligation to serve is not an effective guarantee of rural service. A recent Wyoming Public Service Commission study of 11 of the largest towns in that mostly rural State showed that only half of the carriers authorized to provide service in those towns actually do so. Moreover, the larger carriers appeared to be serving in truckload lots only.

Similarly, the Western States study found the number of available carriers to be extremely limited in the largely rural nine-State Rocky Mountain region. It showed that about one-fourth of the towns were served by no more than one carrier and more than half, 56 percent, are served by no more than two. When the generally prevailing route and commodity restrictions are also taken into account, it is apparent that the choice of carriers to ship a particular load to a particular destination in these rural areas is very limited indeed.

Likewise, the supposed cross-subsidization of rural service with high profits received on other routes simply does not occur. Common carriers are not required to provide rural service at all. Their only incentive for doing so is the profit motive. Consequently they make every effort to avoid serving unprofitable routes. Not surprisingly, a study of carriers who provide predominantly rural service indicates that such service can be operated quite profitably. In a similar vein, a survey by the American Trucking Association of its members determined that thousands of firms wish to provide regular service to small towns.

It is clear, then, that neither the so-called obligation to serve nor the supposed cross-subsidization of rural service insures adequate trucking service for smaller communities. Neither, then, justifies continued regulation of operating certificates, routes or rates. In fact, if anything, regulation has hampered rural service by preventing technically proficient smaller carriers from obtaining operating certificates and route authority needed to operate, thereby depriving rural areas of their services.

In light of the foregoing, the arguments made by trucking interests opposing deregulation are insupportable. Additionally, to get some idea of the benefits which would result from deregulation of the trucking industry, one need only examine the results of the very first year of airline deregulation, which include:

First: Vastly increased levels of competition among the airlines.

Second: $2.5 billion in savings for consumers due to air fare reductions.

Third: Widespread initiation of service on new routes.

Moreover, while in certain instances large carriers have ceased service to some small communities, smaller airlines have eagerly filled the gap—resulting in better service in the form of more frequent and therefore more convenient flights. These results mirror the experience of other nonregulated or deregulated industries and buttress the conclusion that the same developments would ensue from the deregulation of trucking.

In sum, I believe that the arguments against deregulation do not withstand scrutiny. It is understandable why, after four decades of extensive Government regulation, the motor carrier industry views deregulation with considerable trepidation. Motor carriers have been insulated in a cocoon of route and rate regulation from the rigors of real competition for so long that they are now fearful of having to compete.

Nevertheless, I respectfully suggest it is time for the trucking industry to shed its security blanket and I support the efforts of this committee to that end. I return to the point whence I began: We would all be a lot better off if there were more competition and less regulation in the trucking industry.

Thank you, sir.

The CHAIRMAN. Thank you very much, General MacFarlane.

Could you provide us with a copy of the study that you referred to in your statement?

Mr. MACFARLANE. I certainly can, sir.

The CHAIRMAN. Fine, thank you.

Is the State of Colorado doing anything to reduce regulation of intrastate trucking transportation?

Mr. MACFARLANE. My antitrust division and my office, Senator, have been very active in pushing the intrastate deregulation of trucking.

The matter is under study at the current time by the Public Utilities Commission, the regulatory agency of Colorado. To date, we have not been successful in getting the legislature to buy the program. There have been some steps taken along that line but they are very tentative steps.

Quite frankly, in this area, I assume that we will have to see some movement at the congressional level before we're able thoroughly to convince the local authorities of the benefits.

The CHAIRMAN. Is it your view that complete deregulation is desirable or do you think that certain aspects ought to be retained, such as fitness regulation, for example?

Mr. MCFARLANE. In particular, I think—in order to answer the doubts of those who are concerned about service to the rural communities—that some aspects of regulation should be retained. I specifically refer here to the CAB model for the airline industry, wherein I believe the question of service to rural communities is ultimately answered.

That is answered in the following way:

First of all, any certificated carrier who proposed to reduce service or terminate service entirely or reduce it below a certain level would have to give a minimum notice to the ICC, the State regulatory agency and the community affected and allow them time to come in and protest.

Second, in the event that carrier wished to pull out entirely or reduce service below a certain predetermined minimum level, the ICC would have the option to call for proposals by carriers to serve that route with a subsidy, either a direct subsidy or at least a cost reimbursement.

If that didn't work, then the ICC could require the existing carrier to continue service on a minimum basis with a cost subsidy.

It seems to me that answers what I personally think is not a very real, but nevertheless is certainly a perceptual, problem. In the event such a problem were to arise in deregulation, that would provide an answer to it. And, of course, that does not presuppose a total lack of regulation; It presupposes some.

There is also an area relative to consumer complaints, damage problems, et cetera, that you may want to retain some control over from the standpoint of a regulatory agency being able to insure problem resolution and adherence to certain minimum standards.

THE CHAIRMAN. Of course, in the airline deregulation bill, we did provide, as you say, for a subsidy where it was necessary in order to keep service in a smaller community. That kind of an approach is not proposed in any of the trucking deregulations bills that have been submitted for consideration.

I don't know how far that would go. I think the public probably would look at that a little differently than subsidizing the airline business where there has been a long history of providing subsidies to get service to small communities and to communities that couldn't otherwise be served profitably.

We started out by first subsidizing the trunk airlines. And then we removed the subsidy from the trunk and subsidized the local service.

And now, under the deregulation bill, we have the provision there for the Board to determine what is essential service and then provide that essential service either by keeping the last carrier in or letting a new carrier come in on a subsidy basis.

I think that type of a situation might create some very real problems. And, incidentally, that particular point is the one that we're getting more complaints about than any other in the airline deregulation experiment as well. Principally because many communities are not getting the level of service that they feel that they are entitled to.

In other words, they feel that the Board should say, "You're entitled to more service as essential service," and in some instances, one right close by here, for example, over in Bakersfield, Calif., a trunk and local service carrier pulled out about the same time. And while I think eventually the commuters will probably fill that void, it's a very sore spot at the present time for people in that Bakersfield area.

Mr. MACFARLANE. Well, I have a little bit of personal experience with that kind of thing since the community I come from in Colorado—Pueblo, about 100 miles south of Denver—has always been very upset about the amount of air service it got. But, interestingly enough, it was originally served by Varney Airlines, the predecessor of Continental, which grew into Continental. Continental ultimately pulled out once it got to be a big trunk carrier and was succeeded by Frontier. In effect, Frontier is going the same way Continental did and Pueblo is

now being served to a large extent by Rocky Mountain Airways. However, I haven't seen any real reduction in service; it's been just the opposite. Nevertheless, sometimes people think they need access to a trunk carrier even though they do actually have access to an airline.

The real problem there has been the cost—for instance, of the transport between Pueblo and Denver—and not the frequency of service. The airlines have practically priced themselves out of business because there is not that much traffic. And, indeed, it's difficult to compete with the interstate highways on that route.

But in that regard, it does seem to me that Congress and your committee might well look at the airline model simply, if for no other reason, to answer the fear that some communities will cease to be served by adequate trucking service. I, myself, don't fear that because I don't think the economics in the trucking industry are the same at all as they are in the airlines.

The CHAIRMAN. In your legal view, do you believe that the antitrust immunity granted by the ICC to the trucking industry extends to intrastate activities under current law?

Mr. MACFARLANE. Well, we haven't ever tested it and in our position we would never admit that it does unless there were a court that so held. At this point, we haven't got that decision. Our position is basically that it probably does not at the current time but, on the other hand, we're also realistic that it might cover it.

The CHAIRMAN. Thank you, very much. We appreciate your being here and giving us the benefit of your views.

Mr. MACFARLANE. Thank you, Senator.

[The statement follows:]

STATEMENT OF J. D. MACFARLANE, COLORADO ATTORNEY GENERAL

Chairman Cannon and members of the committee. I very much appreciate the opportunity you have afforded me to participate in what I think is a very necessary examination of the effects of the present federal regulatory system on the nation's trucking industry.

As you know, the trucking industry is an extremely important factor in our nation's economy. It is a multibillion dollar industry which moves more than three out of every four tons of the country's freight. Consequently, there are few industries whose practices impact more directly on the average consumer. Whether one visits the supermarket, the department store or the drug store, a significant portion of the purchase price of each and every item is its transportation cost. I am therefore extremely pleased that this subcommittee has undertaken these hearings to determine the effects of present governmental regulation on the cost and quality of motor carrier services.

The point I wish to make to you today is a very simple one: we would all be a lot better off if there were more competition and less regulation in the trucking industry. I believe that the truth of the proposition can be readily demonstrated by reference to the impact of trucking regulation here in Colorado. My remarks in this regard are based on a recent but previously unpublished study entitled "The Social Cost of Motor Common Carrier Regulation in Colorado."[1]

In Colorado, regulation of the trucking industry came about gradually; there was no clear line of demarcation between a period of non-regulation and one of regulation. As in other states, there were no widespread complaints about unjust charges or undue discrimination in rates and services.[2] Thus, there was never a public clamor that regulation was needed to protect customers. Later, during the Depression, there occurred an intensification of motor carrier regulation in Colorado as a governmental attempt to halt or reverse the general decline in

[1] Study by Wesley J. Yordon, Steven E. Crane and Richard L. Wohbekind submitted to the Colorado attorney general on Aug. 1, 1979 (hereinafter "*Social Cost*").

[2] Donald V. Harper, *Economic Regulation of the Motor Trucking Industry by the States* (Urbana, Univ. of Illinois Press, 1959), at 26, cited in *Social Cost* at 5, n.13.

prices and wage rates. As you know, federal motor carrier regulation was also adopted during the Depression for the same purpose.

In non-Depression times, however, there has been a negative, rather than a positive, social result from regulation of the trucking industry. In point of fact, there has been a social cost. In Colorado, the social cost or negative benefit of trucking regulation is conservatively estimated at $6.8 million per year.

This social cost of regulation takes the form of freight rates, which are higher than they would be absent regulation. As a result, monopoly-type profits occur in the trucking industry. One clear indicator that industry profits are above the competitive level is that existing certificates of public convenience and necessity (i.e., operating rights) have substantial market value in and of themselves. Yet, these operating rights are valuable only to the extent they provide an expectation of profits above and beyond the rate which would normally prevail if ordinary competition existed. Such profits stem from the holder's ability to charge higher rates and provide less service than it otherwise could in a competitive market. Thus, the fact that operating rights are worth fifteen to twenty percent of a firm's gross annual revenue indicates that monopoly profits exist in the industry.[3]

Yet, it has been clear for years that the transportation industry evidences none of the economic characteristics to which we normally look to justify regulation. Costs are largely variable in the short run and, absent regulatory restrictions, entry is relatively easy. Low fixed costs in the short run means that profitability is not a function of firm size. In other words, a small carrier with a few trucks can enjoy a degree of profit comparable to a large firm. Consequently, motor carriers, unlike, for example, electric power utilities, cannot be considered a "natural monopoly" since they have virtually no scale economies. In fact, rather than being a natural monopoly, the trucking industry possesses those economic features which characterize a highly competitive industry. Thus, the basic economic criteria indicate that the industry would function effectively in an unregulated market environment.

Nevertheless, the present regulatory scheme exempts regulated carriers from the antitrust laws, thus enabling them to agree on and fix uniform rates to be charged shippers. What would be a crime in most industries is not only condoned but legislatively encouraged in the transportation industry. This causes transportation rates to be higher than they would otherwise be. Moreover, increased labor costs are frequently cited as the reason for rate increases, though close examination of the increases indicates they are generally not justified on that basis. Additionally, changes in labor or other costs rarely, if ever, necessitate the uniform, across-the-board rate increases which occur under the present regulatory scheme.

In brief, transportation rates are higher than they should be because competition has been suppressed. The legalized price fixing in the trucking industry inexorably leads to higher rates since there is no competitive stimulus operating to keep prices low. Additionally, regulatory restrictions force carriers to operate less efficiently than they otherwise could. The most obvious, but by no means only, examples of this are regulations which *require* carriers to use circuitous routes and to backhaul empty.

As one noted economist has emphasized:

"Reliance on competition keeps costs to the consuming public at the minimum necessary to attract the services for which it is willing to pay. There is no danger of rates rising above that level if competition is not restricted by public action. . . . In fact, obstacles placed in the way of such competitive pricing will redound only to the benefit of the protected carriers. It will be to the disadvantage of the consuming public and the carriers that are precluded from competing.[4]

Various statistical studies bear this out. One interstate study quantitatively compared the performance of twenty-five non-regulated carriers of agricultural products with the performance of a number of regulated carriers in the same

---

[3] W. Bruce Allen and Edward B. Hymson, 'The Costs and Benefits of Surface Transport Regulation: Another View," in MacAvoy & Snow (eds.), *Regulation of Entry and Pricing in Truck Transportation* (Washington, American Enterprise Institute for Public Policy Research, 1977), at 99, cited in *Social Cost* at 8, n.14.

[4] Dudley F. Pegrum, *Public Regulation of Business* (Homewood, Ill., Richard D. Irwin, Inc., 1959), at 531–32, cited in *Social Cost* at 9, n. 15.

region. The average revenue per ton-mile for the non-regulated carriers was 53 percent lower than for common carriers of general freight and 41 percent lower than for common carriers of special freight. The cost per ton-mile incurred by the non-regulated carriers was also less, by 60 percent and 46 percent respectively.[5] Thus, although non-regulated carriers charged shippers less, they were more profitable than regulated carriers! Similarly, during the five years after de-regulation of truck transportation of fresh dressed and frozen poultry, freight rates fell by 33 percent and 36 percent respectively, then stabilized there. Moreover, the quality of service improved as delivery and pickup schedules were brought into conformity with customers' needs. Additionally, within a year after motor carriage of frozen food was deregulated, rates averaged 19 percent lower than in the year just prior to deregulation.[6]

Another analysis of unregulated trucking is contained in a report of the Australian experience after interstate trucking there was freed from economic regulation. Although the initial impact was unsettling, the "instability" and "destructive" competition forecast by established trucking interests as being the inevitable outcome of de-regulation were not apparent three years later.[7]

A sophisticated and broad-based study was also made of the experience in Canada, where motor carriers are regulated in certain provinces and unregulated in others. The study indicated that for intra-provincial, inter-provincial and international service, revenue per ton-mile averaged 10–12 percent higher for regulated carriers than for unregulated carriers.[8] That study, like the agricultural products study, indicates that carriers' profits were slightly higher in the non-regulated provinces, despite the lower freight rates.[9] Most interestingly, the study also indicates that had regulation not been applied to U.S. common carriers, their revenues per ton-mile would have been reduced by 6.73 percent.[10]

Based on the foregoing studies, the most conservative percentage estimate of the social cost of trucking regulation in Colorado (and, for that matter, in the United States) is that shipping rates would be 6.73 percent lower absent regulation. Based on 1976 Colorado intra-state revenue for the trucking industry in excess of $101 million, the social cost of trucking regulation in Colorado is $6.8 million annually. In other words, the bill for freight shipped by truck within Colorado in 1976 would have been nearly $7 million less if the carriers had been deregulated!

The irrationality of the present system is reflected by the fact that rates frequently bear no rational relationship to the actual costs of the service provided. A recent study of freight rates in nine states in the Rocky Mountain region found that rates for a given commodity class are often higher for shorter distances than they are for longer distances in the same direction, even though they follow the same route.[11]

The following examples illustrate this point. The study examined rates for a given commodity from Dallas to various points in Colorado. In the southeastern corner of Colorado a group of towns were charged $8.22 per hundred pounds for shipments from Dallas, whereas another group of towns just north of the first group on the same highway and farther from Dallas was charged $7.53 per hundred pounds. In the southwestern portion of Colorado a group of towns in the vicinity of Alamosa was charged $11.75 for shipments from Dallas. Beyond this group and farther from Dallas are two groups of towns charged lower rates. One group, located around Salida, was charged $10.98; the other group, located around Grand Junction, was charged $11.50(See attachment A). There exist no logical reasons—such as mountains or bad roads—for the foregoing differentiations. They are due solely to the regulatory scheme.

---

[5] Richard N. Farmer, "The case for Unregulated Truck Transportation," 46 *Journal of Farm Economics* 398 (1964), cited in *Social Cost* at 9–10, n.16.

[6] George Hilton, cited in William A. Jordon, "Producer Protection, Prior Market Structure and the Effects of Government Regulation," 15 *Journal of Law and Economics* 166 (1972), cited in *Social Cost* at 10, n. 17.

[7] Stewart Joy, "Unregulated Road Haulage: The Australian Experience," 16 *Oxford Economic Papers* 277 (1964), cited in *Social Cost* at 11, n.22–23.

[8] James Sloss, "Regulation of Motor Freight Transportation: A Quantitative Evaluation of Policy," 1 *Bell Journal of Economics and Management Science* 327 (1970), cited in *Social Cost* at 10, n.18.

[9] *Id.* at 352, cited in *Social Cost* at 10, n.20.

[10] *Id.* at 351, cited in *Social Cost* at 10, n.19.

[11] Paul T. McElhiney, *Motor Common Carrier Freight Rate Study for Nine Western States*, final report prepared for Federation of Rocky Mountain States, Inc., in cooperation with U.S. Department of Transportation, May 1975 (hereinafter *"Western States"* study).

The Western States study also found that rates for service between an interchange point and the final destination are frequently different for trips with different origins, regardless of the fact that the portion of the trip from the interchange point to the final destination is the same. For example, the cost of shipping goods from Trinidad, Colorado, to Allenmine, Colorado was more than 20 percent higher if the trip originally started in Dallas than if it originally started in Los Angeles. The physical journey from Trinidad to Allenmine is, of course, the same in both instances.

The Western States study contains page after page of similar examples and concludes that regulated rates are frequently irrational and inconsistent because they are determined by regulation, not by competition. In a competitive market, on the other hand, rates would be cost-based and the marketplace would force them into a more rational pattern, thereby eliminating many of the inequities that result from the present artificial rate structure.

Thus, the adverse economic consequences of the current regulatory scheme are very real indeed and require substantial justification before being continued. The question, of course, is whether the arguments traditionally presented by the opponents of deregulation outweigh these very significant costs of continuing the present system.

Perhaps the most serious argument raised by opponents of transportation deregulation is the suggestion that it will lead to a deterioration in service to smaller communities in rural areas. It is suggested that the current regulatory policy forces motor carriers to provide service to all towns covered by their operating authority. Without this requirement, it is alleged, smaller communities would not receive adequate service. A related argument is that rural service is inherently unprofitable and that motor carriers can only afford to provide it if they are able to earn excessive profits elsewhere which they can use to subsidize service to rural areas.

However, far from providing a justification for the current restrictive regulatory policy, the present system has impaired rural trucking service. Rural towns would be much better served by a governing program placing greater reliance on competitive market forces and eliminating unnecessary and wasteful operating restrictions.

For one thing, the so-called common carrier "obligation to serve" is not an effective guarantee of rural service. The Wyoming Public Service Commission recently conducted a study to determine the extent to which the common carrier obligation was being honored in that largely rural state. It selected eleven towns to study: Casper, Cheyenne, Cody, Gillette, Jackson, Laramie, Newcastle, Rawlins, Riverton, Rock Springs, and Sheridan. The points surveyed are among the largest towns in the state and thus, if anything, overstate the extent to which service is actually provided in smaller towns. Nevertheless, the study showed that only half of the carriers authorized to provide service in those towns actually do so. Moreover, the larger carriers appeared to be serving in truckload lots only.

The Western States study similarly surveyed the number of of authorized carriers in all cities and towns in the largely rural nine-state Rocky Mountain region, and found the number of available carriers to be extremely limited there. The study showed that about one-fourth of the towns are served by no more than one carrier and more than half (56%) are served by no more than two.[12] When the generally prevailing route and commodity restrictions are taken into account, it is apparent that the choice of carriers to ship a particular load to a particular destination is very limited in these rural areas.

In light of the foregoing, it is clear that the "obligation to serve" supposedly imposed by certification does not ensure adequate trucking service for smaller communities. Thus, it provides no justification for the continuation of restrictive entry or rate regulation. Moreover, any potential problem regarding diminution of service to small communities can be dealt with in the trucking industry as it has been dealt with in the context of air line deregulation. First, a certificated motor carrier can be precluded from terminating or suspending all transportation which it provides to a point, and can also be precluded from reducing such transportation below an "essential" level, without first giving 90 days notice to the Interstate Commerce Commission, the community affected and the appropriate state agency. Second, the I.C.C. can be empowered to select an appli-

[12] Western States study, at 44.

cant to provide essential transportation for compensation for as long as such compensation is deemed to be necessary. Third, if there is no such applicant, the I.C.C. can be empowered to require the existing certificated motor carrier to continue providing such essential service while being compensated for any losses incurred. Such an approach would ensure the continuation of essential trucking service to all small rural communities.

As with the supposed "obligation to serve," the argument that motor carrier competition must be restricted to allow carriers to earn high profits on some routes so that they can subsidize rural service is also contradicted by the facts. For example, a study of carriers who provide predominantly rural service indicates that such service can be operated quite profitably.[13] In a similar vein, a survey by the American Trucking Association of its members determined that thousands of firms wished to provide regular service to small towns.[14] Thus, there is ample evidence to suggest that rural service is self-supporting and there is no need for any cross-subsidization.

In any case, there is little reason to believe that common carriers use profits from their more profitable routes to subsidize their less profitable ones. They are neither required to provide rural service nor do they have a private incentive to do so. Rather, they make every effort to avoid subsidizing rural services, and excess profits are translated into even higher values for operating certificates. In short, the facts suggest that the cross-subsidization argument is specious.

It is also frequently argued that if deregulation occurs, the market for motor carrier services will become chaotic. Motor carriers allegedly will behave irrationally, entering and leaving markets overnight and concentrating primarily on a few major markets. Prices and service levels supposedly will fluctuate drastically and shippers will not know from day to day which carriers will be available at what rates.

Why the motor carrier industry should be viewed as being so different from other industries that function satisfactorily without regulation is not clear. When, in the mid-1950s, the carriage of several previously regulated agricultural products was made exempt from regulation, rates, following an initial and substantial drop, stabilized, except for seasonal influences. At the same time, service improved dramatically, becoming far more flexible and responsive to shippers' needs.[15]

Some opponents also contend that deregulation will lead to predatory price cutting as a few larger firms try to monopolize the market. Since predatory price-fixing entails certain short-term losses, a rational firm will engage in such price cutting only when it is reasonably assured of obtaining monopoly profits at a later time. For this to occur, two conditions must be present. First, such firm must have superior resources to give it the necessary staying power to drive its competitors out of the market. Second, there must be sufficiently high entry barriers to enable it to obtain monopoly profits. Since there are no effective entry barriers in the motor carrier industry other than regulatory barriers, there is no reason to anticipate such predatory conduct.

Actual experience in unregulated areas confirms the absence of predatory behavior in an unregulated environment. There are thousands of exempt carriers. Their rates tend to be stable except for seasonal influences, and are high enough to attract people into the industry and keep them there. Bankruptcy rates are low and the business turnover among exempt trucking firms is comparable to similar industries. Studies of exempt livestock truckers, for example, show that the average firm has been in business for more than eighteen years.[16] Finally, there exist both federal and state laws that prohibit predatory pricing practices and provide enforcement machinery.

In light of the foregoing, the obligation to serve, cross-subsidization and predatory practices arguments made by opponents of trucking deregulation are

---

[13] R. L. Banks and Associates, Inc., *Economic Analysis and Regulatory Implications of Motor Carrier Service to Predominantly Small Communities*, draft report submitted to the U.S. Department of Transportation pursuant to DOT–OS–50096 (1976).

[14] American Trucking Association, *Small Town Blues* (Washington, D.C., 1976).

[15] James R. Snitzler and Robert J. Byrne, *Interstate Trucking of Fresh and Frozen Poultry under the Agricultural Exemption*, U.S. Department of Agriculture, Marketing Research Division, MRR-224, March 1958; idem, *Interstate Trucking of Frozen Fruits and Vegetables under the Agricultural Exemption*, U.S. Department of Agriculture, Marketing Research Division, MRR–316, March 1959; and J. C. Winter and Ivan W. Ulrey, *Supplement to Interstate Trucking of Frozen Fruits and Vegetables under the Agricultureal Exemption*, U.S. Department of Agriculture, Marketing Reseach Division, Supplement to MRR–316, July,1961.

[16] Hoffman, Boles and Hutchinson, *Livestock Trucking Services.*

insupportable. In fact, based on developments in the airline industry since federal deregulation was initiated there less than one year ago, it is apparent that numerous public benefits would result from deregulation. Interestingly, opponents of trucking deregulation are now predicting almost exactly the same dire consequences from deregulation as opponents of airline deregulation previously predicted. In point of fact, however, airline deregulation has resulted in lower fares, improved service and greatly increased levels of competition, all to the benefit of consumers. Indeed, in this, the first year of airline deregulation, consumers achieved $2.5 billion in savings due to air fare reductions. Likewise, with regulatory restrictions basically removed, rather than abandoning service on existing routes, numerous air carriers have initiated service on new routes. These results simply mirror the experiences of other non-regulated or deregulated industries, and buttress the conclusion that the same developments would ensue from deregulation of the trucking industry.

In sum, I believe that the arguments against deregulation do not withstand scrutiny. Still, it is understandable why, after four decades of extensive governmental regulation, the motor carrier industry views deregulation with considerable trepidation: motor carriers have been insulated, in a cocoon of route and rate regulation, from the rigors of real competition for so long that they are now fearful of having to compete.

Nevertheless, I respectfully suggest that it is time for the trucking industry to shed its security blanket, and I support the efforts of this committee to that end. I return, then, whence I began: we would all be a lot better off if there were more competition and less regulation in the transportation industry.

Thank you.

The CHAIRMAN. The next witness will be Mr. Richard D. Gravelle, commissioner, California Public Utility Commission.

Mr. Commisioner, we're happy to have you here, sir, and you may proceed.

STATEMENT OF RICHARD D. GRAVELLE, CALIFORNIA PUBLIC UTILITY COMMISSION

Mr. GRAVELLE. Thank you, Senator Cannon, again, it's a pleasure to be here before this committee and have the opportunity to address what I think is one of the critical issues of our times, at least.

I'd like to initially say that I have a prepared statement. I won't follow that precisely but I will talk about the same general subject matter.

The CHAIRMAN. It will be made a part of the record in full.

Mr. GRAVELLE. Thank you, sir.

I would like to probably echo the remarks of Mr. MacFarlane with the one exception of the subsidy issue on which I would disagree because I don't think it's necessary as far as the economics of trucking are concerned.

I would like also to say basically that my remarks will be delivered from a little bit different perspective than those of Mr. MacFarlane.

As background, I've been with the California Public Utility Commission for 20 years although I've only been a commissioner for slightly less than 3. Prior to that or part of the time on the staff of the commission, I was the general counsel.

But I have some background in regulation. And with that, I would say to you and, hopefully, to the balance of your committee that institutions and ideas each have their time.

Forty years ago in California we had a need for a change in the form of trucking regulation. And that was embodied in acts of the California Legislature which were subsequently carried out by the Cali-

fornia Railroad Commission, later to be known as the Public Utility Commission.

What was needed 40 years ago, I do not believe is needed today. The time has come, I think, in our society and the manner in which the trucking industry operates for a change in the form of trucking regulations to add more competition to the mix. And to provide that necessary American ingredient of competition and free enterprise into an industry that is basically competitive by its nature but which has had either a failure of price competition or a mix of failure of price competition as well as ability to enter the field.

California has, for the last 4½ years, been attempting to implement a significant change in the form of its regulation. We have done so with great difficulty. We have done so with some help from the legislature in the form of one bill which changed the structure of the trucking industry as it relates to the type of carrier that is involved here.

The rate aspect of deregulation, as well as the conversion, pursuant to the legislative action, has been delayed for one reason or another because of the reluctance of the industry to embark upon this new form of program which adds, as a basic ingredient, competition to the mix.

I think that we will be able to be successful. We have a cutoff date or a cutover date, I should say, of April 30, 1980, at the present time. We are still facing hurdles in the legislature because the industry is doing its best to delay or stop the implementation of the California program.

But I am encouraged by the remarks, for instance, of Mr. MacFarlane with respect to Colorado. The recognition that Arizona has taken steps to initiate some form of either deregulation or reregulation which adds competition again to the mix of transportation. Recognizing that Florida is another State that is moving in that direction. And recognizing, also, that a State such as New Jersey that never has had regulation, significantly, of the trucking industry and, yet, movement is successful there.

One of the issues that is obviously important and was touched upon by Mr. MacFarlane and touched upon by your questions, Senator Cannon, relates to small community service.

I would like to give you, or share with you, the benefit of our experience in California with respect to small community service. Because it is on that basis of that experience that I do not believe in a less regulated setting that small communities will suffer.

We have a large number of carriers in California, some varying estimates of numbers but in the thousands, 12,000 to 18,000 carriers.

With that number of carriers, the ability to get service to a small community has never been a problem for us in the regulated setting, granted. The common carriers that have the public utility obligation to serve the small communities and who will tell us now and who will tell you now that without the ability to be cost-subsidized in the larger markets, that they will be unable to provide that service, do so, I believe, not because of any socially responsible activity on their part. But do so as hardheaded businessmen because they make money in the process.

62-322 O - 80 - 2

We know we have carriers, as Mr. MacFarlane also mentioned, we know from our own experience that we have carriers that serve only rural communities. And they do so at a profit.

Now we have never had enforcement problems as far as common carriers are concerned to get them to serve rural communities.

We have had, when there have been applications for new authority to go into rural areas, we have had the existing carrier vehemently protest the addition of a new carrier into that market.

Where we have applications for new authority to serve rural communities, rural areas, particularly in the north coast area of California, and in the desert area east of Los Angeles, we have had vehement objection from the existing carrier to having new service added to those communities.

Now that can be focused on the basis that there is only enough for us. On the other hand, if the carrier is a hardheaded businessman, is providing service at a loss and somebody else wants to come and take that obligation away from him, the sensible, realistic, economic financial decision would be "Fine, you let him in, let us out." That has not been the case.

And that's an indication to me, based on our experience, that there is a profit to be made serving the rural communities.

The CHAIRMAN. Now this is with regulated intrastate transportation?

Mr. GRAVELLE. Yes, sir, that's correct. So it's on those bases that I say rural communities will get the service provided there is the ability, the flexibility and the ability of a number of carriers to go in there and provide what is necessary to the community one way or another, whether it's through private operations, through cooperative operations or through competitive less-regulated industry operations, the small community is going to get the service that it requires. And without the need of a subsidy in my estimation.

The reason, basically, that California, 4½ years ago, has embarked upon a course of implementing a change in its regulatory scheme to provide more competition, has been the recognition that the rates in California for intrastate movements were too high. Again echoing what Mr. MacFarlane had indicated but recognizing that instead of $101 million of revenue that is produced, as it's produced in Colorado, the number we're talking about in California is $3 billion of revenue.

You can recognize the significance, taking his number of 6.73 percent or arbitrary number, more or less arbitrary number but ballpark number of 10 percent, you can see the substantial cost reduction that we think will flow through eventually to the consuming public of the State of California if we can put competition into the mix.

We know through our empirical experience that the transportation costs in California are too high. We know that through the movement of exempt commodities which move at lower rates than do the regulated commodities. We know it through the experience of the volume of subhaul movements that are very often conducted at anywhere from 25 percent of the regulated rate up to 95 percent of the regulated rate. And those carriers are able to survive.

We know it because we have a strange creature in California called the rail alternative rate, which allows carriers to go down to that

level or anything above it to compete with the rail movement. And we know it because of the fact that we've had numerous requests for deviations to go below the level of the minimum rates, each one of which is tested by the commission to make sure that it's compensatory to the carrier before it's authorized.

Those are the things that put us on this course and I would commend to you the bill that you have before you and the direction that is being taken, hopefully, to the benefit of the consumer of the United States, as well as California.

The CHAIRMAN. Thank you very much, Commissioner Gravelle.

I find this rather interesting because I remember during the debate on airline deregulation how bitterly the California PUC fought the changes proposed in that legislation.

Yet, you take a 180-degree opposite view with respect to this particular problem.

Why the change in position—opposing airline deregulation and supporting deregulation of the trucking industry?

Mr. GRAVELLE. Basically I would say to you there is no change. I believe, our commission and I, personally, I testified substantially against the legislation and was probably more vocal than any of the other commissioners against the airline deregulation bill, but I see an entirely different situation here.

We are not talking about what basically I believe in the airline field was a more monopolistic industry, a club, small club relatively, that was very difficult to enter. Financially very difficult to enter, costly to do so, that had restrictions on the ability to provide service in certain markets, particularly in California, and based again on our experience, to get into some of the airports in California, if you had unlimited resources and desired to get into that business, you would have great difficulty doing so.

That's not the case in for-hire highway transportation. People can get into this business very simply, provided the regulatory setting is proper to allow them to do so and in California, historically, that has been the case. That's why we have the number of carriers that we do have currently, in the thousands, and it is just an entirely different ation.

Large terminal facilities are not required for trucking. They are required, for proper airline operations. You're not dealing with one fixed point, such as an airport where you have to utilize the service of something that's either operated by a community or privately. Carriers operate from their backyard in many cases in California and throughout the country.

So we have what I believe to be an entirely different animal and one that is basically competitive. That's the premise upon which I go. Whereas, my feeling with the airline industry was that it was not basically competitive. It was too expensive and too narrow a field to have total deregulation.

Again, Senator, we're not talking here in California nor is this bill that you have before you talking about total deregulation for the trucking industry. We intend to keep a handle on the process of transportation so that there will not be predatory pricing and there will not be chaos developing in the industry.

And I think the intent of the Federal legislation is the same.

The CHAIRMAN. What would be your position on a provision in Federal legislation that would limit State regulatory authority in the trucking area?

Mr. GRAVELLE. Well, as it was in the airline bill, if you recall, we said, "Fine, go ahead and deregulate but leave California out. That's a provincial approach to things."

If the system was as described in the bill and allowed competition to get into the market, I don't think we would have a great deal of problem with that. I think that the State of California could accept Federal dominance in that field.

We have in the past run into that situation in areas where the ICC has declared commodities or zones exempt and we have litigated those issues and laws. That hasn't caused great chaos in the State of California.

The CHAIRMAN. Does the State of California regulate the intrastate movement of fresh fruits and vegetables?

Mr. GRAVELLE. Yes, we do. And agriculture is one of the——

The CHAIRMAN. What is your rationale, then? You support deregulation and, yet, when Congress did deregulate the transportation of fresh fruits and vegetables, you have decided to have State regulation in that area.

Mr. GRAVELLE. Well, as I suspect you might hear later today when you hear from the agricultural industry, we have a strange mix of regulation and absence of regulation with respect to not, particularly with respect to agriculture.

There are a number of exempt movements of agriculture in California. For instance, the first movement from field to first point of delivery is an exempt movement.

There are, in addition, however, there is, rather, I should say, a minimum rate tariff that also covers movements of many commodities. The industry is going to tell you, I believe, that while they want all the exempt movements to remain exempt, that they would still like to maintain some form of minimum rate regulation for agricultural commodities.

That is an ambivalent position as far as I am concerned. And I think you would have difficulty recognizing why the distinction but you're going to have to ask them.

We have to wrestle with that situation and it may be that we will be unable to carry out the competitive activity for agriculture that we have for other commodities. And when I say unable to do so, I say it in a political sense. That is one that we will not be able to get through.

That bridge has not yet been crossed, however.

The CHAIRMAN. What has been the moving force behind the PUC's policy? Have these been consumer groups, shippers or industry groups?

Mr. GRAVELLE. No, I wish I could tell you that we had a large constituency of consumers that have rose up because the problem was so bad and said, "You have to make a change."

Instead, I think it was one of those rare occasions, I don't think, I will tell you categorically, it was one of those rare occasions where

the regulator recognized the problems that it had with the industry with doing a job in any kind of an honest, respectable fashion and said to itself, "Some change has to be made here." We recognize the rate levels, the problems that we had with the regulation that we were engaged in and it was on that basis that an internal self-assessment, the commission embarked upon this course.

After the start on that course, we have gained some support, basically from some shippers' organizations and we are recognizing now some support from consumer groups.

Consumers, basically, are so indirectly affected by transportation that it is not, if you will pardon the expression, a sexy issue for them to latch onto. I am happy to see that on your agenda you are going to hear, hopefully, from some consumer representatives.

The CHAIRMAN. Of course, I am reminded of Murphy's law—that if something doesn't need fixing, don't fix it. You're indicating that the commission went out on its own rather than feeling pressures from various groups.

Mr. GRAVELLE. Well, Murphy's rule doesn't apply here because what I'm trying to say, maybe inartfully, is that we recognize this needed fixing badly.

I liken the industry to a sick child that doesn't really know how sick he is, and we're trying to give him some medicine to make him healthy, but he doesn't like the smell of it.

The CHAIRMAN. Well, thank you very much, Commissioner Gravelle. We appreciate you being here.

Mr. GRAVELLE. It's a pleasure to appear before you.

[The statement follows:]

STATEMENT OF RICHARD D. GRAVELLE, CALIFORNIA PUBLIC UTILITIES COMMISSION

Mr. Chairman, Members of the Committee, my name is Richard Gravelle and I am a Commissioner of the California Public Utilities Commission, 350 McAllister Street, San Francisco. I am grateful for the opportunity to appear before you today. It is a privilege to present to the Committee the views of the Commission on the important issue of motor carrier regulation.

My purpose in appearing before the Committee today is to send a clear message to the Committee and the Congress that the California Commission is firmly dedicated to making motor carrier rates more dependent on the competitive market than on regulation. I will discuss both the background and the implications of the changes in motor carrier regulation which the Commission is planning to implement.

California has long had a pervasive system of motor carrier regulation, including restrictions on entry and route authority, and enforced minimum rates. The effect of enforced minimum rates, in particular, has been to reduce competition, limit the ability of truckers to respond to changes in the marketplace and, by raising transportation costs, to create what is in essence a private right to tax the public. In 1978, this "tax" was included as an element of the nearly $3 billion of revenue generated by for-hire intra-California trucking. In recognition of the problems and inequities created by excess governmental intrusion into the motor carrier industry, the California Public Utilities Commission (CPUC) has begun a phased reregulation of the industry, beginning with an expansion of the number of common carriers, and including a move toward competitive ratesetting by the carriers themselves.

Prior to 1976, carriers held one of three permits: they could serve as contract carrier, radial highway carrier, or common carrier. Barriers to entry were low with respect to the contract and radial permit categories—either could be obtained through payment of a five-hundred-dollar fee. In contrast, common carrier authority was available only upon a showing of "public convenience and necessity". If an existing common carrier was available to serve the route proposed by the applicant, the application was typically denied.

Contract and radial carriers had state-wide route authority, while common carriers were limited to specific routings, according to the "public convenience and necessity" criterion. Truckers who could not meet the "public convenience and necessity" test for common carrier authority became radial permit holders. As a result of this tripartite system, in 1976 there were over twelve-thousand radial permit holders in California, and only six-hundred common carriers.

"Minimum rates" were set by the CPUC for the contract and radial permit carriers on the basis of cost studies developing average costs for various categories of freight. Common carriers were also subject to the minimum rates and could not raise rates above that level without asking for and receiving permission from the CPUC. While common carriers could engage in collective ratemaking through rate bureaus, the bureaus had almost no impact on freight rate levels in California.

The results of a system so structured were as one might have predicted. The dominant carriers in the trucking industry, through their Trucking Association, rather than through rate bureaus, sought increases of the minimum rate tariffs which applied to all classes of carriers, thereby eliminating any form of price competition. Because of the ready entry to the radial class, common carrier authorities did not appreciate in value as they have done under federal ICC regulation.

In addition, the minimum rates themselves did not accurately reflect industry conditions. Given the volume of traffic, variety of freight, and complexity of the industry, it became impossible to update the rate structures to reflect changes in technology and industrial organization. Adequate performance of such a task by a state agency would be impossible without an enormous commitment of resources. Outdated cost structures, modified at least biennially on the basis of cost-offset demands presented by the Trucking Association, became the basis for rates from which no trucker could deviate without compliance with a complex and often fruitless "less than minimum rate deviation" process. The last full-scale review of the general freight tariff, for instance, was conducted in 1963. Minimum rates have been set merely by passing through inflation and market-induced price changes in the industry, without any correction for the change in input usage that results from relative price changes. The industry had little incentive to operate efficiently. Competition, such as it was, took the form of variations in seryice, and excess capacity developed. Evidence began to accumulate that minimum rates did not reflect the actual cost conditions in the industry; unregulated subhaul rates far below the "minimum" level were charged by regulated carriers, and increasing numbers of applications for deviations from minimum rates were filed.

In 1977, in response to the conditions described above, the Legislature approved and the Governor signed into law Senate Bill (SB) 860, which abolished the radial highway carrier classification. SB 860 ordered the CPUC to implement a program to afford conversion of radial permits into other forms of motor transport authority. In May, 1978, the CPUC responded by issuing an order providing for the conversion of the more than 12,000 radial permits into common carrier authority, contract carrier permits, or both, for a fee of $25. This would effectively increase the number of common carriers in California from 600 to nearly 13,000. The Commission has established a Tariff Assistance Plan (TAP) to assist truckers in filing tariffs, since very few of the radial carriers are members of rate bureaus, and the CPUC wishes to encourage independent ratesetting.

In further recognition of the problems inherent in the system of minimum rate regulation, the CPUC began in 1979 to eliminate minimum rate tariffs for those portions of the industry for which they were deemed most poorly suited. By August, 1979, the minimum rate tariffs on tank trucks and general freight were abolished, effective April 30, 1980. In place of the minimum rates, a "phased reregulation" was proposed. Under that reregulation, "transition rates" would be set as of April 30, 1980. Those rates would not be raised by CPUC, however, regardless of inflationary pressures. A simple filing process is being created for use by truckers who decide to raise their rates to reflect cost increases. In order to ease the transition to a competitive environment, truckers seeking to set rates beneath the minimum floor would be required to submit operational and financial data. Above the floor, rates could be raised or lowered without substantial data submissions. Any trucker who wished to protest a

competitor's rate as predatorily low could do so, but the burden of proof would be on the protestant.

With respect to route authority, the reregulation program would permit the 12,000 newly converted carriers to retain their statewide hauling authority. In addition, an existing common carrier could expand his/her route authority as much as the carrier felt would be economically desirable.

With respect to entry, the reregulation would work several changes from the existing system. First, a "fitness" test has been added in order to allay the fears of some that in a less regulated environment carriers would give short shrift to safety and insurance needs. Contract as well as common carriers would be subject to the fitness test. The "public convenience and necessity" test would still exist for applicants for common carrier permits. With almost 13,000 certificated common carriers, however, the CPUC expects that barriers to entry will be minimal; a certificate could be purchased from any existing carrier and, with nearly 13,000 carriers and competitive ratesetting, it is unlikely that the cost of purchasing a certificate will appreciate significantly.

The implications of the thrust of the Commission's actions should be clear; we believe that the regulatory goals of avoiding predatory pricing and insuring adequacy of service can be achieved within a framework that permits carriers to adjust rates to reflect competitive economic reality. I hope that in the months to come this Committee and the Congress will observe California's experience, and the experience of other states, in formulating a new National Motor Carrier Regulatory policy.

The CHAIRMAN. We next hear from a panel, Mr. Chuck Fields, American Farm Bureau; Mr. Darrell Zwang, Mr. Bernard Imming, president, United Fresh Fruit and Vegetable Association.

All right, gentlemen, if you will just identify yourselves and we will go right across the line. How is that?

All right, sir.

STATEMENT OF C. H. FIELDS, ASSISTANT DIRECTOR NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

Mr. FIELDS. Thank you, Senator. Glad to see you in a different setting here this morning.

The CHAIRMAN. Thank you.

Mr. FIELDS. I am C. H. Fields, the assistant director of national affairs, the American Farm Bureau Federation in Washington.

Senator, since 1935, when Congress first provided for economic regulation of motor carriers, Farm Bureau has been in the forefront in efforts to obtain and preserve agricultural exemptions provided in the Motor Carrier Act.

We have, for more than 40 years, experienced that unregulated truck transportation, and we've said without reservation that we would not want to depend upon the regulated system.

Our experience in operating within a relatively free market has been good. We have a system which is responsive to the demands of the agricultural producers, which provides the quality of service that we need, at rates we believe are substantially below those we would pay under a regulated system.

We want to further improve and build upon the success of unregulated truck transportation.

We have presented testimony outlining Farm Bureau's general policy on motor carrier regulatory reform to this committee on two previous occasions. In general, we favor far-reaching, meaningful

regulatory reform. We have never advocated deregulation which, to us, means an end to all economic regulations.

In enacting legislation last year to create the Rural Transportation Advisory Task Force, the Congress gave timely recognition to the fact that agriculture is facing serious transportation problems.

We believe the report of the task force, due in January, can have a significant impact on future policies and actions of the Congress and the executive branch of the Government, as well as those of State and local governments, all of which have a role to play in the solution of transportation problems.

But this committee need not wait for that report to take some legislative actions whose need is already apparent.

While we will be recommending here some specific actions that we think the Congress should take without delay to improve the agricultural transportation situation, we are fully aware that agriculture's transportation problems must be viewed as a part of the overall transportation situation and, for the most part, cannot be solved unless approached as a part of the whole.

Farmers and ranchers are becoming more aware of the growing inability of the transportation system to meet their expanded needs.

A recent protest shutdown by the independent truckers amply demonstrated the vulnerability of agriculture to the providers of transportation service.

When we project the transportation needs of agriculture 5, 10, or 20 years hence, we wonder whether the lack of reliable and economical systems of transportation will be a major factor inhibiting the future growth of the business of providing the food and fibre needed for our growing domestic needs and our continuing expansion of exports.

We want to concentrate in this statement on what we think the Congress can do to make agricultural trucking even more efficient than it is now and help insure adequate service in the future by solving some of the problems which face independent owner-operators while, at the same time, proceeding with far reaching and meaningful regulatory reform.

I might say that we will not address the small community service question here since we will have a witness at Fallon, Nev., to cover that. I will say we have no fear that regulatory reform we are proposing here or proposed in S. 1400 will be a threat to the small communities.

We are dismayed by reports circulating in Washington that pressure has been brought to bear on the Senate Appropriations Subcommittee on Transportation to tie the hands of the Interstate Commerce Commission with regard to future internal reform of motor carrier regulation.

While we agree that the Commission should not attempt to go beyond its statutory authority, we believe it has been moving in the right direction to reduce regulatory redtape and give more weight to the role of competition and the needs of shippers instead of emphasis on measures to protect the economic interest of certificated carriers.

We have written the members of the subcommittee urging that no action be taken that would have a chilling effect on the statutory authority of this independent agency to pursue its responsibilities in the public interest.

We are mindful of the fact that powerful vested interests are actively opposing any meaningful reform of economic regulation of motor carriers. However, we are confident that this committee and Congress, as a whole, will place the public interest uppermost and we think the public interest clearly calls for a meaningful and far-reaching reform.

We believe this committee should give priority attention to amending the Interstate Commerce Act and to take other actions to improve the agricultural trucking situation.

We have drafted legislation to accomplish these objectives which we expect to be introduced in the Congress shortly. We've already furnished this committee with a draft copy of suggested amendments of the Interstate Commerce Act.

Specifically, we urge the adoption of the following amendments:

One: Remove the restriction on agricultural cooperatives in section 10526(a)(5). We can see no logical reason for retaining the 15-percent limit on nonmember business. Agricultural trucking cooperatives owned by farmers should be free to operate under the same rules as any other farmer cooperative.

Two: Expand section 10526(a)(6) to include all uncooked meat and fresh bananas. Transportation of red meats has been a problem in several areas of the country and it makes no sense to continue this commodity under regulation while all poultry is exempt. Bananas should be treated the same as all other fresh fruits and vegetables which are already exempt.

Three: The agricultural commodity exemption in section 10526(a)(6) should be expanded to include major agricultural production inputs purchased by farmers.

Four: Language should be added to the act to permit unregulated commodities at any rate they can negotiate, provided that no more than half of their annual tonnage consists of regulated commodities.

If such a backhaul provision is added to the act, it will solve the backhaul problem now faced by the unregulated owner-operators and make it possible for farmers to return-haul commodities for their neighbors following a haul of their own produce.

It would likely reduce the share of the total cost of the round trip by the owner-operator that is now paid by agricultural shippers, since the trip lease fee would not have to be paid to brokers or certificated motor carriers in most instances.

We estimate that these changes would result in deregulation of an additional 5 to 10 percent of motor carriage and result in a motor carrier industry approximately 65 percent free of Federal economic regulation. After 3 or 4 years the Congress could take another look at the results and adopt additional exemptions of all food as proposed in S. 1400, although we do not oppose the immediate adoption of this broad exemption.

This approach does not require the tackling of the difficult matter of collective ratemaking or the lifting of entry, route or commodity restrictions. Gradual expansion of exemptions would achieve a large measure of deregulation over a period of several years by building on the record of success in exempt carriage.

Now in addition to regulatory reform, there are certain other actions that need to be taken by the Congress to improve the agricultural transportation situation.

One: Congress should enact during this session uniform weight and length limitations for trucks on the interstate highway system.

Two: The role of the Department of Agriculture and Transportation need to be strengthened in terms of research, education, technical services to owner-operators, a requirement of a written contract of haul in exempt trucking and authority over loading and unloading practices so as to put an end to the lumper racket.

All these suggestions would be accomplished by another bill we have drafted which we expect to be introduced in the Senate shortly. We are attaching a copy of this draft and would like to request that it be included as a part of the record.

Three: Congress needs to bring order out of choas in the area of State economic regulations of interstate trucking. The Secretary of Transportation should be given authority and direction to take the leadership role in working with the States to achieve as much uniformity as possible in the State laws and regulations in such areas as fuel taxes, registration and licensing.

Any overall truck regulatory reform bill that's enacted should include a provision which asserts Federal authority over the economic regulation of interstate trucking.

We appreciate the opportunity to present our views.

The CHAIRMAN. Thank you, Mr. Fields.

You pointed out a number of areas that, of course, the committee is very well aware of and concerned with. We do hope to try to bring some uniformity out of what we consider to be a rather chaotic situation.

I appeared with one of our neighboring committees just this last week on the issue of truck lengths and weights. I've urged the committee that has the basic jurisdiction in this area to act and try to get some uniform legislation out to address the subject of truck weights and lengths in this session of Congress if at all possible.

But we appreciate your suggestions and we're very glad to have for the committee files the copies of the legislation that you've offered.

All right, sir.

STATEMENT OF BERNARD J. IMMING, PRESIDENT, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION

Mr. IMMING. Good morning, Mr. Chairman.

I am Bernard J. Imming, president of the United Fresh Fruit & Vegetable Association. And I have submitted my full statement to the committee in advance and I would like to read that statement.

I want to thank you for allowing me to present the fresh produce industry's views on agricultural transportation in general and on certain aspects of the truck regulatory reform proposals pending before the Congress.

Our membership is composed of about 2,700 companies engaged in all facets of the industries including growers, packers, wholesalers, brokers, and retailers.

United's members handle more than 80 percent of the fresh fruits and vegetables marketed commercially in the United States, a $15 billion 1-year industry. And, of course, it's obvious that efficient economical transportation of fresh fruits and vegetables is essential, not only to our industry but to the Nation's consumers.

Nationwide, over 90 percent of all shipments of fresh produce commodities move to market by motor carriage, pursuant to the agricultural exemption provided under section 10526(a)(6) of the Interstate Commerce Act.

Transportation costs play a significant role in the price that consumers pay for fresh fruits and vegetables. For some commodites, 20 percent of the retail price reflects transportation costs.

The 1935 Motor Carrier Act and subsequent administrative rulings have exempted the movement of most fresh fruits and vegetables from Government economic regulations. The exempt agricultural trucker has provided the fresh produce industry with reliable, flexible, and economic transportation to market geared to the seasonality, the perishability and the relatively rapid and wide fluctuations in prices that are characteristic of our industry.

Although exempt agricultural truckers have served our industry well, they now face some serious problems that if left unchanged may force a number of them out of business.

My association's members feel that the single greatest problem facing exempt agricultural truckers is the lack of revenue-producing backhauls. Haulers of exempt agricultural commodites have a particularly large number of empty returns.

The 1976 ICC study found that exempt agricultural haulers using refrigerated vans experienced 25 percent more empty miles than regulated carriers. Although for many years, deadhead miles were considered normal for motor carriers specializing in the transportation of exempt agricultural commodities, the skyrocketing costs of fuel and increasing operating costs makes these deadhead miles no longer tolerable.

And if the current situation continues, many of these truckers will be forced out of business resulting in shortage of truckers available to handle fresh produce shipment.

The exempt agricultural hauler has basically three options on his backhaul.

First: To return empty thereby deriving no revenue.

Second: Trip lease to a regulated carrier.

Three: Go through the time-consuming and costly process to obtain permanent operating authority from the Interstate Commerce Commission.

We find none of these options acceptable. The lack of revenue-producing backhauls not only reduces the truckers total operating revenue, but makes the freight charge for the fresh produce shipment unnaturally high in order to cover the round trip operating costs.

Agricultural haulers who trip lease their vehicles to regulated carrier receive only 60 to 75 percent of the freight charge. In many cases, this does not even cover fuel costs for the return trip.

Again, this shortfall in revenue is made up by charging higher rates for the front haul of fresh produce and ultimately this results in a higher price to the consumer.

The third option available to truckers to obtain a backhaul is to seek operating authority from the Interstate Commerce Commission. Although many have done just that, most of the smaller truckers who represent the majority of carriers hauling agricultural commodities are still unable to obtain operating authority because of the time and expense required.

For example, in excess of 120 days now elapses from the time the applications are filed until they are even published in the Federal Register. It takes the Commission another 7 or 8 months to issue a certificate in a case in which there is no opposition.

If there is opposition, the time required is sometime in excess of 2 years. It is not unusual for carriers to pay many thousands of dollars in the process of obtaining their operating authority.

These barriers discourage many agricultural haulers from even attempting to obtain operating authority. We believe in this age of energy conservation it is in the public interest not to let this situation continue.

On May 17 of this year, United, my association, filed a petition designated Ex Parte MC–127 asking the ICC to institute a rulemaking proceeding. This would greatly simplify the procedure and reduce the expense encountered by carriers attempting to obtain an operating certificate to transport nonexempt commodities following the movement of exempt agricultural commodities.

The proposal should make it more attractive for carriers to engage in the transportation of fresh produce since they will be able to obtain round trip revenue.

We contend that the availability of truckers will increase and the economics of the round trip operation should reduce or will provide a slower rate of increase to transportation costs, hopefully at a rate slower than the annual rate of inflation.

Therefore the consumer should benefit from lower retail prices for fresh produce.

For further information on United's petition, please refer to my full statement which contains a copy of the petition and the Federal Register notice.

If our efforts should fail at the Commission, United would seek Federal legislation that would accomplish this objective and other motor carrier reforms. Through legislation we would seek the expansion of the agricultural exemption to include the commodity, bananas, and would support other technical revisions of the exempt commodity list.

We would not be opposed to an expansion that would include farm input items such as feed and fertilizer.

We would also support an increase from 15 to 50 percent in the authority of agricultural cooperative haulers to handle nonmember and nonexempt commodities.

To improve the backhaul situation for exempt agricultural haulers, we support legislation that would allow haulers of exempt agricultural commodities to handle nonexempt freight on their return hauls.

This is similar to the provisions of our petition to the Interstate Commerce Commission, except that the legislation would not require the truckers to go through the process of obtaining operating certificates from the ICC for backhaul movements.

I would like now to discuss very briefly the truck regulatory reform proposals in S. 1400 and their relationship to United's policy in these areas.

Although we agree that regulatory reform in the trucking industry is needed, we contend that certain aspects of S. 1400 might adversely affect the fresh produce industry and the Nation's consumers and would not address the most critical problem facing agricultural truckers. That is the backhaul situation.

The highly perishable nature of most fresh produce commodities demands that they be transported to market as soon as possible after harvest. Otherwise the quality of the product declines. Because the motor carriage of fresh produce is so critical, any reforms of the present system must be looked at carefully.

United contends that expansion of the agricultural exemption to include all processed agricultural commodities and the designation of most truckload transportation—rather the deregulation of most truckload transportation—would severely reduce the number of trucks available to haul fresh produce to market.

If the exemption is expanded to include processed agricultural commodities, we feel certain factors would discourage many truckers from hauling fresh produce commodities. For example.

First: Damage and spoilage claims are generally higher on fresh produce shipments than on processed food shipments.

Second: Although the freight rate on processed food is now, at times, lower than the rate on fresh produce, if processed foods were exempt, we project that the rate would be nearly the same, providing no incentive for motor carriers to haul fresh produce.

Third: Since the cost of owning nonrefrigerated vans is lower than refrigerated vans, we anticipate that truckers will elect to purchase only dry vans, thus reducing the number of refrigerated vans available for fresh produce movements.

We strongly recommend that the Senate delete those portions of S. 1400 that would expand the agricultural exemption to include processed agricultural commodities.

United feels that a number of other areas must be fine-tuned, if you will, so that transportation of fresh fruits and vegetables remain efficient and responsive to the needs of the industry and the Nation's consumers.

United Fresh Fruit & Vegetable Association supports S. 1383 introduced earlier this year by Senator John Melcher. The bill would establish uniform national standards for weight and length of vehicles using the national system of interstate and defense highways.

The legislation would amend the so-called bridge formula thereby allowing load limits of at least 80,000 pounds and length limits of 65 feet.

As is well known, the barrier of States along the Mississippi River, which imposed truck weight and length limits below the national standards adopted by most of the other States, hampers the free flow of interstate commerce and creates inefficiencies in the trucking industry, wastes precious amounts of energy and causes higher prices to consumers.

As a result of the independent truckers' strike in June and July of this year, President Carter established a White House task force to

look into the problem of independent truckers to haul exempt agricultural commodities.

United was an active participant in this group. The Department of Agriculture has already developed and disseminated data on past truck freight rates for fresh produce movements and on the operating costs for agricultural haulers. This information should prove to be beneficial to agricultural truckers and make them a more viable entity in the trucking industry and in the transportation system serving the fresh produce industry.

Finally, the final report from the Secretary of Agriculture to the White House recommends that Federal legislation be introduced that would give the Secretary authority to begin a rulemaking proceeding leading to a mandatory motor carrier contract of haul for shipments of fresh fruits and vegetables.

We anticipate that the contract of haul would state the rights and the obligations of all parties to the transportation transaction. This is an issue in which most exempt agricultural truckers and many in the fresh produce industry are very much in favor.

In the event of legislation and subsequent rulemaking procedures, we envision that the contract of haul would contain only a few provisions that would be uniform in each contract, thereby maintaining the flexibility of the draft contracts that meet particular transportation situations.

Mr. Chairman, I want to thank you for giving me this opportunity to express our views on a few of the agricultural transportation issues facing the fresh produce industry. I'd be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Imming. All right, sir.

STATEMENT OF DARRELL ZWANG, DIRECTOR, CALIFORNIA CATTLEMEN'S ASSOCIATION

Mr. ZWANG. I feel a little bit like the cow's tail following behind Chuck and Bernard. I find that there are many of us pressing the same things.

I am Darrell Zwang. I am primarily a livestock operator so I am involved in farming and operate a medium sized feed yard in western Fresno and Kings Counties of California.

I am a director of the California Cattlemen's, director of the California Feeders, I'm a member of the Agriculture Council of California's transportation committee and a member of the national cattlemen's transportation committee.

I would like to interpose something here that is not in my paper.

I'm having some eye problems this morning and I've asked my son to read my statement to you, with your permission.

Mr. CHAIRMAN. Sure.

Mr. ZWANG. Thank you.

As a part of rural America, I am deeply concerned over the manner in which our transportation network, highway, rail, air, and water will be affected and its net result to us in agriculture by complete deregulation of transportation.

Our urban cousins should be concerned about it, too, for it will touch their way of life also.

The railroads have already flagged out livestock hauling and have abandoned or are trying to abandon many of their low return spur lines leaving many rural elevators and small businesses entirely dependent on highway service.

The airlines, with their requests to discontinue service to many of our smaller cities, is another good example. The people affected by this, rural or urban, have only one other way to go, the highway.

Admittedly, for companies furnishing these services, it makes good economic sense. The return per ton or passenger mile is much greater on the long runs or flights. The high cost of energy, labor, and maintenance today has its affect.

What about the millions of people, though, whose lives and well being are affected by these decisions? The agriculture world and most of the Nation's other businesses feel they are badly overloaded with Government and regulations.

We know that we cannot live without Government and regulations but we feel there should be a happy medium.

Agriculture as we know it today here in the west depends almost entirely on trucks. Trucks to move our livestock from summer to winter pasture and back; trucks to move them to the feedlots and packing plants; trucks to get the dressed meat to the retail outlets all over the Nation; trucks to get our grain to the elevators, our produce to the sheds and canneries; trucks to get the produce to the consumers; trucks to get our machinery to us and the parts to maintain it.

One of our big fears today is that with complete deregulation, the little haulers will be forced out. They cannot, unfortunately, operate as efficiently and economically as the larger operators. They aren't big enough to maintain their own maintenance shops or mechanics. Nor buy fuels, lubricants and tires in quantities to get the discounts the big operators get.

I know what I am talking about for I owned and operated a fleet of trucks. Primarily cattle but I hauled grain, liquid feed, gravel, and even tomatoes. I got out of the rat race, sold out and am down to just one commercial cattle truck and trailer.

It doesn't take a crystal ball to tell us that when the foregoing comes to pass, the large operators, whatever their cargoes, are going to want to do just as the railroads have done and the airlines are doing. With more lucrative tons-per-mile in mind, they are going to stick to the freeways and service the long haul in large urban areas and leave our smaller rural communities with our secondary roads and mountains isolated from any freight service.

We have entered into a period of energy shortage that is causing grave concern. Can't you just see the increased demand on energy when it will take four ranchers or farmer-owned bobtail trucks burning 4 to 5 miles per gallon to get what one diesel rig would haul to the marketplace at 5 miles to the gallon?

Or the fleet of 10-miles-per-gallon pickups rushing 100 miles to larger cities to get the tractor or harvestor or pump parts that they used to be able to buy at home?

Or the fleet of additional cars burning up the highways to get some businessman who used to fly to the city for an important appointment?

And think of the waste of manpower and money. You know who ultimately will pay for that. The consumer and most of them urbanites.

We believe that there probably should be a list of exempt and nonexempt commodities but we believe that it should be created with common sense and good judgment and not just because some court in the distant past said there should be one.

We think the exempt list should be expanded. Some cooked meats are exempt. Some meats are not. This is true with other agricultural items. We feel that all agricultural related hardware equipment should be exempt.

With our energy problem today, we feel that trucks should be permitted to backhaul when they can, not be forced to deadhead, whether it is 30 or 3,000 miles because they are limited to either exempt or nonexempt cargoes.

Agricultural transportation and energy go hand in hand. Federal funds are granted to build interstate highways but there have been no funds made available to maintain them once they are built and many States cannot do it on their own.

There should not be a raiding of the gas tax fund to move urban people. Without the products of agricultural communities and the means to get it from here to there, there will be no urban centers.

We need to standardize our truck lengths and load limits throughout the Nation. To conserve energy per-ton mile, we need to be able to roll our 65-foot, 80,000 pound units from coast to coast and not be blocked by a line of barrier States along the river that cut our Nation in half with their 55- to 60-foot length and 72,000-pound limit. Multiple trailer units would be more efficient.

There is a move toward trying to nationalize our railroads. We need only to look at England to realize that is not practical. It takes 10 times as much to maintain their system as it dos, for example, the Southern Railroad Co. that services our southeastern seaboard.

By the same token, instead of the Government pumping billions of taxpayer dollars into a search for alternate energy, give private industry a chance to help and help them where needed. The private sector is much more innovative.

To cite an example of Government efficiency with the first of the fuel crunch, they guaranteed truckers fuel enough to get agricultural products to market but neglected to give them fuel enough to get back home.

The truck strike that came with the energy crunch posed a very serious threat to agriculture and we aren't over all of it yet. Deregulation can help in many areas of the trucking industry. We feel that some protective regulation is necessary but to be as all encompassing as it has been with limited entry, rate regulation and inflexibility, restricted hauling authority, circuitous routing, and forced deadheading lends to greater inefficiency and decreased costs.

When you finally get to sitdown and try to analyze the reams of testimony presented to you in these hearings across the Nation and struggle to draw fourth your conclusions, I beg of you to let common-

sense sit beside you and be your partner in formulating your recommendations.

Don't orphan our smaller cities and rural communities. Don't weaken our Nation.

Senator, if I may add at this point, in speaking of the backhauls, being a Nevadan, you are well aware that on the west coast the livestock haulers with their $100,000 double deck, triple deck rigs, a two-way haul is a rarity. And so they are burdened with being unable to backhaul about 95 or more percent of the time.

But for all other trucking, I think it should be allowed where it can be allowed.

The CHAIRMAN. Well, I think that is one of the real problems. You have a lot of specialized trucking and, obviously, where you have specialized trucks, they can't very well backhaul.

I think Mr. Imming mentioned that they found in 1976, the exempt agricultural haulers using refrigerated vans, experienced 25 percent more empty miles than regulated carriers.

If you've got a refrigerated van, there are a lot of things that you can't backhaul with a refrigerated van.

Or if you're a specialized trucker in the field of oil or gas, you can haul a load of gas from A to B but you may not be able to find a backhaul in that area.

There are some real difficulties with backhauls in the areas of specialized trucking.

Mr. Imming?

Mr. IMMING. Senator, I think, though, in the case of refrigerated vans, there is little restriction. It's simply that they wouldn't use the refrigeration. The facility, itself, is adequate to handle most backhauls of general freight.

The CHAIRMAN. So you're saying that even though it was freight that didn't have to be refrigerated, they could still haul it in a refrigerated van.

You mentioned in your statement there were three options on the backhaul: to return empty, trip lease or try to get permanent ICC auhority. And, of course, I think there is a fourth option and that is the illegal hauling that we know exists today. We don't know its size but certainly there is a lot of it. We're aware of that, and I'm wondering if it's possible that the projected diversion of traffic from regulated carriers resulting from increased backhaul authority might not be as great as has been anticipated because there is a sizable illegal haul in that backhaul area.

Do you have any comments on that, either you or Mr. Fields?

Mr. FIELDS. Well, Senator, I think there is no question but what some of the illegal hauling going on now would just simply be legalized by what we propose and they would feel a whole lot better about it.

There is no doubt that there is a lot of so-called hot freight going on now, not only by the unregulated carriers but I think by regulated carriers.

The CHAIRMAN. I was a little surprised at Mr. Imming's comments that processed foods should not be exempt. I am not sure that I follow your rationale there.

Mr. IMMING. Well, the idea, Senator, is only that in the case of perishable fresh fruits and vegetables, the likelihood, the incidence of claims, for example, because of their highly perishable nature is such that, frankly, they are more trouble to haul. And many carriers, if they found themselves with the opprtunity to haul cargo that was less troublesome, simply wouldn't bother with the fresh fruits and vegetables.

The CHAIRMAN. So what you're saying is that if processed foods were exempt you might not find any carriers that would stay in the perishable foods market.

Mr. IMMING. Many of the regulated carriers, for example, even now shy away from perishable hauls for this very reason.

The CHAIRMAN. Is there a shortage of capacity today in the exempt area?

Mr. IMMING. On occasion, seasonal only, but generally it's been pretty well handled. At peak harvest season in California, for example, in the Fresno area where these folks come from, sometimes there may be spot shortages but they are temporary and they are related to the seasonality of production.

Mr. FIELDS. Let me add to that, Senator. We've had two major problem areas with hauling exempt agricultural commodities by truck out of Florida and out of Texas. And you will find that in those two States have some of the most pervasive State regulation, economic regulation of trucking in the Nation, and I think it's directly related to that.

Mr. IMMING. I was going to add that Florida, particularly has had some problems this year, although the relationship to the regulation may have a great deal to do with it, too.

The CHAIRMAN. Are there quite a large number of carriers that specialize in exempt hauling or are you relying primarily on the independent owner-operators?

Mr. IMMING. Primarily the independent owner-operator. They carry by far the majority of it. Some of them, of course, are more than a single-rig type of operation, but most of them are the smaller independent owner-operators.

Mr. FIELDS. We also do have, of course, carriers that are certified by ICC that may haul, for example, east to west with a regulated commodity and then they will haul the exempt agricultural commodities back east. There is some of that going on.

The CHAIRMAN. I know that Mr. Zwang's statement suggests that there is a move going forward trying to nationalize the railroads. I would say that it seems to me that what's really happening is that the railroads are trying to nationalize themselves. We're just passing legislation on the Senate floor today to try to help the Milwaukee Road over a period of time to see if they can come up with a stock ownership plan that would be viable, because the structure of the railroad is such that it just can't compete and exist over the long network that it has.

The court has already said that they should have to reduce the trackage they serve to a core system and then they might have the opportunity to remain a viable system. But we've got the Norfolk in bankruptcy; we've got Conrail that the Federal Government is financing. So I don't think that it's a move on the part of any of us at the Fed-

eral level to try to nationalize it. But there certainly is a move, because of their unfortunate results, toward the Federal Government having to put up a lot of financial support for them.

Mr. ZWANG. That's why I cited Southern in my example there because they are an outstanding railroad.

The CHAIRMAN. You picked out one of the best ones.

Mr. ZWANG. I sit on a committee with one of their vice presidents and I am pretty well aware of it. But a big part of it is management. And the other is overburden of labor.

The CHAIRMAN. And probably the coincidence of where your railbed happens to be. Is it in a highly dense area of passengers or shippers or what-have-you.

Well, we certainly appreciate all of you giving us the benefit of your views.

Mr. Zwang expressed a concern that certainly we on the committee share—that we hope we can use some commonsense and try to come out with something that is going to be a reasonable solution.

We don't want to find the small towns and small cities of this country not able to get service as a result of actions that we take. And you indicated a fear yourself on that, that everything would move to the big cities and would have to run back and forth.

And that is one of the concerns that we've had expressed by a number of people, and I hope that we can sort the facts out enough to come up with some reasonable solution.

Thank you very much, gentlemen. We appreciate you being here.

Mr. IMMING. Thank you, Senator.

The CHAIRMAN. Our next panel will be Mr. John Hagedorn, vice president, finance, Pacific Intermountain Express; Mr. Robert Fleischer, vice president, traffic, Transcon Lines; Mr. Ray Mitchell, vice president, director of traffic, System 99; Mr. Chuck Mack, secretary-treasurer, International Brotherhood of Teamsters; Mr. Lee Adler, executive vice president, California Grain & Feed Association.

All right, gentlemen, do you have any choice as to which end of the table we start at? Well, let's start over here on my left.

STATEMENT OF LEE ADLER, EXECUTIVE VICE PRESIDENT, CALIFORNIA GRAIN & FEED ASSOCIATION

Mr. ADLER. All right, Senator, I am Lee Adler with the California Grain & Feed Association.

I've provided copies of testimony that I presented before the Rural Transportation Advisory Task Force in Fresno when they were out here. Pretty much, this encapsulates our feelings with respect to truck transportation as well as rail.

Basically, our organization represents feed manufacturers, brokers, merchandisers, and elevating operations within the State of California that handle grain and feed ingredients for use by domestic livestock and poultry, as well as movement into export.

Our concerns with interstate truck deregulation is considerably less than rail. Only about 10 or 15 percent, possibly, of the grains that come into California move in by interstate truck movements.

The remainder of our 65 percent feed deficit condition comes in by rail from the Midwest. We're 100 percent short on soybeans and that

is coming in 100 percent by rail. So naturally our concern gravitates to the rail.

But on the truck side of the coin, as I say, we don't have a great deal of concern because grain that does move in is exempt.

We are concerned, however, about the efficiencies of movements. Thus the question of the regulated backhaul situation, of course, becomes of interest to us with respect to interstate truck transportation. If ways and means could reasonably be found to more efficiently use that truck, we think that everybody benefits from it.

But we, too, do have some specialized equipment that handles grain and, consequently, there may be a limitation on the kinds of backhaul which would be applicable.

With respect to the rail situation, I won't go into it in great deal. We do here in the commentary. But, basically, we're concerned with the fact that if we were to totally deregulate rail transportation, California, in effect, as a State, could become a captive State rather than just containing captive shippers or receivers.

We are umbilically dependent upon those rails to the midwest and to the southwest to provide us with our feed grain deficit requirements. Trucks are not considered to be a longhaul competitor because of the volumes involved, about 4.4 million tons of feed grains a year, almost 1 million tons of soybean meal and another few hundred thousand tons of miscellaneous products. So, really, trucks aren't going to fill the gap. We have no water alternative and we're at the end of the line for four major carriers.

We're concerned that if we were to go to a totally deregulated circumstance, that we would, in fact, be the classic example of a captive but on a statewide basis rather than an individual shipper basis.

That's one of our very basic concerns. We raised other concerns and questions that have come up with respect to deregulation of rails, such as interline division of revenues and whether or not their economics are, in fact, representing the true situation with respect to return on investment.

So, Senator. with those comments, I will pass on to my colleagues here at the table.

The CHAIRMAN. All right, sir.

[The statement follows:]

STATEMENT OF LEE ADLER, EXECUTIVE VICE PRESIDENT, CALIFORNIA GRAIN AND FEED ASSOCIATION

My name is Lee Adler. I am Executive Vice President of the Californa Grain and Feed Association whose offices are located at 510 Bercut Drive, Suite H, Sacramento, California, 95814. Our organization is a non-profit agricultural trade association representing 350 firms within the state of California who process, distribute and otherwise handle the great majority of grain, finished feeds and feed ingredients within the state that are destined for consumption by our domestic livestock and poultry or for movement into export channels. The membership includes feed manufacturers, brokers, merchandisers, feed ingredient processors, elevator and warehousing facilities both at ports and inland points, integrated feeders of livestock and poultry, and numerous other firms that provide goods and services to the feed and feeding industry within California.

The comments we have to offer will relate to transportation issues that are particular to the movement of grains and feed ingredients. Similar to other

segments of agriculture we are vitally dependent on inter and intrastate rail and truck transportation to move our products. We feel that transportation is basically an integrated system wherein all modes must operate in harmony to assure an unrestricted flow of traffic at a reasonable cost to the user of transportation services. Therefore, while we may identify and isolate certain transportation issues for purposes of discussion and decision, we must always keep in mind that changes or actions affecting one mode of transportation will likely have some level of impact on other modes, whether directly competing or not.

As a background for our comments on the various issues, the Task Force should be aware of the particular circumstances that exist in California today with respect to movement of grain and feed products. Basically we are receivers and not shippers, with the exception of intrastate movements from warehouses to point of final use and export movements. Of particular note is the fact that California is a feed grain deficit state and likely to remain so in the foreseeable future. Currently we must import from out of state origins approximately 65 percent of our feed grains composed mainly of corn, sorghum and some barley. We import from midwest origins virtually 100 percent of the soybean meal which is mainly utilized by the poultry feeding industry. 100 percent of this soybean meal and at least 80 percent of the grain comes in via rail. Another major factor in the scenario is the fact that generally there is very little storage at receiver facilities, causing us to virtually live out of rail cars in most locations. If cars are delayed as much as a day or two some facilities will run out of grain and have to "scramble" to get enough to tide them over from their competitors or any location they can come up with. At least in the near future it is not likely that we will see any significant construction of storage facilities due to cost factors and lack of space available at many plant locations.

To give you and idea of the volumes involved, feed grain shipments not including wheat totalled about 4.4. million tons during calendar year 1978. Wheat movement amounted to about 900,000 tons. Nearly 470,000 tons of soybean meal was moved into the state by rail, along with 170,000 tons of mill feed and hominy. Generally the origins for these products are in Nebraska, Kansas, Oklahoma and Texas, with some barley being trucked from Utah, Idaho and Montana.

Because of the distances and volumes involved, trucks are not deemed to be competitive with rail from those midwest and southwest points. Barge movements of grain and other feed ingredients from the Gulf to California ports is at this time not deemed to be feasible.

This umbilical connection by rail to the mid and southwest makes us effectively a captive market statewide for the railroads that serve our area, which are 4 in number—Sante Fe, Union Pacific, Southern Pacific and to a lesser extent Western Pacific. Northern California, in particular, is in a captive position in that it is generally not served by rails that directly originate grain in the midwest. Interline transfers are necessary to get cars to the final destination in northern California.

As a final comment on the California situation, we have consistently opposed the general percentage increase technique of raising rail rates. We are a long-haul, high rate area as compared to our inter-regional competitors for red meat and poultry products in the southeast and southwest who are closer to the grain source, thereby enjoying lower rates on the relatively shorter haul. A general percentage increase applied uniformly to all regions impacts the California reciever more greatly in terms of bottom line dollars and cents cost of transportation than it does his inter-regional competitor in those areas. As an alternative to the general percentage we have advocated, when increases are deemed necessary to maintain the economic viability of the rail system, that they be applied on a flat cents-per-hundredweight basis which would serve to maintain economic equity between inter-regional competitors. This recommendation has fallen on deaf ears, thus far, with the argument being that it is much less complex in terms of the tariff structure to apply a general percentage than it is to individually single out commodities and apply increases on a cent-per-hundredweight basis.

With this background as an indication of "where we're coming from" we will attempt to address some of the issues raised in the preliminary report of the Task Force and add a few of our own that were not mentioned in that report. First, however, we would like to compliment the draftsmen of the report for

developing a comprehensive and coherent statement of the needs and issues involved in the transportation of agricultural products. This will serve as an excellent guideline for the development of policy recommendations.

SPECIFIC NEEDS AND PRIORITIES

The six tradeoffs listed on Page 13 of the report were presented to a sampling of our membership to obtain their reaction. Their response was as follows:

1. There appears to be more concern with how changes in service and rates might affect competitive relationships than with whether or not the transportation system is meeting specific needs.

2. Being able to predict availability of service and probable rate levels was rated more important than maintaining some degree of equity with the competiton.

3. Members indicated that they would be willing to pay higher rates to obtain better service, provided that such service improvements could be specifically quantified and assured by the carriers. However, all respondents did indicate that there would be a rate level beyond which improved service may become uneconomic. No respondents contacted felt that they would be willing to sacrifice better service to obtain a lower rate.

4. In programming shipping needs, respondents tended to favor precommitment with assured future service, as opposed to a quick response transportation system without prior commitment. Acceptance of precommitment was based upon locking in the price for both the commodity and the transportation. Those favoring a quick response system wanted the flexibility to take advantage of market situations.

5. This question was generally confusing. If we assume "availability" means the presence of equipment when needed and "reliability and timeliness" relates to the providing of proper service, respondents could not see how one could be favored over the other because they are both necessary elements in an effective transportation system.

6. Being able to predict arrival time at the destination was deemed to be of more concern than reducing transit time from origin to destination.

RAILROAD ISSUES

In general, it is interesting to note that deregulation or regulatory reform is being advanced as the method for achieving two very different goals, dependent on whether it is railroad or trucks that are being deregulated. On the truck side of the coin, deregulation is supposed to achieve a stabilization or perhaps even a lowering of rates in the long run. For the railroads deregulation is supposed to achieve increased revenue such that they recover full long term cost plus a reasonable return on investment which allegedly is not currently the case.

As pointed out in the preliminary report it has been suggested that the problems and issues involving railroads are simply symptoms of the basic disease which is an inability to earn sufficient return on investment to provide financial stability over the long term. We would have to say that this may not necessarily be true. There has to be some reckoning as to what is considered to be a reasonable return on investment, as determined by what kind of accounting method. It has been said that the nation's railroads have two sets of books—one that they use when they want to justify a rate increase and another that they use in justifying a rate decrease for the same movement between the same points. In their testimony before Congress on the railroad deregulation issue the Fertilizer Institute spends a great deal of time pointing out the differences between betterment accounting, as used by the railroads, and depreciation accounting utilized by all other industries. Without attempting to judge which system may be the most appropriate to evaluate railroads, we would suggest that if the rail industry is to be compared with other industry in terms of return on investment, that the measurement of financial condition should be uniform in order to provide a proper comparison.

Another part of the railroad financial picture is the recognized fact that certain carriers do much better financially than others. Generally our western carriers and the southern railway tend to lead the pack when it comes to financial performance. Whether or not their rates of return are "reasonable" is subject to debate. These railroads are generally cited as having a desirable traffic compo-

sition, being generally more efficient and having effective management at the top levels, as opposed to the so-called "poor" eastern roads that have none of the above and are stuck with excess trackage they cannot abandon. It has been suggested that the deregulation thrust holds up the condition of the "poor" railroads as the reason why the industry needs regulatory relief, while paying little or no attention to the facts that there are some railroads that are in a healthy financial condition.

As we are all aware, management is an exceedingly important factor in whether or not an organization performs efficiently and effectively and realizes a reasonable return on its investment. A reasonable return on investment may be a reflection of competent management but it in and of itself does not necessarily guarantee such competence. Some criticism has been leveled at the management of our railroads for not fully utilizing the provisions of the 4R Act. This raises some question as to how railroad management would deal with a fully deregulated situation if they were hesitant to exercise their options under the 4R Act.

RAILROAD DEREGULATION

Our Association has not yet established a formal position on the issue of railroad deregulation. We have been waiting to see what sort of final proposal emerges after having been exposed to the public eye and initial congressional scrutiny. We will be meeting soon to attempt to establish a position.

Our initial response to a total deregulation of railroads is that it is not wise to jump off a cliff until you know how far down it is. It is likely that certain regulatory reforms will be appropriate and will be agreed to by the parties involved. However, other issues in the deregulation scheme cause considerable concern and objection, as voiced by many organizations thus far. In general, we would expect to see significant increases in freight rates over the long term under a fully deregulated situation. If a main objective of deregulation is to achieve a greater return on investment there can hardly be any other conclusion.

We should carefully evaluate definitions of "market dominance," "market share" and "effective competition." These are key elements in determining whether or not full deregulation is to be applied in a specific instance. They should be defined narrowly enough to provide significant protections for the so-called "captive" shippers and receivers.

Division of revenues on interline hauls is another question that has received considerable attention. Carriers have tended to treat those divisionary agreements as essentially privileged information, pretty much limited to themselves. It has been alleged that some of the existing divisions work to the continuing detriment of the poorer railroads while favoring those in better financial condition. The Fertilizer Institute has analyzed railroad industry figures related to revenue divisions and reached the conclusion that an excessively high division of interline revenues on east-west and east-south movements is settled to the western and southern carriers and that the western and southern territory lines are taking an unfair and disproportionate share of interline revenues on movement from and to the east. We believe the current equity or inequities involved in the sharing of revenues should be carefully evaluated as an element of the carriers financial picture.

Concern has also been expressed that, under full deregulation, there would be a tendency to develop transportation monopolies wherein the bigger railroads get bigger and the little ones disappear, resulting in reduced competition overall. Presumably this kind of situation could be controlled by the application of existing antitrust statutes. However, the possibilities in this area must be considered and weighed carefully.

As regards the activity of rate bureaus, we have as an association had contact over the years primarily with the Transcontinental Freight Bureau and the Pacific Southcoast Freight Bureau. We feel the procedures established by these bureaus for collective rate making have lent reasonable order to the process of establishing rates. We feel that although some modernizing improvements in their procedures may be appropriate, such as the possibility of limiting voting on rate matters to only those carriers that are directly involved rather than all carriers serving on a committee, that these bureaus should not be "gutted" as was originally proposed by the Interstate Commerce Commission and as is being suggested under deregulation. These bureaus, through the issuance of notices to shippers and receivers, have provided the means for users of transportation services to keep reasonable track of what is going on in the rate making area

RAIL CAR SUPPLY

Railcar supply has always been a critical issue. We agree that the grain car fleet will have to be expanded and/or its utilization improved. As regards the policy options in this area, we have the following comments:

1. We believe it is entirely appropriate for shippers and receivers to augment railroad-owned car supplies by purchasing or leasing cars. This is currently being done and is an increasing trend which should be encouraged in our view. If we relied strictly on railroads to purchase or lease cars required they may not have the inclination nor the finances to develop the kind of fleet that is needed.

2. The establishment of a joint company to purchase and lease cars by railroads may have some merit, however, it does establish another bureaucracy which may have some difficulty in administering the proper distribution of cars on a timely basis.

3. We believe that shippers, receivers and carriers should work together to do the best job they can in improving utilization of the existing fleet—it is in everybody's best interests.

4. Regarding ICC's authority over car service orders, our initial feeling is that it should be retained as this tends to provide some degrees of protection to shippers and receivers in times of emergency.

5. We would have to raise some question about the viability of demand-sensitive rates as a means of allocating railcars. We would be particularly concerned if the railroads were permitted to raise rates on very short notice, such as one day or a few days. This would create significant problems for us as receivers in predicting cost factors to be considered in the manufacturing of our products.

6. I believe we would agree that tax or other incentives such as loan guarantees to encourage railroads and/or shippers to purchase more cars would certainly be appropriate.

ABANDONMENTS

This is perhaps less of a problem in California than it is in the eastern parts of the country where there are many, many miles of lightweight lines which were built many years ago. As regards the policy options in this area, our initial response would be to favor the current laws and regulations which allow railroads and shippers to argue the merits of potential abandonments on a case-by-case basis. The ICC would probably be the logical entity to maintain jurisdiction over abandonment issues. Hopefully the Commission could reduce to the minimum the amount of time required to decide an abandonment case.

MULTIPLE CARS AND UNIT TRAINS

Multiple cars and unit trains have seen increasing use in California, which has in general been to our distinct advantage from a rate standpoint. Not to say that there haven't been some problems—dependent on which railline they may be on one firm may experience significantly lower rates than a competing firm who happens to be on a different railline. This is particularly notable in the southern part of the state between those which are situated on a Santa Fe line and those that are with the Union Pacific. However, all parties involved have been attempting to devise ways to establish equity in the system and eliminate, to the extent possible, some of the most glaring problems. Multiple cars is probably the most flexible situation in that they can be few enough in number that nearly any plant location can accommodate them. However, when we look to unit trains there are only a limited number of facilities that can handle 25, 50 and 75 car units in the given turnaround time. We must note that single cars are still and will continue to be a very important segment of the rail transportation system in our state. As regards the policy options, we would suggest that no specific action be taken in this area at this time and allow market forces to continue to work as they have up to this date. We don't feel that it is appropriate to attempt to unduly restrict multiple cars and unit trains in an attempt to promote single car shipments. If an effective gathering train system can be developed perhaps that would be a significant advantage in the origin area. However, we suspect that there may be numerous instances where such a system cannot be employed. We suspect that the economics of multiple cars and unit trains will further encourage their use in the future.

CAPTIVE USERS

As mentioned at the outset in our background information, we have an uncomfortable feeling in California as being the kind of captive that is under discussion. This is probably one of the major issues of concern, particularly with the smaller receiver that is some distance from established traffic corridors. He is wondering whether or not he will find himself discriminated against by the railroads in terms of both rates and service because he is a less desirable customer in terms of geography and volume. As a captive user definition, we feel that alternative number 2, which focuses on service availability, is probably more appropriate than definition number 1. In fact, definition number 1 involving higher transportation rates might necessarily follow as a result of the situation described in definition number 2. We are very concerned that appropriate protections be developed to assure that the captive has access to reasonable service at a reasonable cost. Again, the definitions of market dominance, market share and effective competition have to be carefully drawn so as to protect captive situations.

SERVICE

Rail service continues to be a real sore point among our receivers in California. The predominant service deficiency tends to be "bunching" wherein loaded cars arrive all at once rather than being spread out as originally ordered. This situation results in demurrage charges because the plant facilities are incapable of handling such a volume of product within the time alloted before demurrage becomes effective. Members have indicated that, in most instances, it seems that service is deteriorating rather than improving. We would also be quick to point out that significantly increasing demurrage rates does not stimulate more efficient turnaround, particularly when a receiver is experiencing a bunching situation. In some cases a receiver may be able to apply reverse demurrage wherein the railroad pays for improperly delivered cars, but the burden of proof is upon the receiver to demonstrate that the roalroad bunched those cars intentionally which can be extemely difficult if not impossible. We have had some complaints within our membership regarding the condition of the cars themselves wherein hatch covers would not tightly seal, resulting in moisture damage if the car had travelled through a rain storm enroute and leakage through deficiencies in the car's structure resulting from lack of repair. This seems particularly notable during the peak car movement season when apparently all operable pieces of equipment are put on the line, whether or not they are past due for overhaul.

WORK RULES

Certainly one area needing reform is that of work rules and their effect on railroad productivity. Featherbedding and other labor situations that have evolved over the years have certainly contributed significantly to carrier cost of operation and have tended to depress productivity. If any area is to be reformed it is certainly this one. However, unions we are sure would be extremely reluctant to give any ground on this issue.

MOTOR CARRIER DEREGULATION

This area is of much less concern to us than rail deregulation in that it comprises a relatively minor segment of our interstate transportation system. Also, grain is currently an exempt movement so we have been effectively operating in a deregulated situation anyway. However, the proposal to deregulate backhauls may well be of some interest to us. But it has been indicated that this could serve to bring the teamsters and the independent owner/operators into a head-to-head confrontation which could be a political as well as a physical hot potatoe. Within California we are undergoing regulatory reform of intrastate trucking as a result of the passage of SB 860 and its subsequent implementation by the California Public Utilities Commission. This current regulatory reform effort deals with virtually every segment of intrastate trucking, including the currently established minimum rates. The Commission is moving toward elimination of these rates as quickly as they can, establshing a system of negotiated carrier filed rates. However, whether or not the minimum rate elimination will extend itself into the agricultural tariffs remains to be

seen. There is considerable feeling at the present time that some minimums should be maintained on certain commodities, while others could be appropriately freed of rate regulation. This issue has yet to be dealt with by the Commission and the industry.

HIGHWAY TRUST FUND

We believe that funding derived from the Highway Trust Fund should be used for the construction, improvement and maintenance of highway facilities and not diverted to other uses.

WATERWAYS

Our main concern in the area of waterways involves dredging of the Stockton Channel to increase its average depth, thus maintaining the viability of Stockton and West Sacramento Port facilities, as we see a new generation of vessels with larger draft coming into operation. If these dredging programs are not initiated soon, we could find ourselves effectively land locked as these new vessels become operational which would certainly have serious consequences on the agricultural products which move through these port facilities.

FUEL SITUATION

The most finely conceived and operated transportation system is worth little without sufficient fuel to operate it. Our attention has certainly been focused on this fact in recent months. Our fuel allocation set aside system in California seems to be functioning fairly well, at least so far. We are currently authorized to set aside 4 percent of gasoline and diesel supplies for allocation to end users in agriculture and other segments who are experiencing hardship conditions. The administration has requested that California be authorized to set aside up to 6 percent in anticipation of our harvest requirements. We would recommend that the Task Force consider establishing a policy recommendation in this area, such that our nationwide approach to the current situation, as well as any similar situations that may occur in the future, is clearly understood and uniform, if at all possible. This concludes our testimony.

The CHAIRMAN. Go ahead please.

STATEMENT OF ROBERT FLEISHER, VICE PRESIDENT, TRAFFIC, TRANSCON LINES

Mr. FLEISHER. Thank you.

My name is Robert E. Fleisher, vice president, traffic, of Transcon Lines. I am based at the company's headquarters at 101 Continental Boulevard, El Segundo, Calif. 90245. I have been employed by Transcon in this capicity since 1973.

Transcon is a regular route motor common carrier of general commodities operating under Interstate Commerce Commission—ICC—certificate MC–110325 and subs thereof. The company was founded in 1946. At its inception, the operations were limited to service between Los Angeles and Kansas City serving intermediate points of Oklahoma City and Tulsa. The company has grown to be one of the largest publicly held regular route motor common carriers in the country. In 1978, the company's total revenues were approximately $229 million. This made the company one of the top 10 in the industry based on sales. During the year, we averaged approximately 4,800 employees working at more than 100 freight handling facilities located from coast to coast and border to border, numerous over-the-road transportation offices throughout the country and the company's general office here in California. All over-the-road transportation is provided by company employees as opposed to owner-operators. All equipment, local pickup and delivery as well as line-haul tractors and trailers, is

company owned. During 1978, we operated nearly 6,000 pieces of equipment over more than 43,000 miles of regular routes authorized by the ICC. We have pending before the ICC several applications for additions to our present certificate of public convenience and necessity so that we can further increase our service to the shipping public.

Transcon is an integral part of the national network of motor common carriers providing efficient and low-cost freight transportation services to shippers and receivers without discrimination as to locations, company size and size of shipments. Transcon serves more than 25,000 points throughout the United States either direct; that is, providing local pickup and delivery service, or in conjunction with reliable connecting carriers through ICC-approved freight interchange provisions such as convenience interlining. The more than 8,000 points Transcon serves direct on a daily basis range in size from small rural communities such as Biola, Calif., population 800, to giant metropolitan areas like San Francisco.

During 1978, the company handled in excess of 1.1 million shipments. About 95 percent of these shipments weighed less than 10,000 pounds—LTL shipments. More than 60 percent of those weighed less than 500 pounds. LTL shipments handled by the company contributed 54 percent of the revenue and amounted to 34 percent of the total weight handled. This means that the remaining 5 percent of the shipments—about 55,000—yielded 46 percent of the total revenue and was 66 percent of the weight. Consequently, it is obvious that the shipments over 10,000 pounds—the truckload or TL freight—are an important part of the company's overall business both in terms of tonnage and revenue.

To this point I have attempted to provide insight into the scope and nature of the company's business to provide some background against which the following discussion might be evaluated. Before proceeding, however, to recapitulate, Transcon is:

One: A large, regular route motor common carrier more than 20 years in existence;

Two: Serving more than 25,000 points and places in the United States either direct or with reliable connecting lines;

Three: A network of more than 100 terminals, 43,000 route miles, 6,000 pieces of equipment, and nearly 5,000 employees;

Four: Providing service to shippers and receivers that virtually span the spectrum of size and geographic location;

Five: Handling shipments large and small, LTL and TL, with competitive service to all of our customers.

In a nutshell, Transcon is a big, important, service-oriented component of the country's freight transportation system.

I am here today because the motor common carrier system is crumbling. Carriers, both large and small, that make up that system are struggling for their very existence. The environment in which we operate is hostile at best. The prospects of favorable changes are poor. About the only thing certain is that there will be further threats to the system from external forces. Transcon's employees are attempting to continue to provide an acceptable level of cost-effective service to the shipping public but it's becoming more and more difficult due mostly to factors beyond our control.

I address myself to the latest threat to my company and our industry—Ex Parte MC–127, Special Procedures Governing Return Hauls—Applications for Motor Carrier Authority Complementary to Movements of Exempt Agricultural Commodities.

This proceeding is the latest in a never-ending series of ICC knee-jerk reactions to some special interest group's desire to whittle away at the motor common carrier system. If successful, the petition will legalize the transportation of regulated commodities by agricultural haulers if they can prove that at least 50 percent of their total tonnage is in agricultural commodities. The stated purpose being to fill "empty backhaul miles." This is bunk. The purpose is nothing more than to divert traffic now moving by carriers of general commodities to the specialized carriers of agricultural commodities. It is not to fill empty miles.

During 1978, about 66 percent of Transcon's system tonnage involved TL—more than 10,000 pounds—shipments. A substantial portion of that tonnage moved into and out of California, the source of many agricultural products handled east-bound by members of the United Fresh Fruit and Vegetable Association—petitioners in Ex Parte MC–127. Transcon operates 14 terminals in California. They are nearly equally divided geographically between southern, central, and northern California. We have facilities in agricultural centers like Salinas as well as manufacturing centers such as San Leandro. In total during 1978, these 14 facilities handled 600,000 shipments and over 1¼ billion pounds of freight in and out of the State. The vast majority of the shipments weighed less tran 500 pounds. For these and other LTL shipments we have invested substantial capital in city pick-up and delivery equipment and terminal facilities. However, these facilities are also used in the flow of heavier-weighted TL shipments. Nevertheless, their principal function is to facilitate a smooth and expeditious flow of the thousands of small LTL shipments handled by the company. Truckload traffic is a substantial portion of the total weight and revenue handled by Transcon. It, therefore, absorbs some of the total overhead necessary to provide the full range of services required by our certificate of public convenience and necessity. Without dwelling on the complexities of joint-costs, allocation of fixed burdens, cross-subsidization of traffic, et cetera, it does not require a degree in accounting or economics to realize that a reduction in the revenue base will require a higher per unit fixed cost absorption by the remaining revenue. We have struggled with a continuous loss of TL traffic due to formal and informal—lack of enforcement—deregulation of TL traffic for a number of years. The instant proceeding is just another chapter in the continuing saga.

The higher the shipment weight the more desirable is the shipment for the agricultural-hauler and consequently more likely is the chance of diversion from common carrier. They require a minimal amount of terminal facility and related capital expenditures. Single shipments filling trailers are the simplest to handle. These are then most likely to be diverted. Our experience indicates that most shipments over 30,000 pounds will fully utilize our equipment. This may not be true for all carriers. For most it will be less. Transcon has a fleet of the lighest and largest cubic capacity trailers in the industry. Our 45 foot

trailers have 3,250 cubic feet of available space compared with a refrigerated trailer of about 2,200 cubic feet.

In 1978, Transcon's California terminals handled 11,026 shipments weighing more than 30,000 pounds. These shipments had a total weight of 500 million pounds and were approximately $29 million of the company's total revenue.

The operation into and out of California is basically balanced. The shipments over 30,000 pounds coming into the State totaled 248 million pounds whereas the outbound amounted to 252 million pounds—an imbalance factor of about 1.5 percent. This balance coupled with our light, high-cube equipment has facilitated cost-effective transportation of not only TL traffic but has also permitted a lower level of overall costs to the shipping public than would be possible in case of tonnage imbalances or loss of a significant portion of our revenue base—like TL traffic—through diversion.

We are currently experiencing line haul costs of approximately 85 cents per mile. These are fully allocated costs including out-of-pocket as well as overhead costs. The cost is roughly the same whether the unit is full or empty. We simply cannot afford to run empty miles—and we don't. System wide we have less than 5 percent empty miles.

The thrust of Ex Parte MC–127 is to divert westbound regulated traffic from general commodities carriers to agricultural commodity haulers. Where else would it come from? Changes in the regulations are not going to change the basic volume of freight moving between the midwest and east on the one hand and California on the other. The traffic must be shifted from one carrier to another. This will have a serious detrimental effect on Transcon and ultimately on our customers. As has already been pointed out, we presently have a very well-balanced operation into and out of California. Disruptions in that balance created by a loss of westbound business will require that the remaining traffic—the California outbound—absorb more cost burden occasioned by the imbalance. That is, unless the agricultural haulers also divert some of our east-bound general freight and we lose TL traffic moving in both directions in the process. In either case, the LTL shippers must compensate the carriers for the effects of a greatly reduced revenue base by absorbing substantial rate increases which will undoubtedly be necessary. Both possibilities are likely. In fact, we have seen over the last several years a continuing diversion of TL traffic to illegal operations not effectively controlled by the ICC. This has caused a substantial reduction of TL traffic handled by regular route common carriers like Transcon. This illegal diversion has been supplemented by legalized diversion as manifested in the ICC's dual standard of entry regulations. On the one hand, the proliferation of contract carriage available for the asking to the small operator and, on the other, the ICC's snail-like pace of handling common carrier applications intended to offset these losses has caused a major shift in TL traffic handling patterns.

In today's environment, most of what is contemplated in MC–127 or similar moves to divert motor common carrier TL traffic is already happening and has for some time. And it will not stop unless the ICC changes its total philosophy regarding the transportation of gen-

eral freight by motor common carriers. The philosophy I refer to embraces the mundane, routine aspects of controlling illegal transportation through programs of effective field compliance and includes esoteric principles such as involved in motor common carrier revenue need proceedings such as are embodied in Ex Parte MC–128, Revenue Need Standards in Motor Carrier General Increase Proceedings. From my vantage point, the only changes I see now and expect to see in the future are more aggressive attempts to wreck a system that still works—and I emphasize the word "Still."

It seems to me that the ICC has itself worked up into a frenzy to accomplish some sort of reform, deregulation, reregulation, modernization, or whatever word is in vogue at the moment. I don't fault attempts to change for the overall better. To make sure change is for the better, however, requires carefully planned and executed steps. Those steps should also be in concert with some overall plan or policy. I believe Congress should take an active role at this time to insure that the ICC is taking administrative actions consistent with the national transportation policy. If there is inconsistency, either the actions of the ICC or the policy must be changed. Shippers and carriers alike have attempted to change actions at the ICC with little if any success. It appears only Congress is in a position to effect any substantive control of the situation. We urge you to do so.

The CHAIRMAN. Thank you very much, Mr. Fleisher.

All right, sir.

STATEMENT OF JOHN J. HAGEDORN, VICE PRESIDENT, FINANCE, PACIFIC INTERMOUNTAIN EXPRESS CO.

Mr. HAGEDORN. My name is John Hagedorn. I am vice president of finance, Pacific Intermountain Express.

I submitted my entire statement to your staff and I would like to excerpt from that.

The CHAIRMAN. All right, sir.

Mr. HAGEDORN. At the outset I would like to say that I didn't come here to oppose all meaningful reform of the trucking industry.

What I did come to oppose are piecemeal changes to industry regulations that respond to special interest groups without benefiting shippers and consumers as a whole. And I know that's the effort to which your committee and these hearings are dedicated.

Pacific Intermountain Express is headquartered in Walnut Creek, Calif., and is the Nation's sixth largest for-hire common carrier. For 1979, revenue is forecast at $396 million. In 1978, PIE operated over 198 million intercity miles. At midyear, 1979, PIE employed over 7,300 people, including an average of approximately 700 trip lease owner-operators.

In 1978, PIE's general commodities division, accounted for over 75 percent of these employees and about 75 percent of PIE's revenue.

PIE's general commodities division provides direct service to 10,000 cities from 132 terminals in 44 States and British Columbia.

Seventy-four percent of PIE's general commodity revenue is generated by less-than-truckload shipments averaging about 630 pounds.

PIE's average general freight shipment is hauled 1,563 miles in markets which require normal delivery times of 5 or more days.

Much of PIE's GCD's backhaul is filled with truckloads of exempt agricultural commodities. This was acknowledged by Mr. Fields in his testimony and it was also acknowledged that there is not a real shortage in capacity to handle exempt commodities. And, of course, one of the reasons is that the regulated carriers such as PIE participate in handling these exempt commodities.

In the 4-week accounting period of October 1979, PIE handled 140 loads of exempt commodities out of California alone, saving us some 330,000 empty miles, or on an annualized basis, around 4 million empty miles.

PIE operates an All States Trucking Division which employs owner-operators and specializes in the movement of truckloads of high-volume, heavy or outsized commodities. About 50 percent of the truckloads moved by All States travel in flatbed trailers, about 30 percent in refrigerated trailers and about 20 percent in conventional dry vans.

Freight is solicited by 103 commission agents located in most of the large industrial cities. All States has a full-time staff of 76 employees who perform administrative functions. It is also supported by PIE's claims and tax departments.

About 48 percent of All States operations work is done on permanent leases and about 52 percent on single trip leases.

Many of the single trip operators employed by All States are exempt agricultural commodity haulers who lease their equipment to All States when returning home after delivering a load of agricultural products.

Because of PIE's extensive involvement in general commodity operations and also in owner-operator operations, PIE's experience is particularly relevant to the Commerce Committee's efforts to assess the impact on common carriers, on owner-operators, and on shippers of the proposed changes in regulation of exempt agricultural carriers.

The most far-reaching of these proposals is to allow unregulated agricultural carriers to haul regulated commodities subsequent to the movement of exempt agricultural commodities at any rate they can negotiate.

The benefits predicted for this proposal are: (1) fuel will be saved; (2) regulated commodity rates will fall; (3) rural communities will be served by more trucking firms; (4) owner-operators will be able to compete without relying on regulated carriers for backhaul leases and without paying 25 percent of their backhaul revenues to regulated carriers; (5) freight rates for farm products will decline.

Let us examine the reasoning behind each of these predicted benefits.

(1) Predictions of fuel savings are based on the contention that exempt haulers must run empty backhauls. The fact is that most exempt haulers are availing themselves of the opportunity to match front and backhauls either by tripleasing to regulated carriers or by applying for their own authority.

I am aware of the problems that exist in obtaining additional authority since PIE has also sought to obtain additional authority.

Administrative reforms which have been proposed to expedite those procedures would be welcome.

The exempt haulers are correct in arguing that they cannot stay in business by operating empty in the backhaul. Much of the 26 percent empty miles, which the GAO estimated in 1976, was experienced by trucks carrying agricultural commodities which were run, and continue to be run, by owner-operators who do not obtain backhauls and who, ultimately, go out of business.

The primary consequence of allowing exempt agricultural carriers to haul regulated traffic in their backhauls would be to attract more owner-operators to haul agricultural products out of markets such as California.

PIE, like many common carriers, is overbalanced inbound to California. Like many common carriers, PIE depends upon agricultural commodities to fill its trailers in California for return trips eastbound. As I've stated before, in the month of October, we hauled 140 trailerloads of exempt commodities and avoided 330,000 empty miles.

If there are to be fewer exempt loads available for common carriers to haul out of California, common carriers will experience additional empty miles to move their equipment back east.

There are other reasons why shifting loads to exempt haulers will not save fuel. The exempt owner-operators usually drive higher powered, less fuel efficient tractors than those used by common carriers.

For example, PIE currently buys its tractors with Detroit diesel 6V–92TT high-torque engines rated at 270 horsepower at 1,800 revolutions per minute. PIE also equips its tractors with air shields, fan clutches and radial tires. While owner-operators do employ fan clutches and radial tires and do maintain their tractors in excellent condition, very few use low-powered engines and air shields.

At comparable weights over comparable terrain it is unlikely that the owner-operators' tractors are as fuel efficient as are PIE's.

In addition, most owner-operators employ 45-foot semitrailers, while over two-thirds of PIE's miles are run with 28-foot twin trailers. These tandem trailers have about 25 percent greater capacity than a 45-foot semitrailer but consume less than 10 percent more fuel.

(2) Regulated commodity rates are predicted to fall because of the increase in competition.

While some truckloads would move at lower rates on exempt carriers, the overall impact on truckload rates would be upwards.

If common carriers were able to obtain fewer exempt loads to fill empty miles, their round trip cost of handling the truckload traffic moving into California, which creates most of the east to west overbalance, would rise. Most of the headhaul traffic that is moved by common carriers at regulated rates is transported in that manner because the common carrier provides a ready fleet of trailers and regularly scheduled pickup and delivery and reliable transit service and not because of low rates.

If the truckloads must be expedited or traced, the common carrier can do so with around-the-clock communication systems. If the shipment is lost or damaged, the common carrier has the financial and administrative ability to quickly pay the claim.

Therefore while exempt carriers may initially be able to attract some headhaul truckload business, this business will ultimately revert to common carriers because of the greater overall service provided.

(3) Rural communities are predicted to be served by more trucking firms because they will have greater flexibility to provide a wide range of service.

This prediction ignores the fact that truckloads of agricultural products which are shipped out of rural communities and truckloads of regulated products which are shipped into rural communities represents but a small part of the trucking service upon which rural communities depend.

Rural communities depend upon less-than-truckload shipments. LTL shipments cannot be handled by exempt carriers because they do not have the pickup and delivery networks, the terminal facilities, the technical know-how or the desire to serve these LTL shipments.

Furthermore, many rural communities, not having manufacturing or processing facilities, receive far more inbound LTL freight than they ship outbound. If less farm products are available to fill the otherwise empty common carriers who bring in LTL shipments, the freight charges on these LTL shipments will have to rise if the common carrier is to have the same incentive to serve that community.

(4) Owner-operators are predicted to be able to compete for regulated freight without leasing to regulated carriers and without transferring 25 percent of their revenues to these carriers.

It is argued that with the help of a broker, owner-operators can perform the functions now performed by regulated carriers and do so at a lower cost. Owner-operators receive, on an average, about 75 percent of the revenue they move on the certificated carrier's authority. The 25 percent retained by the regulated carrier compares with 10 percent charged by exempt brokers whose sole function is usually to secure the loads.

It is argued that most of that 15 percent differential can be traced to two factors, the monopoly value of the ICC certificate and the excess paperwork required by the ICC. This is not true.

PIE's All-States Trucking Division, which employs owner-operators on both permanent and trip leases has committed 76 full-time employees, a considerable amount of computer capacity and millions of dollars in capital to performing services for owner-operators. It is unlikely that owner-operators could perform these services at all, much less with the efficiencies with which they are carried out by PIE's All-States Division.

My written statement cites a great deal of specific PIE experience which dramatizes the need for these services. These services include: making advances to trip leasers at the time they sign up for a load, rating freight bills, billing shippers or consignee debtors and following up until the bill is collected, financing accounts receivable and incurring bad debt costs, settling the trip immediately upon the arrival of the load, regardless of whether the freight charges are ever collected, taking primary responsibility for bodily injury and property damage insurance—although the trip leaser is required to carry such coverage—reporting fuel and road taxes, defending against tax audits involving owner-operators and paying for deficiencies, usually without recourse to the owner-operator, maintaining an inventory of State regulatory permits, maintaining daily telephone contact to keep track of the owner-operator's location and status for the benefit of shippers and owner-operators.

62-322 O - 80 - 4

The CHAIRMAN. Mr. Hagedorn, you've gone about 5 minutes over your 10. Do you want to just summarize and the whole statement will be made a part of the record?

Mr. HAGEDORN. All right.

The CHAIRMAN. I've already read it myself while I've been listening to you.

Mr. HAGEDORN. OK, the maintenance of loss and damage responsibility to the shipper is provided now by the regulated carrier. Insurance to cover regulated commodity loads would be prohibitively expensive to most owner-operators so there are, as I pointed out here, grave risks to shippers and owner-operators of allowing owner-operators to carry regulated commodities as exempt carriers.

The proponents also predict that freight rates for farm products will decline. We expect that that will not happen for two reasons. First of all, it would be difficult for exempt carriers to obtain backhauls because backhaul truckloads are not repetitive movements and the help of agents for regulated carriers will be required to obtain these hauls. Furthermore, exempt carriers will not be able to provide the administrative service that I was just enumerating at a cost that is less than the 15 percent now charged by the regulated carriers.

So in summary, we feel that the proposal to allow exempt carriers to transport regulated commodities in their backhaul will not provide the benefits predicted by proponents.

The CHAIRMAN. All right, sir, Mr. Hagedorn. Next.

[The statement follows:]

STATEMENT OF JOHN J. HAGEDORN, VICE PRESIDENT, FINANCE, PACIFIC INTERMOUNTAIN EXPRESS CO.

Pacific Intermountain Express Co. (P–I–E) is headquartered in Walnut Creek, California and is the nation's sixth largest for-hire common carrier with 1979 revenues forecast at $396 million. In 1979 P–I–E operated an average of about 1,400 owned and permanent leased line tractors running over 198 million intercity miles over 46,000 miles of authorized routes in 44 states serving approximately 10,000 cities and towns from 138 terminals and 91 agencies. At mid-year 1979, P–I–E employed over 7,300 people including an average of approximately 650 permanent lease owner-operators and 700 trip lease owner-operators.

In 1978, P–I–E's General Commodity Division (GCD) accounted for over 75 percent of the employees and about 75 percent of P–I–E's revenue. This division hauls almost any commodity other than household goods, ores, petroleum, bulk chemicals, and other highly perishable, dangerous or outsized goods requiring special equipment. It provides service to 10,000 cities from 132 terminals in 44 states and British Columbia. P–I–E has filed a Petition of Convenience and Necessity with the I.C.C. requesting authority to serve Houston, Texas and other major cities in Southern Texas and in Louisiana, Arkansas and Oklahoma. About 74 percent of P–I–E's GCP revenue is for high rated less-than-truckload (LTL) shipments averaging about 630 pounds. The average shipment is hauled 1563 miles and approximately 60 percent of the shipments hauled are in transcontinental markets which require normal delivery times of 5 or more work days. The in-transit service provided to all of the markets served averages better than 90 percent on-time versus competitive standards which are reviewed regularly with customers by P–I–E sales representatives. Much of P–I–E's GCD backhaul is filled with truckloads of exempt agricultural commodities.

The All States Trucking Division of P–I–E (All States) which employs owner-operators, specializes in the movement of high volume, heavy or out-sized low rated commodities that move in truckload increments usually on special equipment. About 50 percent of the truckloads moved by All States travel on flatbed trailers, about 30 percent in refrigerated trailers and about 20 percent in conventional dry freight vans. Freight is solicited and pickups are arranged by 103 commission agents with offices in or near most of the large industrial cities in the country. The administrative functions of All States are performed by a full

time staff of 76 All States employees most of whom are in a separate office area at P-I-E's Walnut Creek, California headquarters.

Shipments solicited by All States agents are picked up, moved between cities and delivered by independent owner-operators about 48 percent of whom work on permanent leases and 52 percent on single trip leases. Quite a few of the single trip operators employed by All States are haulers of exempt unprocessed agricultural commodities who lease their equipment to All States on a single trip basis when the produce they haul is ont-of-season or when returning home after delivering a load of agricultural products. Both owner-operators and agents are compensated based on a percentage of the gross freight revenues charged the shipper or consignee.

Because of P-I-E's extensive involvement in general commodity operations using its own equipment and terminals and in special commodities operations using owner-operators, our experience is particularly relevant to the Commerce Committee's efforts to assess the impact upon common carriers, owner-operators and shippers of the proposed changes in regulation of exempt agricultural carriers most of whom are composed of owner-operators.

These changes in regulation have been proposed by the American Farm Bureau Federation, the National Agricultural Transportation Association and the United Fresh Fruit and Vegetable Association. The most far reaching of these proposals is to allow unregulated agricultural carriers to backhaul regulated commodities subsequent to the movement of exempt agricultural commodities at any rate they can negotiate provided that no more than half of their annual tonnage consists of regulated commodities and that such carriers file an annual notice with the I.C.C. indicating their intent to engage in such backhaul business.

The benefits predicted by those supporting this proposal are as follows:

1. Fuel will be saved because trucking companies will have fewer empty or partially loaded backhauls.
2. Regulated commodity freight rates will fall or future increases will be moderated.
3. Rural communities will be served by a greater number of trucking firms.
4. Owner-operators will be able to compete as independent businesses without relying on regulated carriers for backhaul leases and without transferring 25 percent of their backhaul revenues to regulated carriers.
5. Freight rates for farm products will decline or future increases will be moderated.

Let us examine the reasoning behind each of these predicted benefits, citing P-I-E's specific experience wherever applicable.

1. Fuel savings predictions are based primarily upon the contention that exempt agricultural haulers must return empty after delivering their farm loads when the fact is that most exempt haulers are already availing themselves of the opportunity to match front and backhauls by trip leasing to regulated carriers. The exempt haulers are correct in arguing that they cannot stay in business by operating empty in the backhaul. Much of the 26 percent empty miles which the General Accounting Office estimated in 1976 was experienced by trucks carrying raw agricultural commodities were run and continue to be run by owner-operators who do not obtain backhauls and who ultimately go out of business, creating instability in the service offered agricultural communities.

The primary consequence of allowing exempt agricultural carriers to haul regulated traffic in their backhauls would be to enable these carriers to haul more agricultural products out of markets such as California. In the markets it serves, P-I-E is over balanced inbound to California. P-I-E like many common carriers depends upon exempt agricultural commodities to fill its trailers in California for return trips eastbound. In the month of October 1979, P-I-E hauled 140 trailer loads of exempt commodities out of California avoiding 329,993 empty miles. If exempt carriers are able to balance hauls of more agricultural products moving out of California, there will be fewer exempt loads available for common carriers and P-I-E and many other common carriers will experience additional empty miles in order to move its equipment back east.

Even if the shifting of regulated truckloads from common to exempt carriers did not result in more empty backhauls for common carriers, it would probably increase fuel consumption for several reasons. First of all the owner-operators who comprise exempt carriers usually drive higher powered more elaborate less fuel efficient tractors than those used by common carriers. For example P-I-E currently buys its tractors with Detroit Diesel 6V–92TT fuel squeezer high torque engines rated at 270 horsepower at 1800 revolutions per minute. Equipped with airshields, fan clutches and radial tires these tractors average 5 miles per

gallon in doubles operations with gross carrying weights in the 73,000 to 80,000 pounds range. While owner-operators tend to maintain their tractors in excellent condition and many do employ fan clutches and radial tires, very few use low powered engines and air shields. The air shield has improved P-I-E's fuel efficiency by about 4 percent. At comparable weights and over comparable terrain it is unlikely that the owner-operator higher powered tractors are as fuel efficient as are P-I-E's.

In addition most owner-operator's employ 45 foot semi-trailers, while over two-thirds of P-I-E's miles are run with twin 28'5'' trailers. These two trailers have a combined capacity of slightly over 4,000 cubic feet, about 25 percent greater than that afforded by 45 foot semi-trailers. However, these twin trailer combinations consume less than 10 percent more fuel than the 45 foot semi rigs. Many longhaul common carriers employ twin trailers. To the extent that miles are shifted from those twin combination onto the 45 foot rigs of exempt carriers more fuel will be consumed.

2. Regulated commodity rates are predicted to fall because of the increased competition in the motor carrier industry as a whole which will result from exempt carriers being allowed to haul regulated commodities at whatever rates they can negotiate. While some truckloads would move at lower rates on exempt carriers, the overall impact on truckload rates would be upward because there would be less exempt products available for general commodity carriers to fill their empty backhauls.

If P-I-E and other common carriers could not depend upon exempt commodities to fill empty miles, our round trip costs of handling the truckload traffic moving into California which creates most of the East to West overbalance would rise. Therefore if we are going to continue to afford to offer East to West truckload service the rates on this traffic would have to rise. It might be argued that these truckloads could be handled by exempt carriers at reduced rates. However, most of the headhaul truckload traffic that is moved on common carriers at regulated rates is transported in that manner because the common carrier provides a ready fleet of trailers and regularly scheduled pickup and delivery and reliable transit service that the shipper can depend upon. If the truckload must be expedited or traced the common carrier can do so with a coordinated round-the-clock dispatch and communication system. If the shipment is lost or damaged the common carrier has the financial and administrative ability to quickly pay the claim. Therefore, while exempt carriers may initially be able to attract some headhaul truckload from common carriers and may be able to retain a small amount of it, in the long run the business will revert to the common carrier because of the greater reliability of over-all service offered. It should also be pointed out that many of these headhaul truckload shippers are also shippers of less-than-truckload (LTL) freight and exempt carriers lacking terminal facilities pickup and delivery networks will not be able to handle this freight and thus offer a complete service to these shippers.

3. Rural communities are predicted to be served by a greater number of trucking firms because by allowing exempt agricultural carriers to haul regulated commodities they will have greater flexibility and be able to provide a wide range of service offerings. This argument ignores the fact that the truckloads of agricultural products which are usually shipped out of rural communities and the truckloads of regulated freight that is proposed to be backhauled by exempt carriers, represent only a small part of the trucking service upon which rural communities depend. The life line of rural communities is the life blood of common carriers. It is LTL shipments. LTL shipments cannot be handled by exempt carriers because they do not have the pickup and delivery service network, the terminal facilities, the terminal know how or the desire to serve these small shipments. The typical load of LTL freight carried over-the-road between cities by P–I–E contains over 50 shipments averaging 630 pounds moving more than 1650 miles from 30 different shippers destined to more than 40 consignees on several pickup and delivery routes in several different communities.

Furthermore many rural communities, not having manufacturing or processing facilities, receive far more inbound LTL freight than they ship outbound. Outbound shipments usually consist of truckloads of raw farm products. If less of these raw farm products are available to common carriers who bring in the LTL shipments, the freight charges on these LTL shipments will have to rise to offset the cost of the additional empty miles if the common carrier is to have the same incentive to serve that community.

4. Owner-operators are predicted to be able to compete as independent businesses without relying on regulated carriers for backhaul leases and within

transferring 25 percent of their backhaul revenues to regulated carriers. This prediction is based upon the argument that since exempt carriers provide satisfactory service by transporting truckloads of unprocessed food, they can provide satisfactory service in transporting truckloads of regulated commodities. It is further argued that with the help of a broker, owner-operators can perform the functions now performed by the regulated carrier to whom they must lease and do so at a lower cost.

Owner-operators who lease to regulated carriers receive on average about 75 percent of the revenue on loads they move on the certificated carrier's authority. The 25 percent retained by the regulated carrier compares with 10 percent charged by exempt truck brokers whose sole function is to secure the loads for the owner-operators. It has been argued that most of that 15 percent differential can be traced to two factors: the monopoly or scarcity value of the I.C.C. certificate, and the excess paperwork required of I.C.C. carriers. Nothing could be further from the truth.

As mentioned at the beginning of this statement, P–I–E's All States Trucking Division has committed 76 full time employees, a considerable amount of computer capacity and millions of dollars in capital to performing services for owner-operators. It is most unlikely that individual owner-operators or that large agricultural cooperatives representing many owner-operators could perform these services at all, much less with the efficiency with which they are carried out by P–I–E's All States Trucking Division. These services performed for trip leasers are described below:

(a) Advances are made to the trip leaser at the time he signs up for a load providing the leaser with funds to meet his living and operating costs until the load is delivered and the full trip payment is settled. P–I–E bears the cost of financing this interest free loan.

(b) Freight bills are rated by All States which insures that freight is completely and properly described and that given these descriptions rates are competitive, properly applied, and accurately extended.

(c) Shipper or consignee debtor is billed and written and telephone followup maintained if necessary until the bill is collected.

(d) Accounts receivables are financed and bad debts are incurred with no costs or risks to the lease operator. In 1979 All States has financed an average of about 28 calendar days of revenue in receivables.

(e) Immediate settlement of the trip is effected upon delivery of the load. The owner-operator is paid the remainder of his 75 percent share of the freight charges, regardless of whether the freight charges are ever collected or if collection is delayed or reduced by disagreements over rates and descriptions.

(f) Primary responsibility for bodily injury and public liability insurance is held by All States, although the trip leaser is required to carry such coverage. All States must frequently pay such claims and then seek reimbursement from the owner-operator or his insurance company.

(g) Road and fuel taxes are reported by P–I–E for the owner-operator. P–I–E also defends against tax audits involving owner-operators and pay for prior years' deficiencies usually without effective recourse to the owner-operator. For example, in September 1979, New York State presented P–I–E– with a proposed assessment for $75,000 in sales taxes not paid by single trip operators on lease revenue received from P–I–E for leases originating in New York between June, 1974 and June, 1978. There is no possibility that P–I–E will be able to recover these taxes from these single trip operators.

(h) An inventory of state regulatory permits is maintained by All States at the offices of each of its 103 agents. These permits are provided to owner-operators at no markup, even though P–I–E bears the costs of financing and controlling these valuable documents. This is a considerable convenience to the owner-operators who may lose valuable time and available loads for the lack of the permits needed to operate in new states unless he buys permits for states which he may never cross.

(i) All-States' central dispatch maintains daily telephone contact at All States' expense to keep track of the owner operator's location and status for the benefit of shippers and owner-operators. If leased equipment breaks down in route, All States advances the owner-operator funds to have the equipment repaired (up to a maximum of half the revenue value of the load) and/or dispatches another operator to "repower" the load.

(j) Loss and damage responsibility to the shipper rests with All States. While the trip leaser is legally liable All States pays the claims to the shipper regardless of whether we ever recover from the owner-operator. In the first

9 months of 1979 All States paid over $718,000 in loss and damage claims and only recovered $362,000 from owner-operators. All States maintains not only the financial ability and expertise to rapidly settle claims but the expertise to protect itself and the owner-operator against false or overstated claims.

While insurance to cover a perishable agricultural load tht may be valued as high as $15,000 to $25,000 can be afforded by the average owner-operator, insurance to cover a regulated commodity load valued at $80,000 to $300,000 is prohibitively expensive for most owner-operators. Descriptive examples of 12 loss and damage claims with a total value of $855,750 paid in the last twelve months of All States are provided on Attachment 1. The purpose of citing these examples is not to impugn the integrity or reliability of owner-operators in general but to demonstrate that there are grave risks to both shippers and owner-operators of allowing owner-operators to carry regulated commodities as exempt carriers rather than as leasers to certified carriers.

It is the materialization of these risks together with the realization of the costs of financing advances, receivables and repairs in route which are likely to make the exempt carrier's penetration of the regulated commodity market a temporary and destabilizing phenomenon—destabilizing to common carriers, shippers, and owner-operators alike.

5. Proponents of the proposal predict that freight rates for farm products will decline or future increases to be moderated. This prediction is based upon the expectation that an exempt owner-operator permitted to backhaul regulated commodities will be in a position to shift more of his cost to non-agricultural shippers or to pass along a portion of his increased profit to agricultural shippers in the form of reduced rates. This expectation is not well founded.

First of all the exempt hauler must find a shipper at or near the destination of his agricultural load who has a truckload bound for the area to which the exempt hauler wishes to return. Without the assistance of someone like an All States agent in the destination area, that is not going to be easily accomplished. Besides if the exempt hauler does find a regulated truckload to backhaul on one trip there is no assurance that that truckload move will be available on his next trip. Very few truckloads move by truck in the headhaul direction on a repetitive basis. Most heavy headhaul loads move on rail and trucks move the commodities only where there is not enough available to fill a rail car. Priority moves that are diverted from rail to trucks because of service requirements also are not repetitive. Thus there is a great risk to the exempt hauler in trying to secure his own loads of regulated freight to fill his backhaul.

Furthermore, most astute owner-operators who are going to remain in the exempt agricultural hauling business are already obtaining backhauls of non-agricultural products by trip leasing to regulated carriers. If the owner-operator handles regulated backhaul movements, even movements with very high rates, those rates are going to be related to the loss and damage risk inherent in the freight. As we described, the average owner-operator is not in a position to insure against high risks. It is also very likely that the cost to the owner-operator of performing all of the services available through lease to a regulated carrier will greatly exceed the 15 percent that the regulated carrier retains for performing these services. In fact, owner-operators trying to handle their own backhauls might come under such financial stress that they would be pressured to raise rates on agricultural commodities if the market would support it. Nevertheless even if a financially strong, administratively efficient exempt carrier is able to increase his profits by backhauling regulated commodities on his own, there is no assurance that he would pass these profits on to agricultural shippers in the form of lower rates.

In summary, the proposal to allow exempt agricultural carriers to transport regulated freight in their backhauls will not provide the benefits predicted by its proponents. It will not result in conserving fuel, in lowering regulated rates, in increasing service to rural areas, or in reducing rates to farmers. It will result in attracting more owner-operators into the exempt market than the market and the opportunities for trip lease returns can support. It will reduce the availability to common carriers of the exempt freight upon which they depend to avoid empty backhaul miles and thus would reduce the stability of the carriers who have the obligation to serve all kinds of truckload and LTL freight between many cities within their area of authority. It would create upward pressure on rates for headhaul truckloads most of which could not be moved by exempt carriers. In the long run, it would reduce the stability of owner-operators and reduce the overall trucking service available to rural communities and/or increase the price of that service.

ALL STATES TRUCKING DIVISION OF PACIFIC INTERMOUNTAIN EXPRESS CO.

[Examples of large claims paid and recovery from lease operators, November 1978–October 1979]

Date paid	Claim No.	Amount	Account	Description	Type operator	Recovery to from lease operator
November 1978	AG–08102	$27, 392	Chrysler Corp	Wreck machines	Trip	
December 1978	X6–08741	22, 823	Armour & Co	Wreck	do	
January 1979	X6–08725	75, 047	Maxwell House	Stolen load of coffee	do	
Do	X6–08683	20, 000	Lemoine & Phillips	Load of meat abandoned	Permanent	
March 1979	P6–08440	23, 000	Miles Labs	Off-condition prepared foods	Trip	$572
Do	X6–08722, X6–08984	125, 000	Lemoine & Phillips	Off-condition meat. Abandoned	Permanent	
Do	A6–08000	30, 000	Aquafine Corp	Cargo cost	do	
April 1979	G6–08850, G6–08991	130, 000	Crossley Machine	Wrecked machine	Trip	
Do	X6–08905	32, 130	General Foods	Stolen load of coffee	do	
Do	T6–08952	19, 102	Gold Bond Building	Stolen load steel lathe	do	
September 1979	G6–08663	58, 256	Anaconda	Wreck	do	58, 256
October 1979	Not available	293, 000	N.J. Importer	Load of tin stolen at pier	do [1]	(2)
Total		855, 750				58, 828

[1] Trip leaser was permanently leased to another regulated carrier which had insurance.

[2] Full recovery expited.

STATEMENT OF RAY V. MITCHELL, VICE PRESIDENT, DIRECTOR OF TRAFFIC, SYSTEM 99

Mr. MITCHELL. Thank you.

My name is Ray V. Mitchell. I am employed by System 99 in the capacity of vice president, director of traffic.

System 99 is a regular route and irregular route common motor carrier authorized by the Interstate Commerce Commission to transport general commodities with standard exceptions. I have a total of 24 years experience in the regulated motor carrier industry in all facets of pricing and costing transportation service.

My present duties include the direction of establishing rates in joint routes in agency tariffs, in intrastate and interstate tariffs. Responsibility for practices and procedures in the assessment of transportation charges, preparation of exhibits and testimony in appearances before the Interstate Commerce Commission and State regulatory commissions on behalf of the company. And in negotiation of rates and charges with the shipping public.

System 99 was founded in 1925, and originally operated as a house carrier for Montgomery Ward. At the time of its founding, until 1962, it was known as Blankenship Motors.

Meanwhile, another company known as Interlines Motor Express, originally operated as a partnership, organized as a corporation in 1952. In 1963, the two companies were merged to form what is presently known as System 99.

In 1967, it purchased the business of another trucking company and extended its service into the California Imperial Valley. In 1972, it was merged with another carrier, extending its operations into northern Nevada. In 1974, it purchased the business of a trucking company and extended its service area into Oregon and Washington. In 1977, it purchased operating authority from a carrier into southern Nevada; and in 1978, it purchased operating authorities into Arizona and Idaho.

System 99 now has pending before the Interstate Commerce Commission, applications to purchase operating authorities from other common carriers which will, if approved, extend their service into New Mexico, Texas, Utah, and Montana. The Commission has granted temporary authority, pending the final decision of the Commission. The company has offered its service to the general public, developing an operation geared to less-than-truckload shippers of general commodities and has succeeded in developing its business and growth on that type of service in addition to its truckload service.

Probably unique in the western part of the United States is the fact that the company emphasizes a regular statewide service to small communities and, accordingly, it is very dependent upon the prosperity and the economy of the less-populated areas.

System 99 maintains 58 terminals strategically located throughout its service area and operates 347 over-the-road tractors and 1,843 over-the-road trailers and a large fleet of pickup and delivery vehicles. It has over 1,800 employees.

I appear before the committee today to convey my objections to it, as well as the Congress as a whole, on the subject of the Interstate Commerce Commission's further attempts to ignore Congress and its

mandates by its recent notice of rulemaking to adopt special standards and procedures for granting irregular-route general-commodity authority for backhaul movements as an incident to the hauling of exempt commodities on the headhaul.

The purpose of Government intervention in the provisions of transportation is to insure that the public gets the best possible service at the lowest cost.

This means that at any time when a portion of the transportation is examined, it must also be correlated with the whole. We believe that this is true here. In talking about the transportation of agricultural commodities as related to general commodities, it is important that we define these terms and we need to be certain whether we are talking about transportation that is for the benefit and interest of the farmers or some nonfarm activity.

If we say that processing, canning, freezing, or meatpacking is agricultural, then is the production of the metal can or glass jar for canning, the oil for the production of plastic for packaging frozen items or paper for wrapping such items, also an agricultural activity that is entitled to exemption from regulation because of a benefit to the farmer?

In the same vein, we must determine, as we move into areas of release from the regulation of transportation, what benefit or harm will accrue to the public as a whole, not just the farmer from such actions.

This is the reason for the appearance of System 99 today. There is a substantial discussion about backhauls and keeping the efficiency of the transportation up to the elimination of empty backhauls. System 99 is strongly in favor of the elimination of any empty movements or even movements when its equipment is not at capacity and would be very happy if the Government would devote its efforts to the establishment of industry that would ship from areas where it now is unable to find anyone to solicit for traffic, let alone transport any traffic, since it finds that much of this backhaul problem results from the lack of traffic available at a point.

Empty backhauls are wasted fuel but when you take the backhaul from one trucker and give it to another, where is the greater fuel efficiency and who is the benefactor? The result can only be more trucks going after the same amount of freight which would result in inefficiency, unreliable service and the consumption of more fuel. The advocates indicate that there is a public need for the transportation of exempt commodities and that that need can only be met if the agricultural carrier can haul regulated commodities in lieu of empty miles. One must therefore conclude that the regulated commodities must subsidize the movement of commodities which are not subject to the economic regulations of the Interstate Commerce Commission nor require certificate of public convenience and necessity be held by the trucker transporting the exempt commodity.

Perhaps the public need for transportation of exempt commodities can be met by price stability and economic regulations which would insure that the exempt trucker will have sufficient revenues for the movement of the exempt commodity to the marketplace.

With this in mind, system 99 is, at this point, particularly concerned about three phases of any proposal to allow the limited movement of

general commodities in connection with the primary haul of agricultural commodities.

First, we need to know what is a primary haul and what is a backhaul. It would appear that a primary haul would be a movement in a direction that has the largest volume of traffic suitable for movement in a particular type of equipment. Backhaul would be a movement in the reverse direction.

Further, it would appear that the volume transported by a carrier or even a group of carriers is not really significant. It is the volume that may be moved in a type of equipment. Naturally, we all realize that a tank truck cannot be used to transport lumber any more than an asphalt tanker can haul orange juice. But we ask that when these figures are used to indicate empty movements in considering a backhaul, they take into account traffic by equipment types and also ascertain whether the empty movement is because of the lack of available traffic for the type of equipment in that traffic lane.

We realize that equipment can be used for various types of traffic. For example, dry freight can be moved in refrigerated trailers. But frequently, vans or open-top equipment cannot be used for palletized shipments that shippers insist on loading with lift trucks from the side. Flat or removable sided equipment must be used for such movements.

We do not feel that merely looking at the volume of all traffic moving in a traffic lane establishes what is the prime haul for all carriers in the traffic lane. An accurate definition of backhaul is critical.

Second, we want to know how large the agricultural shipment has to be to qualify. Must it be 100 pounds, 1,000 pounds, 10,000 pounds or load to the full visible capacity of the equipment or to the applicable highway limits?

We want to be sure that there is not a token movement of an agricultural commodity in one direction in order to obtain a lucrative general commodity movement in another. Further, that lucrative general commodity movement may be the bread and butter of the carrier that is providing an essential, though unprofitable, service on small quantities of traffic in the reverse direction.

Next, we want to know how the movement in the return direction must be conducted. Must it be direct or can it be circuitous? Can a movement of potatoes from Idaho to New York City justify a movement of printed matter from New York City to Atlanta, of canned peaches from Atlanta to Chicago, of electric motors from Chicago to New Orleans, of imported transistor radios from New Orleans to St. Louis, of beer from St. Louis to El Paso, of clothing from El Paso to San Francisco and of farm machinery from San Francisco to Idaho?

We need to be certain that any movement authorized as a result of an agricultural movement does not, of itself, authorize a waste and inefficient movement in the reverse direction.

We submit that the present procedures by which operating authorities are granted to applicants by the Interstate Commerce Commission, allows the exempt trucker the opportunity to gain authority to fill his backhaul needs. This would, of course, require him to show that the public requires and needs his service and requires the Commission to find him fit to provide the contemplated service.

We are concerned that the proposed rulemaking proceeding before the Interstate Commerce Commission will be a major vehicle in delivering the death blow to the regulated motor carrier industry.

Estimates as of January 1, 1979, indicate that the total registered trucks and truck tractors, other than Government vehicles, to be 28,366,901—and truck trailers to be 2,861,523—in the United States.

Will the Commission have the facts to determine, of these registered vehicles, what percentage are presently unregulated by the Commission, and under the 50-percent proposal, how many would be able to step in under the ease-of-entry policy into the transportation of regulated commodities?

The increased competition will not create additional freight shipments nor could it properly be monitored or efficiently policed to protect the public.

The volume of the potential carriers is staggering and when one considers the requirements of filing tariffs, providing service without preference or prejudice to a segment of the industry that heretofore could choose and reject customers, markets, and service, then an army of investigators and enforcement people would be needed to protect the public. This, of course, is based on the premise that the exempt commodity carrier would, upon grant of operating authority be required to adhere to the same standards as the present regulated carriers.

Our concern here is that no decision on one phase of transportation be made without considering the realistic impact of that action on the other parts of the transportation industry. We do not want by any of our actions to adversely affect the transportation service provided to any shipper or class of shippers. But we believe it equally important that any action taken that benefits a shipper not adversely affect another shipper or class of shippers, at least without a determination as to which shipper or class must suffer for the common good.

We are especially concerned that any change that is made in the present regulatory concept does not destroy a system whereby a small carrier can grow to meet the shipping needs of the public as has System 99 in the past years and where, in a listing of the 70 largest carriers of general freight, the top 5 carriers had less than one-half of the business.

We wonder what other industry has such a lack of concentration at the top. We believe that the best interest of the country dictates that no action be taken that would rock a boat in which this situation prevails.

In closing, I agree with Senator Cannon that the time has come for Congress to take whatever steps are necessary to insure that the Interstate Commerce Commission does not embark on a course of action which will dismantle the motor carrier industry or preempt Congress in its ultimate finding which would be to the disservice of the Nation.

The lack of factual information and impacts to the industry and Nation have been apparent in the new policies enacted by the Commission which has and is creating uncertainty.

Action by the Congress will settle this uncertainty. We only ask that Congress in reaching its decision consider the entire transportation scene and assure that when it is done, the general public will be

benefited, not just a small but, perhaps, loud group of people or carriers.

The CHAIRMAN. Thank you very much, Mr. Mitchell.

All right, sir.

STATEMENT OF CHUCK MACK, SECRETARY-TREASURER, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 70

Mr. MACK. Yes, Mr. Chairman, my name is Chuck Mack. I am secretary-treasurer of Teamsters Local 70 in Oakland.

I want to, first of all, apologize for not having a prepared statement. Apparently something was lost in the communication and I wasn't aware that I had to have a prepared statement in advance and I would submit that something has to be lost in the communication when the secretary-treasurer of Teamsters Local 70 ends up on the same panel with three representatives of the trucking industry.

I am happy to be here today to express my concern to this committee about deregulation.

The CHAIRMAN. By the way, that's one issue, though, that the trucking industry and the Teamsters seem to be together on, is in their opposition to deregulation.

Mr. MACK. Fairly close, fairly close on this issue.

I think that the proper forum for a discussion of the very profound changes that are being talked about at both the congressional level and at the Interstate Commerce Commission, ICC, is the Congress of the United States.

Whatever changes are made in regulation have a profound impact on the industry, on the consumer, and upon the labor and work force in that industry. And if those changes are going to be made, I think they ought to be made by a body that's objective, one that can listen to all sides of the issue and then have the power and authority to move forward and make a decision that is going to be a consensus decision, that takes into consideration the myriad of viewpoints that surround regulation, reregulation, or deregulation.

Many of us who have dealt with the ICC over the past several months or years feel that that decision has already been made there and they are taking actions now just to confirm that which they've already made up their mind about.

The Teamsters Union has a large stake in the trucking industry. Our local union in Alameda County represents approximately 7,000 people, the majority of which are employed in the motor freight industry. All told, there are approximately between 300,000 and 400,000 people that are members of the Teamsters Union that work under the collective bargaining agreement with the industry.

Any changes that are taken in this industry and in this area are going to have profound effect on them.

We're concerned because a lot of the ideas that are being advanced, we feel, are blatantly antiunion. A statement was made earlier by Mr. MacFarlane, the attorney general of the State of Colorado, that there were millions of dollars to be saved in the State of Colorado and potentially millions of dollars, perhaps billions of dollars to be saved

in the United States if, in fact, regulation, free regulation was adopted. And I would quibble with those figures.

However, if there are millions of dollars to be saved, I would ask the committee where those savings are going to be made. There are several factors that stand out about this industry: One, equipment costs—and whatever type of carrier you are equipment costs the same. Fuel costs are the same. Maintenance costs are generally the same. Parts costs are the same.

The variable costs in this industry are labor costs and I am fearful, as many other people in the industry are who represent people in the Teamsters Union, that those millions or billions they are talking about are going to be at the expense of our membership; and that there is an effort afoot to drive down the wages because some group of people feel that Teamster drivers and Teamster dockworkers make too much money.

We have fought long and hard to provide our membership with decent benefits, decent conditions, decent health care programs and a livable wage, a wage that meets the standard of living, the cost of living in this country. I thing, generally, we've been successful.

An inasmuch as the proposals that are being offered in regulation would cut into that, we're opposed to that. And we see, generally, the bills that have been offered by President Carter and Senator Kennedy as doing that.

The second factor of concern to us is highway safety. A recent study that was done by a professor at Harvard University, Dr. Darrell Wycoff, looked at the safety records of regulated and unregulated carriers. And Dr. Wycoff reached several conclusions which I think are important for this committee to consider when they consider the entire subject of regulation.

He found that nearly half of the nonregulated drivers questioned in this study admitted to misrepresenting their driver log entries. He found that nonregulated drivers routinely drive more than 10 continuous hours—the time limit allowed the regulated sector by the ICC. He found that nonregulated drivers receive three times as mainy tickets for safety violations and had four times as many accidents as regulated drivers.

He found that nonregulated drivers cruised at an average speed of 63 miles per hour, versus an average of 58.8 miles per hour for regulated common carriers. And, finally, he found that more than 20 percent of nonregulated drivers routinely use pep pills in order to continue driving.

Now the findings of this study, I think, confirm quite conclusively that there is a relationship between safety and regulation. And the changes that are being proposed in advance in this regulatory area, if, in fact, they do deregulate, we would see as making a very, very serious mistake, especially with regard to truck safety. And I think the results would be predictable. We would find more and more drivers on the highway that are operating under the conditions that Dr. Wycoff found out from the unregulated area.

Another consideration that is one of our concerns is the question of energy in this country. Because when the industry is deregulated—if it is, in fact, deregulated and when we're talking about deregulation,

we're talking about free entry and free exit—this increased competition is going to come from more people going into business because the ICC has lifted the restrictions on entry. That is not going to increase the volume of freight that we have in this Nation or in the State.

And what it means is that you're going to have a greater number of people competing for the already existing volume of freight and plying up and down the highway in search of that freight. In light of the energy problems that we have, it makes no sense to deregulate and allow increased entry in the name of competition because that means a greater expenditure of the energy resources that we already have.

And we're treated, on the one hand, to the adminstration urging people to get out of the automobile in the interest of conserving energy and, on the other hand, to get into the truck in the interest of increasing competition.

Those are the general concerns, a few of the general concerns that we have with regard to these proposals on deregulation.

Specifically with regard to the questions before this committee in this hearing, I think the statements have already been made that you're not going to increase the volume of freight because you allow an unregulated carrier to make a backhaul. They are going to be competing for the already-existing amount of freight that is available.

That comptition means, essentially, one carrier's backhaul is another carrier's fronthaul. And it's going to take work away, as we see it, from carriers that we have in collective-bargaining contracts in our membership.

Our membership initially, because of the protection of our collective-bargaining contracts may operate, may have to run home empty and the carrier may have to pay the cost of sending them home. But in terms of making a solid industry, a stable industry, one that is going to survive, that is not the way to do it and that is not the answer. It means the same empty miles that really we have today. It just means who is going to carry the freight, who should be allowed to carry the freight.

We think that it should reside with the common carriers, those that have the responsibility because of their permits, to serve the outlying areas, rural areas, and to take the good with the bad.

And I'd just like to make a couple of comments, if I can, about some of the statements that have been made by some of the speakers that have gone ahead of me.

First of all, with regard to the airline industry; and that has already been alluded to by Mr. MacFarlane and I probably don't have to make a number of statements with regard to that because you, Senator Cannon, seem to be well aware of what's happened there.

The deregulation of the airline industry has not been the panacea for the consumer or the American public. Freight rates have gone up in the airline industry, the latest figures I have, 23 percent. I was told earlier today that it had gone up now 30 percent. But at least they've gone up 23 percent since deregulation occurred. Passenger rates have increased 4 percent and they are going to continue to increase next year. I would admit that a large part of that is the result of fuel cost increases. But they are going up and they are going to continue to go up.

We've seen a phasing out of these "frill" fares. If you fly when the Moon is half and come back when its full, you get a reduced rate. Those have been phased out and I think you will see them continue to be phased out.

Moreover, we have seen a tendency toward increased combinations. PanAm, I guess, purchased Continental or is in the process of trying to purchase Continental. That has been approved.

We've seen a decrease and diminution of services; 113 cities have been phased out of prime airline service with this deregulation movement. And I was interested to hear your comment about Bakersfield. I have a friend in Bakersfield who recently had to fly to San Francisco, United Airlines is phased out of serving Bakersfield so he took one of these new commuter airlines that's available, flew to San Francisco. He had to be back the same day. He went down to the airport to catch his airplane and, lo and behold, the flight had been canceled. They told him he could catch the next one tomorrow. And he had not hired a car and therefore was forced to fly to Los Angeles and to rent a car in Los Angeles and drive back to Bakersfield in order to be in his office the next morning.

There have been a lot of problems with airline deregulation and I don't think that serves as a good example, really, of what can be done. I think, also, it's comparing in some cases apples and oranges because airlines are talking about an industry that takes a tremendous amount of money to go into business. While trucking, it doesn't take that amount. You can go into business for $50,000 or $60,000 and start competing with anybody that happens to be in this business.

Finally, with regard to the California experience, I was interested to hear some of Commissioner Gravelle's comments. I have been very involved in the efforts to stave off deregulation or at least to fashion it in some degree—the regulation that is being proposed in California.

California is an anomaly when we talk about regulation and deregulation. You have almost, and have had for a number of years, freedom of entry into business. Now what freedom of entry generally has meant in California is that you have about 4,000 carriers who go into business every year and you have 4,000 carriers who go out of business every year, a very unstable number of marginal carriers that operate in California transportation.

On top of that, my experience is just the opposite of Commissioner Gravelle's with regard to service being supplied to rural areas. I don't think there is any question since the public utilities commission in California has started to move or talk about deregulation move in that area and make an effort to hold down increases in rates, we have seen a reduction in service to outlying and rural areas.

A number of companies that I can name, California Motor Express, Pacific Motor Trucking, Delta Industries, Inc., have, in essence, cut back service to these outlying areas. They have done all within their power, really, to start phasing out of intrastate freight and to move into the interstate area where they think they are going to have some protection with rates.

Deregulation in California has not been achieved and I feel very strongly that it's not going to be achieved in any respect at the expense of our membership if anything is accomplished in this area.

I appreciate the opportunity today and I am available to answer any questions you might have.

The CHAIRMAN. Well, thank you very much, Mr. Mack.

First, I agree with you in some of your comments on airline deregulation. But I don't agree with you on some others. You've mentioned that freight rates have gone up and that's very true. But the Board had previously found that the freight rates were artificially low by 40 percent. Since air cargo was deregulated, freight rates have not gone up 40 percent.

And on the plus side, there are more cities and better service in air freight today than there has ever been in the history of our country before. And all of the shippers that have been in contact with us, almost without exception, have been very, very commendatory from the standpoint of the freight-rate issue.

Now with respect to passenger rates, you said that they have gone up and that is true. And they are going to go up some more. But not as a result of deregulation.The movement upward in the passenger rate has been because of the fuel situation, solely, and not because of the deregulation issue. As a matter of fact, the record shows that last year the passengers of this country were saved $2½ billion in passenger fares as a result of the regulatory reform effort.

You mentioned there has been a diminution of service and, of course, there has been in some selected areas but not generally throughout the United States. The service is up from the standpoint of departures, it's up from the standpoint of seat-miles, and it's up from the standpoint of passenger-miles. So in all three of those areas, service is up nationally.

Now, of course, as you say, Bakersfield—and Bakersfield is one of the horrible examples, but I think Bakersfield will eventually be well served—they did lose service and very drastically, and much to my surprise, when the regulatory deregulation bill went into effect.

When we were debating the airline legislation last year, many of the labor unions said that the bill was antiunion because, they said, that it was going to result in a loss of employment for their members. Actually, just the contrary is true. Now, 1 year later from the time when the airline deregulation bill was passed, more people are employed in the airline industry than ever before. Wages have certainly not gone down, to my knowledge, anywhere. So I don't think we could point to the analogy there between the airline industry and the freight industry.

You have made one very, very good point, though, and I think that this is the reason that deregulation of the airlines can't be used as a valid example for deregulation of trucking. And that is you've only got so much freight out there. If you have a lot of new carriers entering the field, a lot of new people with trucks, they have got to take those loads from someplace.

They can't go out and generate new traffic because if a producer is over here in San Francisco, he's got certain places that he wants to ship his goods to and he's shipping that now. You can't go out and induce him to ship another half a truckload of goods simply by offering him a better rate. At least that is the best information that we have.

Whereas, in the airline field, you had many people who had never been inside an airplane. You had the opportunity to reduce rates, give them special fares and get them on board the airplanes and, as a result, you've seen the business go up and you've had more passengers travel in the past 12-month period in this country than ever traveled before.

And so you had a market that you could expand. This is one of the things that gives me a lot of problems because when you talk in terms of filling up these backhauls, as you said, "What's one man's backhaul is another man's fronthaul." And those loads have got to come from someplace.

I'd like to ask the three of you though, a question, and that is, to what extent, if any, do your individual firms operate services that are unprofitable simply because you have a common carrier obligation to do so?

Mr. HAGEDORN. Well there is no question but that we have customers on which we lose money. We have a very elaborate cost accounting system that gives us the ability to determine the profitability of various customers. We have customers on whom we lose money, and we have other customers on whom we make a great deal of money.

The CHAIRMAN. But you're not really providing service to some location simply because of your common carrier obligation, are you, if you're losing money on it?

Mr. HAGEDORN. It's difficult to say. There are areas to which we have to provide service because of our common carrier obligation where probably we are not losing money but where the returns are probably not adequate to support the equipment that has to go into those areas. If we assign line equipment to that particular area and it is very imbalanced, as some rural areas are, particularly those which may not even have agricultural commodities to backhaul, the amount of empty miles we're running in those areas entails the commitment of more equipment, relative to the profit, than we have committed in the rest of our system.

I do not believe in general that carriers such as PIE are providing service to a large number of areas because they are obligated to do so or to large groups of shippers because they are obligated to, even though they lose money in those areas and on those shippers. There are great differences, though, in the profitability of different traffic lanes.

The CHAIRMAN. Mr. Mitchell.

Mr. FLEISHER. I'm Mr. Fleisher, Senator.

The CHAIRMAN. Oh, Mr. Fleisher, yes.

Mr. FLEISHER. I guess the simplest way to answer your question is that for the year so far, for the first 9 months, Transcon Lines is operating at a net margin right at 1 percent. That means that we are providing services to a number of communities, large and small, where we're not making a profit today.

These operating ratios and operating results are influenced by a number of factors, not the least of which was the strike, the fuel cost increases and the recession that we seem to be in at this point in time.

We don't have areas that we have totally abandoned service on because they were unprofitable.

The CHAIRMAN. Do any of you gentlemen oppose a continuation of the agricultural exemption?

Mr. FLEISHER. No.

Mr. HAGEDORN. No.

Mr. MITCHELL. No.

The CHAIRMAN. Would you oppose any modest expansion of that, for example, to include red meats, bananas and some of the exotic combinations that we hear are so absurd?

Mr. FLEISHER. Not in our case.

Mr. HAGEDORN. I think that makes sense; no.

Mr. MITCHELL. We would have no objections.

The CHAIRMAN. Mr. Hagedorn, in your statement, you indicated that the proposal to allow exempt haulers to backhaul regulated commodities would include the provision allowing them to negotiate their rates.

However, my understanding is that the exempt haulers would be allowed to charge no less than the tariffs on file by the regulated carriers. Thus, they wouldn't underprice you. Now if that limitation was adopted, would you have less of a problem with that proposal?

Mr. HAGEDORN. No; I think it is still going to be a problem. The exempt carriers will still have very limited ability to, over the long run, handle the truckload regulated traffic that they are looking for.

But, to the extent that the promise of handling that regulated traffic will attract more exempt carriers into a market, which the agricultural associations and growers themselves agree is adequately served now, owner-operators will have the ability to headhaul the exempt commodities and reduce the availability of those exempt commodities for common carriers to fill their empty backhauls.

I also pointed out in my written testimony that most of those regulated truckload movements do not move by truck because of the prices. The heavy movements in the headhaul direction are usually moved by rail. They move by truck only when there is not enough freight available for rail or they move by truck when they have to move at high service levels.

The CHAIRMAN. Mr. Mack, did you make a point that a very substantial number of carriers went out of business in California last year?

Mr. MACK. No, Mr. Chairman. The point I made was this: A number of carriers that have been involved in California traffic, very heavily involved over the years, are now starting to phase out because of the failure of the public utilities commission to grant the rate relief they felt was necessary and because of their fear that there may be a deregulation in the industry in California.

Delta Industries is one example; Pacific Motor Trucking, they have reduced service into these outlying and rural areas. They may oppose, as Commissioner Gravelle indicated, somebody else operating in the area. But they have reduced service in those areas; they've cut back. They may have taken a terminal out of a rural town, closed down terminals. I think of several examples where that has happened.

And as a result, the service today for those rural areas, even though it may be done, may be performed by those carriers, is not of the kind that it was, say, 3, 4, 5 years ago. It's reduced service.

The CHAIRMAN. Do you think that is principally because of the costs that they are incurring now, the added costs, or is it the uncertainty about what's likely to happen?

Mr. MACK. I think it's twofold. I think it's as a result of the cost; it's not as profitable. In some cases they can operate within California, and do so very well, products moving between San Francisco and Los Angeles; generally there is a lot of profit in that. Not a lot of profit but there is profit in it; they can make money.

Things that move between here and Sonora or into the Sierras, obviously they don't get the backhauls so they can't make that much money on it. That's the type of business they started to phase out in. And they've done it, in my opinion, because of two things. One, the added cost that they've incurred through fuel costs, equipment costs, labor contract costs and things of that type. Plus the uncertainty.

There is no question, in talking to a number of these firms, that they are making the moves that they are toward interstate carriers to protect themselves in case total deregulation comes in California; they will be out of that market or, in large part, in some other market, an interstate market, so they can protect themselves and their investment.

The CHAIRMAN. It's rather interesting. To refer again to the airline experience, in the course of our hearings on airline deregulation, almost all of the big carriers, with a few exceptions, were opposed and for many of the same reasons that you stated here. Yet, now they have been in it for awhile, had a year's experience, they think that its the greatest thing to come along since highbutton shoes.

I just noticed an article I read on the way out here in one of the magazines, November 5 issue of Business Week, where a number of carriers were saying what a great opportunity this was to get the hands of the Federal regulators out of their hair and let them use some business judgments and that it worked out much better than they had expected. I think there was only one carrier quoted in the article that was a supporter of deregulation, when we started down that road.

So I guess that what I am saying is that if some changes are made it may be helpful to a lot of the carriers that are currently in the business. I certainly envision that if deregulation does go into effect, there obviously will be a lot of new people trying to come in the business. And I think people that come in that are underfinanced and don't have the structure to set up to support their operation are going to fall by the wayside.

But that is part of our way of life in this country—to give people the opportunity to compete and if they can make it, fine. And if they can't make it, they have to go to work doing something else.

Mr. FLEISHER. Senator, I would like to go back to a question that you asked just a moment ago, if I could, please.

The CHAIRMAN. All right, sir.

Mr. FLEISHER. The question related to whether or not we would be opposed to the intent of ex parte MC–127, if there was some assurance that there was a minimum charge that might apply on the shipment.

I think that one of the problems that we, as a carrier, and we, as an industry, have had is that regulations that become so precise, so

specific as to the scenario in which one must operate and how one must operate become virtually impossible to monitor and to see whether there is effective compliance.

You mentioned earlier in the morning a feeling that you had that there is an awful lot of illegal transportation. I don't know whether there is or there isn't. I know that we as a carrier have lost an awful lot of volume business to, what shippers tell us, modes that have some questionable—not modes, but carriers who have some questionable way of handling that traffic. I think we have to keep sight of any of these regulations. There has to be some way to check whether there is compliance. And things of that nature make it very difficult when they are so precise.

Mr. MACK. Let me make just one comment, if I might. I think, in the trucking industry, that if, in fact, we have deregulation tomorrow, that maybe the same experience that the airlines have had, you might experience in the trucking industry, too. And that is you will see rate increases rather than decreases; maybe in some areas you might have decreases.

But I think, generally—if the figures I've seen are correct, freight rates are down about, what, 25 percent less than the cost of living over the past 8 years—that if you take off the shackles, that you're going to see probably a number of carriers increase their rates and try to recapture or get at least up to a profitable rate, that which they are hauling. So I think, you know, in that regard, that there may be some validity between the experience in the airlines and what might happen in the trucking industry.

One of the concerns that I have is that deregulation in the airlines was obviously of definite benefit to the consumer, as you pointed out. You know, there was a reduction, immediate reduction. While there are going to be increases, they may be less, may be more, I don't know. But assume that they are less than they were before, maybe somebody has got something out of this thing.

In the trucking industry, when we're talking about these tremendous savings if, in fact, they are to be made by anybody because of their rate reductions—and I don't know, as I said, I am somewhat questioning whether that would happen—only, I think, very significant benefits to the consumer, generally, should be the reason to deregulate the industry. Because I don't think there is any question, whether PIE increases their rates or Transcon increases their rates, the fact that there are going to be a number of failures are going to obviously negatively impact upon the work force that is in that industry now.

Our members and even the nonunion people who work for firms that would fail because of a change in the system, unless there is some tremendous benefit that's going to be gained by changing the system, if there is economic benefits, I would submit that I don't believe those benefits are going to be passed along to the consumer.

The person that is going to benefit are those individuals and those firms that generally are supporting deregulation and that is large businesses and large shippers, people who make use of firms like PIE and the rest of these companies that are going to be in a position economically, because of their concentration of economic power to negotiate rates, in essence, and dictate what rates are going to be.

I don't believe because they make cost savings those savings will be passed along to the consumer. And I direct the committee's attention to proposition 13 in California. Tremendous savings for business in California. Maybe it put us in a better competitive advantage with some of the States like Nevada and the ones around it, but those savings, for the most part, outside of some maybe very rare circumstances have not been passed along to the consumer.

Rental savings, there is a big battle in California at this present time about whether renters are going to get any type of rebates or get reductions in rent control legislation now being talked about in every corner. Businesses in California haven't reduced prices, they haven't cut rates, because they have made savings of millions and millions of dollars because of proposition 13. And I think that's instructive when we look to see whether those increases or decreases in savings are going to be passed along to the consumer. I don't think they will. I think they will result in increased profits.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate you being here and giving us the benefit of your views.

Next we will hear from Mr. Z. L. Pearson, Jr., executive director, Rocky Mountain Motor Tariff Bureau, Inc.; Mr. Louis W. Burford, director, Mervyns, a subsidiary of Dayton Hudson Corp., representing the Western Traffic Conference; and Mr. Leo Osborne, president, Pacific Coast Owner-Operators.

All right, sir, Mr. Pearson.

STATEMENT OF Z. L. PEARSON, JR., EXECUTIVE DIRECTOR, ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.

Mr. PEARSON. Thank you, Mr. Chairman.

My name is Z. L. Pearson, Jr. I am executive director of the Rocky Mountain Motor Tariff Bureau, Inc., hereafter referred to as RMB or bureau.

I have submitted a prepared statement and, as the Senator has said, it will be a part of the record.

As of this month, I have been with the bureau for 21 years. Prior to that time I was a staff member of the Idaho Public Utilities Commission.

As a westerner whose father was a teacher or farmer in the States of California, Oregon, and Idaho, I have lived in small towns and communities over three-fifths of my life. I believe I understand some of the problems that have been discussed here today, as well as anyone in the room.

The bureau for which I work today is a nonprofit trade association owned and operated by the motor carriers for the purpose of assisting them in discharging the duties imposed upon them by part II of the Interstate Commerce Act, which was enacted by the Congress in 1935, pursuant to the powers granted to it under the Commerce Clause, article I, section 8.

Those are the most important powers, perhaps, that have ever been granted to a legislative body, at least in this country. The need for the regulation of commerce was, perhaps, the most important reason for the calling of the Constitutional Convention in 1787. The reason

I am here today, however, is to report to this committee, with respect to the duties imposed upon the RMB motor carriers in part II of the act.

In 1978, the carriers who are primarily charged with the responsibility for providing common carrier service at just and reasonable rates transported within the Western United States—11 Western States with the exception of between Oregon and Washington where the rates are published by PIB, a similar association—and between the Eastern United States and the Western United States, 27 billion pounds of freight. The average cost of that transportation was 11 cents a pound. I can't even do the math to compare that with the cost of mailing a letter.

The average length of haul in the primary territory, transcontinental territory, was in excess of 2,000 miles. The average size shipment was approximately 1,200 pounds. That traffic moved by virtue of the system of service that Congress encouraged the motor carriers to undertake by section 216 of part II of the act originally.

In other words, in many, many instances, common carrier service to the small towns and communities in this United States are provided only by virtue of the "system," which those carriers have developed through their collective ratemaking procedures.

For example it's possible, and it did happen in 1978, for a shipper to put a 17-pound shipment into the system in Ohio and see it delivered to Enterprise, Oreg., one of the points mentioned in the study recently discussed with this committee by the new Secretary of Transportation.

It's also possible for a shipper to put freight into the system and no longer be concerned about the fact that it will be moved to destination on the basis of a single through rate. I have an example of such a shipment with me today of 17 pounds of caulking compound from Oklahoma City to Fallon, Nev.

Now in performing this service, the carriers are faced with a problem as to balance of traffic. This is a situation that has been discussed here earlier today under the guise of headhaul-backhaul. For example, from California to Nevada last year, the Rocky Mountain carriers provided some 689 million pounds of service. In the reverse direction, approximately 400 million pounds moved.

The point that I think this committee really must deal with is the question of whether this present system, which provides cost-oriented rates which progress in accordance with distance and which decline in accordance with the size of shipment tendered—in other words, the rate per hundredweight is less as the size of the shipment goes up—is satisfactorily meeting the charges imposed upon the carriers under part II of the act; and whether, if there are any savings to be realized under deregulation, they would be passed on to the consuming public; or whether the same or higher rates would be imposed upon the consuming public in a preferential and discriminatory manner.

We have the situation where the proponents of deregulation have asserted that if a free market competition prevailed in the motor carrier industry overall costs would go down. But we have no assurance that the costs would not go down simply to the larger shippers who have the economic leverage to negotiate for prices that are incon-

sistent with the primary responsibility imposed upon the carriers today.

To illustrate how the system works, Senator, I would like to show you just a rough diagram of how the authorities of some 40 carriers tend to overlap at various points and places.

It is by virtue of the open end routing and interchange provisions that any RMB carrier can be called upon to take a shipment tendered to it and interchange that traffic with any other carrier at any of these points and see it moved on to destination. Without the ability to collectively establish prices and to see that they are related geographically and by commodity, by origin and destination, the carriers would no longer have the ability to provide the kind of a service system that we are dealing with today.

One of the earlier witnesses suggested that what we had here was a situation of a sick child and the need to administer medicine in his own best interest. That's a curious comparison because I made one somewhat similar. I suggested that it was extremely strange that the motor carrier system which Congress wanted created was most grievously threatened by the very agency charged with regulating it and seeing to it that the system was established.

The proponents of deregulation make three primary arguments: (1) that the costs of motor carrier transportation are too high; (2) that what is needed is more competition; and (3) that the rates should be adjusted on an individual basis, by carrier, by shipper, and with respect to each specific commodity movement.

And yet, virtually that same group has told us that that same medicine is what has made the railroad a sick industry; that is, excess competition or capacity, depressed earnings, and a rate structure that reflects the economic leverage of individual shippers shipping specific commodities.

The charge that the motor carriers are assessing excess rates, I think, is encompassed within the 11-cent-per-pound average cost for the traffic the RMB motor carriers have handled in 1978.

Putting it another way, over the past 13 years, the motor carriers have averaged approximately 4 to 5 cents, before interest and taxes, on their entire volume of business.

In the first 6 months of 1979, the 52 largest carriers, parties to the tariffs published by this Bureau, had revenues of $3-plus billion on a systemwide basis. Of that, they kept before interest and taxes, and those are substantial charges, $84 million.

One, just one, of the major shippers in this country, and one which happens to support the continuation of regulation, did $1.7 billion worth of business in the same period and netted more than twice as much after interest and provision for taxes than the $84 million generated by the motor carriers party to this Bureau.

I would be happy to answer any questions, Senator.

The CHAIRMAN. Why do you see the limitation on collective ratemaking—the withdrawal of the antitrust immunity—to be such a threat?

Mr. PEARSON. Well, carriers are making prices jointly. With the withdrawal of the antitrust immunity, I am sure that the moment

that any two carriers got together, there would be some other carrier out there who thought that his traffic was treatened or, indeed, that the shipper that he represented would be threatened by the results. And there would be not only prosecutions by the Department of Justice, but by individuals under the so-called treble-damage statutes.

I would suggest further that the shippers could no longer discuss pricing with the carriers for the same reason. The result, I guess, would be that each carrier would have to make his rates over his line and the shipper would have to worry about the combinations of local rates from origin to destination.

The CHAIRMAN. Wouldn't the carriers still be able to discuss with the shipper on a bilateral basis the prices that they were to be charged?

Mr. PEARSON. It's an interesting question, Senator. I understand that there is a recent publication out which I haven't had an opportunity to read by Prof. Andrew Popper. I think he is with the American University at this time. I believe his point is that the antitrust immunities enjoyed by the shippers are a derived immunity and that they would be liable for prosecution for discussions among themselves and with carriers if the motor carriers did not have immunity for their collective ratemaking activities. He's a former member of the Department of Justice, Antitrust Division. I defer to his expertise. I have not read his publication.

The CHAIRMAN. You seem to suggest in part of your written statement that there was an imbalance that was existing because of—or service was being provided at a loss—because it was covered by common carrier obligations.

Do you foresee any kind of a situation where you wouldn't have some kind of an imbalance?

Mr. PEARSON. No, sir, there is no possibility of eliminating imbalance because manufactured products move directionally. And fresh fruits and vegetables also move directionally. There will be imbalances, but the imbalances that the system has learned to live with would be aggravated by any significant change in the system. The cost would go up on the smaller shipments to the extent that the larger ones were diverted.

The CHAIRMAN. Thank you very much for your statement.

[The statement follows:]

STATEMENT OF Z. L. PEARSON, JR., EXECUTIVE DIRECTOR, ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.

My name is Z. L. Pearson, Jr. I am Executive Director of Rocky Mountain Motor Tariff Bureau, Inc. (hereafter "bureau" or "RMB").

At the outset I want to express my appreciation to you for allowing me to appear at this particular time and place so I will be able to honor a prior commitment in St. Louis, Mo., on November 1, 1979, which would have had to be cancelled in order to tender this testimony at Fallon, Nevada.

The impetus for these oversight hearings has been generated, at least in part, by a continuing controversy as to whether existing transportation policy concerning both regulated and unregulated motor carrier service is ensuring transportation adequate to our commercial needs and consistent with basic public policy goals. A primary argument currently being made is that the existing "system" of

regulated motor carrier service should be modified to reflect a more competitive stance and therefore more effective and less costly transportation.

I am truly intrigued by the amazing non sequiturs in the theses of those who would restructure and reform the existing motor common carrier system. Their three basic prescriptions are:

1. More capacity (competition), i.e., eased entry.
2. Greater ehphasis on individual pricing.
3. Reduced profit margins.

As I understand it, these three things, namely, expanded capacity, greater emphasis on individual pricing, and lower profit margins will allegedly provide the nation with more responsive and less costly transportation.

I believe I have heard that song before, but in an entirely different setting. It was, I think, rendered as a plaintive ballad by a group dedicated to restoring the health of the ailing railroads. As I recall, the principal causes of the railroads' illness were asserted to be:

A. Excess capacity and/or competition,

B. A hodgepodge of individual rates (riddled with preference and prejudice, that reflect the economic leverage of various shipping interests); and,

C. Depressed profit margins.

Well, as Alice in Wonderland was wont to say: "How curious]"

It will be my purpose here today to try and describe the quality and scope of motor common carrier services currently being provided to the general public throughout the continental United States, on a regular basis. I will also undertake to make the point that these essential services must be very carefully evaluated in terms of their potential impairment, by changes in regulatory standards including those applicable to exempt transportation activities.

Today's network of regulated motor carrier service represents a near perfect achievement of the specific Congressional objectives set forth in the National Transportation Policy and the Interstate Commerce Act. Those objectives are neither outdated nor inadequate.

The Constitutional intent that Congress further the general welfare by fostering the development of adequate and economical transportation is just as fundamental to the effective operation of this nation's economic and political system in the next hundred years as during our first century of progress. In the words used in another context by former Secretary of the Treasury, William Simon, the ills and nostrums suggested by the critics of regulated motor carriage are "illusory, nonsensical and self-destructive."

Because of my familiarity with carrier operations under rates published for participating carriers by this bureau, pursuant to collective ratemaking procedures previously approved by the Interstate Commerce Commission (ICC), most of my illustrations, examples and statistical data will relate directly to those services. It should be noted, however, that such services and data are not unique. As a matter of fact they simply typify the services available to the public generally, via the nationwide network resulting from the collective ratemaking activities of the motor carriers under the 5a procedures of their various rate bureaus.

Before outlining the actual services performed under rates published by this bureau let me briefly describe the bureau itself. RMB is a not-for-profit trade association created and operated by its motor carrier members. It was incorporated in 1939 for the purpose of assisting motor common carriers to discharge the statutory requirements imposed by the Interstate Commerce Act and similar statutes. At this point it should be recalled that members of the ICC, and the State Commissions had strongly urged the motor carriers to reduce the volume and complexity of rate schedules, and voluntarily join their operating authorities together to provide joint-line services, as contemplated by Part II of the Act (which brought them under regulation), by establishing common publishing agents or "tariff bureaus", and issuing their rates through such mediums, like the railroads and water carriers.

On behalf of its participating carriers, RMB publishes and files such schedules of rates and charges as the carriers determine to be consistent with their statutory duties. All other bureau activities, including the collection of CTS data, and the providing of assistance in defending specific proposals are but ancillary functions.

The transportation system afforded by the "full service" carriers, i.e., those handling small shipments as well as large and intermediate or volume shipments, under rates published by RMB is probably more like the services of by the Postal Service than those of other regulated modes.

The door-to-door transportation provided under the "open routing and interchange" provisions of the RMB tariffs effectively facilitates the through movement of traffic, from origin to destination, usually on the basis of single-factor charges that are the same without regard to whether the involved freight was handled in multiple-line or single-line service.

Thus, any shipper can tender traffic to an RMB carrier with the assurance it will move to the named consignee, at final destination, without further effort by the shipper.

In broad terms, the tariffs published by this bureau cover the movement of traffic between points in the so-called eleven western states, except traffic between Oregon and Washington, and between points in those eleven western states, including Oregon and Washington, and the 37 eastern states.

In 1978 the RMB carriers handled over 21.7 million shipments, consisting of 580 million individual pieces, under the general commodities tariffs issued by this bureau. In handling that traffic, those carriers provided over 418.6 billion hundredweight miles of service. This traffic moved an average distance of 1,542 miles. And over twenty billion pounds of freight were delivered within the eleven western states. On the basis of 1970 population figures (33,763,853) this represented 592 pounds of inbound freight for every man, woman and child in the eleven western states.

In many instances there was a substantial imbalance between inbound and outbound traffic flows. For example, the RMB carriers handled 26 percent more traffic out of California than into California. On the other hand, traffic into Nevada significantly exceeded outbound tonnage. Specifically, in 1978, some 689 million pounds were moved into Nevada from California by the RMB participants, but only 409 million pounds were available in the reverse direction. But for their common carrier duty those carriers might have been able to maximize profits and minimize expenses, and fuel consumption, as well as empty mileage by simply declining to handle some 40 percent of the California-to-Nevada traffic tendered to them.

Let us now look at the primary traffic territory covered by the RMB tariffs. In transcontinental territory, i.e., between the 11 western states and the 37 eastern states, the RMB participants transported 15.4 billion pounds of freight consisting of 12.5 million shipments and 341.3 million individual pieces over an average distance of 2,129 miles in 1978. The average weight for all these shipments was 1,287 pounds. For this service the carriers received an average revenue of 11.02 cents per pound ($1,692,938,042÷15,362,200,000 pounds). Shipments of less than 500 pounds moved an average of 2,186 miles, while all other traffic moved an average of 2,090 miles. It is estimated that the average retail value of this 15.4 billion pounds of freight amounted to $109.6 billion. In total, transportation provided under RMB tariffs represented 1.54 percent of the average retail value of the commodities transported.

While motor carrier service is not really comparable to airline service because the motor carriers serve all points and places, and airline service is available only between a relatively limited number of points, certain interesting comparisons can be made. For example, it cost 69 cents a pound to fly here to San Francisco from Denver, Colorado. Had I flown from Chicago, a short-line highway distance of 2,142 miles, it would have cost 114 cents per pound. Furthermore, unlike the airlines who provide only linehaul service, which requires the customer to deal directly with the problem of arranging for transportation to and from the airplane itself, the motor carriers provide a complete door-to-door service.

Moreover, the average "real" cost of transportation, in transcontinental territory, under tariff provisions published by RMB has actually declined over the past five years. In 1973 the average cost per pound for traffic moved within this territory was 7.75 cents per pound as compared to 11.02 cents per pound in 1978. When adjusted for inflation the 1978 revenue of 11.02 cents per pound becomes 7.66 cents per pound in terms of 1973 dollars.

In reality "the system is the solution." Under existing 5a procedures any carrier, shipper or other interested person can propose a tariff change and have it

docketed for consideration by the carrier rate committee responsible for collective ratemaking in a given tariff territory. With the rare exception of a carrier taking independent action before procedure (not placing a proposal before the committee) all proposals are docketed for application via all carriers having the authority to participate in the handling of the involved commodities over any portion of the origin-to-destination movement.

The open routing and interchange provisions of the RMB tariffs permit a carrier to turn a shipment, to any other participating carrier, for further transportation, at any of the points specified in the governing tariff. And the charge (rate) is the same whether the traffic moves in multi-line or single-line service. At the present time over 1,160 carriers are participants in the service network available under the RMB tariffs. More than 800 of these participants are Class II or Class III carriers.

Obviously, the existing "system" provides an expanded opportunity for each individual carrier to participate in traffic which originates or terminates beyond its respective certificate. In addition, it provides for increased efficiencies and economies, by interchanging traffic at common junctions so as to avoid the necessity of two or more carriers making parallel service runs, particularly to smaller destination points, to deliver small volumes of traffic. This avoidance of wasteful transportation has become even more essential in recent months because of the increasing scarcity and cost of fuel. The joint-service system offered by the carriers participating in rates published by the various 5a bureaus was particularly well suited to meet these new transportation difficulties by reason of "convenience interlining" and "substituted motor-for-motor service" arrangements.

Various witnesses have appeared before this Committee during the current session of Congress to assert that the present system should be radically altered. At the same time most of those witnesses, including deregulation proponents, have conceded that the present motor common carrier system is effectively servicing shipper needs at even the smaller points.

Furthermore, the "Rural Communities" study referred to by Secretary of Transportation, Neil Goldschmidt, in his recent testimony before this Committee, fully corroborates my point that the common carrier network created under collective ratemaking is succesfully providing a comprehensive system of safe, adequate, economical and efficient highway service. Moreover, that system actively seeks to avoid or correct any unjust discriminations, undue preferences and prejudices, or destructive competitive practices. It also fosters fair wages and equitable working conditions.

In Appendix A hereto, I have set forth relevant data as to interstate shipments, drawn into the RMB carriers' 1978 CIS sample, which actually moved into or out of the points referenced in the Rural Communities study, to show the breadth of service being regularly performed with respect to even the smaller points and places, by the existing common carrier system.

It is strange, but true, that the continued effectiveness of the existing motor carrier system is grievously threatened by the agency charged with the responsibility for encouraging and fostering the development of a "system" to provide the very type of services now available. The outgoing Chairman, and his designated successor, as well as a majority of the other members of the ICC have indicated their intention to implement the following:

Reversal of prior policy, which was predicated on specific statutory language, of limiting entry to demonstrated instances of need for additional or different services. Stated differently, the ICC has announced its intention to ignore its statutory directive and adopt the contrary policy of authorizing excess authority.

Limitation of collective ratemaking activities to exclude certain carriers from voting on designated docket proposals. This program also appears to be directly contrary to the statutory intent of Section 5a, and would obviously undercut the effectiveness of the present system, wherein participants handle traffic tendered to them, by any other participant, at any of the open interchange points designated in their common tariffs.

To simply negate the Congressional intent that antitrust immunity be extended to carriers undertaking to provide a system of service, through the medium of collective ratemaking, by arbitrarily holding that pro-competitive concepts preclude a finding that any collective ratemaking agreement could warrant immunity from the antitrust laws.

Imposition of profit-margin limitations so much lower than achieved in prior years that the system would probably break down by reason of numerous carrier bankruptcies and/or withdrawals from the present through-rate system.

In recent testimony before this Committee, a group of shippers known as "Current", urged Congress to act quickly and enact legislation directing the ICC to implement the type of changes outlined above. These shippers assert that legislation is urgently needed to resolve the controversy as to whether the ICC is or is not currently acting in a manner consistent with the Congressional intent as set forth in the NIP and the IC Act. Another reason advanced by Current for the need to act promptly is the desire to avert the possibility that the motor common carrier service system might deteriorate like that of the railroads. However, the motor carrier industry is not yet suffering fom the maladies afflicting the railroads. The industry appears to be in a position to remain healthy—but for the insistence of the deregulators and the ICC that they be deliberately infected with the rail viruses of excess capacity, preferential rates, and inadequate earnings.

The basic raison d'etre offered by the proponents of deregulation, or regulatory reform, for overturning the existing system and substituting increased competition is that conventional economic wisdom holds that free-market competition will result in lower overall costs. But economists admit that they have never actually seen a real example of "pure" free-market competition. And economists also hold that a single entity or utility type system may be more efficient in economic terms, than a multitude of small, highly competitive enterprises. Economic theories can also be wrong, as we are painfully learning in our current bout with inflation.

A close reading of the testimony heretofore presented to this Committee clearly establishes that we presently have in place an efficiently functioning system of motor common carrier service which is truly meeting the needs of shippers and receivers at all points and places (see Appendix B for illustrations).

Even if it could be categorically demonstrated, which it cannot, that overall transportation costs would be lowered by substituting greater competition for the cooperative system that exists, Congress must not overlook the potential impact on other broad social and policy goals for which it is responsible. All but the most fanatic of the deregulationists concede that the substitution of unrestrained free-market competition, for a system predicated upon common carrier duties, could have an adverse impact on persons and/or places. In the Rural Community study, it was concluded that: "This heavy use of general commodity carriers by local retail firms suggests that the larger impact of a reduction or loss of service by motor common carriers of general commodities would primarily be felt by local retailers, and consequently by the consumers in these areas."

The cavalier attitude sometimes exhibited by theorists was exemplified by William K. Jones, Professor of Law at Columbia University, during a presentation supporting deregulation at the American Bar Association meeting in Atlanta, Georgia, in August of 1976. In response to questions as to the possible erosion of service to small communities under a pro-competitive system, Professor Jones agreed that some communities might cease to exists, but that their populations could simply move to other areas able to attract more adequate service. As Marie Antoinette is purported to have said on being told that French peasants had no bread and were starving: "Let them eat cake."

Other advocates, such as the Public Citizen Congress Watch which testified before this Committee on March 28, 1979, have considered the possibility that reductions in existing cost (rate) levels from a more pro-competitive system, might be retained by the shippers rather than passed on in the form of lower consumer prices. As a consequence, they suggest that it may be necessary for Congress to enact additional legislation to require the pass-through of such reductions. In their view then, the deregulation of transportation may require Congress to regulate the balance of our economy to avert the possibility of windfall profits by other entities. Such suggestions are clearly impractical.

Various persons have claimed that the profits of the motor carrier industry are excessive. But those persons choose to completely ignore the fact that the carriers' margin, before interest and taxes, over the past 13 years has averaged approximately 4.3 cents on the revenue dollar. See Respondents' Petition for

Reconsideration in I. & S. Docket No. M–29772, S.M.C.R.C., April, 1978 (SMC Exhibit AR–3). If the return on equity (ROE) calculation, excluding intangibles, maximum of 14.2, which was initially adopted by the ICC in I. & S. Docket No. M–29772, had actually been implemented across the major rate territories, it would have caused hundreds of carriers, particularly the smaller carriers, to operate at an out-of-pocket loss level (SME Exhibit AR–5).

Let us also consider the subject of profits from another perspective. In the first six months of 1979 one shipper, who is a prominent member of shipper conferences that support the continuation of transportation regulation, reported a net profit, after interest and taxes, of $190,726,000, or 10.8 cents on the revenue dollar, from a total dollar sales volume of $1,763,200,000. This was much, much better than the before interest or tax margin achieved by the 52 carriers generating the largest volumes of revenue dollars from RMB traffic. During the first six months of 1979, these 52 carriers achieved a system margin of $84,655,000 or 4.5 cents on revenues of $3,518,058,000. In other words they did more than twice as much business to obtain less than half as much profit.

Motor carrier transportation charges are a relatively small and declining percentage of the Gross National Product (GNP), despite the fact the motor carriers are meeting increased service demands that are growing at a faster pace than the GNP itself.

The deregulation proponents' summary rejection of the motor carriers' repeated demonstration that their rates (prices) have risen less rapidly over the last ten years than free-market indices, by blandly asserting that such rates were simply too high in 1967, is totally unwarranted. Their proposition becomes even more ridiculous when considered in light of the fact that up through 1957 motor carrier rate levels, and general rate increases, did no more than match those of the railroads. Since 1957 the motor carriers have increased their basic rate structures by substantially lesser percentages than have been taken by the railroads.

Today's network of regulated motor carrier service constitutes a comprehensive and highly effective system which has repeatedly demonstrated an amazing resiliency and adaptability. The success of this system in meeting the recent fuel crisis, without interruption of the free flow of commerce, is but the most recent chapter in the industry's continuing list of service achievements. But the system is not invulnerable. It is an interdependent, complex mechanism. To the extent that significant amounts of presently available traffic are diverted, even on a temporary basis, by excess competition or accommodations of special-interest groups, it will bring about higher costs for the remaining common carrier service. Major diversions of presently available traffic could, in fact, bring about a total collapse of the existing system. Small-shipments traffic, especially that moving to small towns, might not be serviced at all in the absence of a common carrier obligation.

In working on this presentation I couldn't help but think of Alexis de Tocqueville, the eminent French statesman and political commentator of the nineteenth century. How amazed he would be, to see how much time and energy are being spent debating the pros and cons of revising a system that is effectively responding at national, regional and local levels. In his classic treatise on the French Revolution, de Tocqueville makes the point that even revolutionary changes do not necessarily produce either more effective or more equitable institutions. Change for the sake of change is without any merit whatsoever.

Limitations on collective ratemaking, to say nothing of the threatened withdrawal of antitrust immunities, would destroy the existing system. Collective ratemaking is the heart of the cooperative common carrier system of highway transportation which presently exists. Without antitrust immunity the carriers could not develop a cost-oriented pricing system, free of undue preference or prejudice, as contemplated by the IC Act and the even more fundamental Constitutional mandate.

It is also clear that the concept of common carrier obligation carries with it the correlative assurance that entry will be limited and profit potentials will be adequate to meet current and future service demands and provide realistic returns to the private investors who furnish essential capital resources.

History teaches that over the course of forty centuries mankind has repeatedly discovered that transportation is so "affected with the public interest" that it must be regulated for the common good. Our predecessors also perceived that

the most effective form of regulation is a positive system of obligations, which provide economic incentives, as opposed to a negative system of penalties. It is, therefore, hardly surprising that Congress previously opted for a positive system of regulation to be implemented by an Administrative Agency, the ICC, subject to periodic Congressional oversight. The underlying economic, social and public policy goals of this country require the regulation of essential transportation. Effective regulation simply cannot be implemented through the punitive negatives of the antitrust laws. The preferences and prejudices of unrestrained free-market forces are also inconsistent with those basic goals.

Congress should not deregulate, or permit the ICC to deregulate, the existing system of regulated transportation by bits and pieces. Such an approach will irreparably damage or destroy the ability of the remaining portion of the system to operate effectively and economically. In lieu of piecemeal surgery, it would be far less damaging to the carriers and the economy, as a whole, to make a clean sweep of it by abolishing the ICC and absolving the regulated carriers of their common carrier duties at a single stroke.

On the other hand, if Congress determines to retain the ICC and regulation, it should take immediate steps to depoliticize the Commission and restore its independence. The wholesale reversal of prior Commission policies in recent months cannot be squared with the ICC's Organic Charter. If the ICC's past reading of Congressional intent was sound, most of the changes presently contemplated cannot be justified. At a minimum, Congress should undertake to eliminate the pressures imposed on the ICC by way of the Executive privilege of naming the Chairman. Congress should also enact new legislation to ensure that the ICC is adequately funded and staffed with a full complement of able and unbiased Commissioners.

Economists tell us that in a free-market environment, all other things being equal, there will be but one price. Many of those who would dismantle the present system, attack it because the collective ratemaking procedure, that permits the carriers to provide an integrated and cooperative service-system, usually results in the publication of a single price (rate) for any given service—which applies without regard to whether the transportation will be multi-line or single-line. There is a vast difference, however, between the potential impact of these two concepts on commodities, persons, points and places. Free-market economics does not concern itself with relationships between commodities, points, places or persons. Free-market economics has its own value-of-service concept which is: "what the traffic will bear." The free-market philosophy also reflects another maxim: caveat emptor ("let the buyer beware").

Let us assume for the moment that free-market economics would produce a lower overall cost than the present system. The resulting rates and charges, which would be subject to change without notice, are unlikely to bring about the development of a "system." Transportation must deal with hundreds and thousands of markets. When one multiplies the thousands of shippers, times the hundreds of commodities, times the tens of thousands of points and places, one is confronted with a vast number of individual markets. Free-market rates and services to smaller shippers and receivers, particularly with respect to smaller shipments moving to the smaller points and places, would not be required to reflect equitable relationships between commodities, points, persons or places. The present system does. Which system provides the greater good? It seems to me that this is the decision that Congress must face.

Are preferences to larger shippers and the larger points, as opposed to smaller shippers and smaller points and places, more consistent with our nation's basic philosophy than a system of regulated common carrier service predicated on the requirement of just and reasonable rates which are without preference or prejudice as to persons, points, places or things?

Senator Dolliver really said it all in 1906 during the 59th Congress: "We have required all rates to be published and at the same time, in the faint hope of preserving what is left of competition, have treated all rate agreements as an unlawful restraint of commerce. It is obvious that where there is more than one road between two points all must have the same rate whether they agree upon it or not * * * (40 Cong. Rec., p. 3194)"

INTERSTATE SHIPMENTS TO OR FROM 7 OR 8 POINTS DESIGNATED IN DOT STUDY BY WASHINGTON STATE UNIVERSITY WHICH WERE DRAWN INTO CARRIERS' 1978 CTS SAMPLE

Destination	Origin	Commodity	Weight (in pounds)	Number of carriers handling shipment
INBOUND				
Colfax, Wash	Portland, Oreg	Plastic articles and glassware	222	1
Do	do	5 skids—steel strapping, flat or round	5, 855	1
Do	San Francisco, Calif	10 packages chains	565	2
Do	Hawthorne, N.J	4 drums paint	100	2
Do	Liberty, Mo	5 boxes greeting cards, 1 box wrapping paper, rolled.	163	2
Enterprise, Oreg	Seattle, Wash	1 drum paint stripper	50	2
Do	Dayton, Ohio	1 box auto parts, 1 box tubing	17	2
Do	Spokane, Wash	1 stereo	70	2
Kamiah, Idaho	do	2 refrigerators	551	2
McCall, Idaho	Pleasant Grove, Utah	14 refuse containers	5, 412	2
Do	Tacoma, Wash	143 packages—playground apparatus	5, 778	2
Do	Seattle, Wash	3 boxes—bed rails	90	2
Do	do	2 boxes—chain saws	406	3
Prosser, Wash	Portland, Oreg	41 rolls wrapping paper	3, 150	1
Do	Hayward, Calif	351 caps, covers, other than plastic	10, 153	1
Do	Milwaukee, Wis	8 cartons—circuit breakers, switches, or parts.	3, 440	1
Do	Portland, Oreg	2 rolls carpet	326	1
Republic, Wash	McMinnville, Oreg	104 containers—paint	2, 914	
Thompson Falls, Mont	Kalispell, Mont	3 drums boiler chemical corrosive	1, 600	2
Do	Spokane, Wash	18 rolls carpet	693	2
OUTBOUND				
Prosser, Wash	Salt Lake City, Utah	Cinnamon sauce, apple sauce, and grape juice.	45, 000	1
Do	San Fernando, Calif	1,440 cases canned juice	44, 000	1
Do	Hopkins, Minn	1,540 cases frozen juice	40, 040	1
Do	Floral Park, N.Y	1 drum chemicals	456	2
Do	Santa Fe Springs, Calif	2,080 cases—canned foodstuffs	48, 885	1

The CHAIRMAN. All right, sir.

STATEMENT OF LOUIS W. BURFORD, PRESIDENT, WESTERN TRAFFIC CONFERENCE, INC.

Mr. BURFORD. Senator Cannon, and ladies and gentlemen, we appreciate the privileges you've afforded our group and respect the time crunch with which you're faced.

The points enumerated in this position paper are not revolutionary nor are they new. They have been carefully prepared over a considerable period of time and one thing I feel is different is the fact that they are the independent viewpoint of a segment of the public from which you've not previously heard. That is the retailers situated on the west coast.

My name is Louis W. Burford and I am president of the Western Traffic Conference, a voluntary nonprofit conference made up of the traffic managers and operations managers of some 80 retail corporations operating in excess of 6,000 stores throughout the Western United States.

Our particular company, by the way, has four flourishing stores in the State of Nevada, I might add.

Our membership is divided into four groups, those being located in Seattle, Wash., Portland, Oreg., San Francisco and Los Angeles, Calif. The permanent office is in Seattle.

The member stores sell goods of all nature, ready-to-wear, furniture, appliances, housewares, foodstuffs, books, automotive goods, to name a few. The merchandise comes to the stores, the warehouses, and the distribution centers via all modes of transport—rail, truck, airplane and ship—and moves to the west coast from all parts of the United States and abroad.

Some of the larger members' transportation bills are measured in the hundreds of millions of dollars a year. Cumulatively, we feel we are large users of transportation and are vitally concerned in its regulation.

We have prepared a "white paper" 2 successive years at our annual meeting. Throughout the year, each regional division has worked on the points, debated them, argued about them, revised them, amended them, and adopted them and although it does not represent the unanimous view of all the members, it does represent the preponderant majority view of the purchasers of transportation serving the retail industry in the Pacific coast of the country.

We feel the ICC and other agencies should become more accessible to the public and more responsive to the public interest.

To acomplish this, we propose longer terms for the transportation regulatory agency members, appointment by the ICC of an office to represent the public interest that might be an inflammatory statement.

The CHAIRMAN. Well, I might say that the ICC already has an Office of Consumer Affairs that supposedly represents the public interest.

Mr. BURFORD. We feel it's worthy of mentioning again, that expansion.

Submitting the ICC, the CAB, and the FMC annual budget requests directly to Congress for their review and final approval. Reducing the time lag by transportation regulatory agencies on all matters under consideration before them.

We support legislation requiring all agencies to demonstrate that the economic benefits of proposed rules and regulations would exceed the projected costs to the public and consider efficient usage of energy therein.

We support the position of the NIT League regarding motor carrier entry provisions respecting shifting of burden of proof for denial to the protestants.

We support simplified procedures as proposed by the ICC for unopposed applications evidencing fitness, willingness, and ability to provide the proposed services. Establish time limits on motor carrier applications for operating authority. And 60 days after the close of hearings the application should be allowed to operate pending a final decision. And after 90 days the authority would be automatically granted.

We favor liberalizing present ICC restrictions on private and contract carriage and commodity and route restrictions of regulated carriers. And for the purposes of private or contract carriage, a division or majority-owned subsidiary of a corporation should not be defined as a separate business.

We feel the ICC should remove commodity and route restrictions of existing motor common carriers. This would help alleviate energy problems through greater usage of a particular common carrier. And resulting in reduced mileage by being permitted to select the most direct route.

In addition, the operating authority certificate should allow for backhaul authority for the points served, should not contain gateway and route restrictions, should not impose restrictions as common carriers to designated shippers or plantsites and should not restrict the authority to a specific commodity truckload or LTL shipment.

Cost or rate information should be considered by the ICC as part of the justification for granting operating authorities to motor carriers. Motor carrier merger proceedings should be decided by the ICC under expeditious time limit requirements. In a merger of motor carriers, don't eliminate service or authority previously held.

Only carriers who've actually participated in involved traffic during the past year should be permitted to protest an application for operating authority.

Motor carrier trip leases should be permitted without regard to the plants or mode or time limits. Rate bureaus should not be allowed in any way to protest rates.

Released rates or the authority limiting carrier liability should be subject to continual Commission review to reflect the effects of inflation.

Bureau members should only be permitted to vote on traffic handled by them or which could be handled by them under their existing authority. Single-line rates should be allowed to be docketed and fully discussed by any rate bureau carrier but cannot be voted on or agreed upon by other than a single-line carrier involved.

Bureau members' votes should be available to the shipping public. The ICC should be able to require motor carriers to participate in through rates and routes.

The WTC favors an increase in present credit periods for payment of transportation charges, provided there is no increase in carrier rates.

Supporting liberalization of the existing 25-mile aircraft exemption and extend the radius of exemption from ICC economic regulation when such transportation is incidental to transportation by aircraft.

Rate bureau employees should be prohibited from proposing rate dockets.

As for legislative changes, we espouse securing uniform adoption of increased weight standards and length standards to allow for multiple trailer operations. We oppose motor carrier rate changes which might require the protestants to show immediate and irreparable injury.

We oppose any motor carrier proposal which would establish a no-suspend zone for annual rate increases. We feel shippers should be able to obtain refunds for motor carrier rate increases found unlawful.

We support legislation that would allow the railroads and motor carriers to rid themselves of archaic work laws and rules. We favor the enactment of legislation reforming Government regulation of the airlines, meaningful reform requiring major changes in existing law, including uniform minimum aircargo liability rules to protect needed

62-322 O - 80 - 6

air service to small communities. We feel motor carriers should provide incentive rates for shipments tendered in multiple lots.

We join the American Retail Federation in support of the concept of lessening regulation of railroads except for those rates of captive shippers who have no effective competitive alternative, as outlined in the proposal by Fred Tolan of Seattle, January 25, 1979. I mention that is attached but it is not; I am sure you are familiar with Mr. Tolan and his proposal.

The Western Traffic Conference joins the American Retail Federation in support of the concept of lessening the regulation of motor carriers in accordance with the actions taken by the NIT League at its most recent annual meeting.

And as far as the Federal Maritime Commission, we feel that we should support retention of the OCP rate structure and import ocean carrier tariffs and oppose the elimination of the so-called free-return movement of steamship containers back to ports of entry.

Thank you for listening to me and are there any questions I could answer?

The CHAIRMAN. Thank you very much, Mr. Burford. There are a number of items that you've mentioned there that have already been given very serious consideration by the committee and I know the committee is sympathetic to a number of them.

There was one point that you made that kind of surprised me. You suggested longer terms for Commission members. Now normally those terms are 6-year terms. What are you referring to? You don't want to make a lifetime job there, do you?

Mr. BURFORD. Well, maybe 10 years and have it a one-term affair.

The CHAIRMAN. What do you think would be the benefits from a longer term?

Mr. BURFORD. I hesitate to make an inflammatory statement because I also personally feel that maybe a longer term for Members of Congress for perhaps the same reason, Senator, in all respect.

The CHAIRMAN. Well, I may say as being chairman of the committee that has jurisdiction over a number of the regulatory agencies, from the complaints that we get about Commission members on occasion, it would seem to me that most people would suggest they ought to have shorter terms so that they would come up for a review more often and would be less likely to be reappointed again if the pressures were so strong.

Mr. BURFORD. This represented the majority viewpoint of the members of the conference. However, there was substantial difference of opinion on that point, sir.

The CHAIRMAN. Well, thank you very much, gentlemen. I appreciate both of you giving us your views.

Mr. BURFORD. Thank you.

The CHAIRMAN. Is Mr. Osborne here?

[No response.]

The CHAIRMAN. All right, we next have a panel of Mr. Richard Zimmer, director of traffic, Orion Industries; Mr. David Shepherd, ALTA Freight System; Mr. Stuart Jaquay, Country Wide Truck Service; and Mr. Kenneth Rudy, Columbine Carriers, Inc.

I hope you gentlemen recognize that we're not trying to put you in any particular embarrassing position by having you all on the same panel. It's just a matter of expeditious proceeding here.

When Mr. Mack raised that question a little while ago, I was a little embarrassed because it sounded like maybe he didn't want to be on the same panel as some of you.

All right, let's start right over here and if you will just identify yourself for the record.

Mr. JAQUAY. My name is Stuart Jaquay.

The CHAIRMAN. All right, sir, and?

Mr. RUDY. Oh; Mr. Kenneth Rudy.

The CHAIRMAN. All right, sir.

Mr. ZIMMER. Rich Zimmer.

The CHAIRMAN. All right, sir.

Mr. SHEPHERD. David Shepherd.

The CHAIRMAN. All right, Mr. Jaquay, why don't we start with you.

STATEMENT OF STUART F. JAQUAY, PRESIDENT, COUNTRY WIDE TRUCK SERVICE, INC.

Mr. JAQUAY. Mr. Chairman, my name is Stuart F. Jaquay. I am president of Country Wide Truck Service, Inc., Pamona, Calif.

Country Wide is a carrier of exempt commodities from the west to the east and returns to the west with regulated commodities as a contract carrier for a few shippers such as Mobil Chemical Co., Arco Polymers, Westwood Pharmaceuticals.

I appreciate this opportunity to appear before this committee and to suggest some important changes in legislation regarding the exempt carriers.

Because I am both a regulated and an exempt carrier, I believe I have a fair knowledge of both worlds, exempt and regulated. My comments will tie each area together to a certain extent.

To the extent that the more encompassing proposals suggest virtual deregulation of the industry, I feel that the best of both regulated and exempt could better serve the Nation and the trucking industry. There are real problems in both segments. I will attempt to relate some of these problems with the exempt area, what they are in the exempt area and, to come extent, how some of these problems can be resolved.

The exempt carrier has traditionally been the less stable of the trucking industry. This is true of individuals as well as some fleets, probably the biggest factor being the instability of rates. Supply and demand of loads determines extensively what the going rate is. Also some large carriers will haul exempt products at far less than cost simply to return to their terminals.

The surcharge today applies only to regulated freight and could not be applied to exempt simply because there is no base rate. I feel there must be some basis for establishing a minimum rate per mile for all exempt commodities related to the cost of operating a truck, as determined by the Department of Agriculture. The USDA has this information available at this time.

The second area that the exempt trucker suffers is the loading and unloading of his trucks. In many instances, he is required to hire lumpers to unload or load his truck, whether he wants them, or not, and often at an unbelievable rate, $50 to $120. Often the receiver and his employees are the ones that are charging for the unloading. Wherever there exists a way to make a fast buck there is usually a certain unwanted element that takes advantage.

In Los Angeles we have a peculiar situation. The receivers negotiated a contract with the union for charges to be paid by the truckers. You can't blame the receivers. They wanted some form of normality in rates. Stabilization, but yet, it is unfair for the trucker to be required to pay these charges, sometimes against his will. In other words, "Use the lumper or don't get unloaded."

Another extreme problem related to the lumper is the trucker is required by law to get the name and social security number of the lumper and determine what deductions must be made for State and Federal taxes, workmens' comp, as well as social security. You would have a far better chance of survival to kiss an alligator than to get this information from some of these lumpers. Most of these problems could be eliminated or better controlled if the receiver were responsible for unloading.

The receiver would have employees at a realistic rate who would not only unload, but put the product away in its proper place. In other words, his own employee would be operating his own equipment. This employee would eliminate much of the receiver's problems as well by cutting down on pilferage, stovepiping, damaged or short products and so on.

The CHAIRMAN. What's stovepiping?

Mr. JAQUAY. To take a pallet and, in the center, hide damaged product or short product, sir.

The CHAIRMAN. I see.

Mr. JAQUAY. It is in this area that a bill introduced into this session of Congress by Neil Smith of Iowa would help. This bill has been recently amended to include the exempt trucker. That bill is H.R. 753 or the Loading/Unloading Act of 1979. This bill is presently in the Committee on Public Works and Transportation.

Another area that the exempt trucker suffers is unfair claims and skimming. Since there is no written regulations regarding obligations on the part of a shipper, receiver, trucker, or truck broker, the trucker is left at the mercy of the other parties.

The trucker is held responsible for market declines, poor product conditions, impossible delivery times as well as using his truck for cold storage until the product is sold, sometimes as much as 2 or 3 days. As a rule, the trucker receives no compensation for these delays or layovers.

I was part of a White House working party that was chaired by James Louth, Deputy Director of Transportation, USDA. The findings of this working party and the recommendations of the Secretary of Agriculture are available from the Office of Transportation.

One of the findings of this working party and the recommendations of the Secretary of Agriculture is legislation to authorize the Secretary of Agriculture, after due consideration, to mandate and enforce rules

and regulations that will govern contracts of haul for fresh fruits and vegetables for trucks.

An area that is burdensome to the exempt and regulated carrier is State licensing and reporting. Each State has a different form, application, reporting method, and fees that vary with each State. As a carrier, we must file bonds and forms in excess of 140 different agencies to traverse this Nation's highways and have proof with the trucks for all of said agencies or pay excessive fines. The independent trucker is not capable of performing all of these filings and reports unless he devotes most of his time to same and gives up his trucking.

My suggestion for resolving this problem is for one registration of interstate trucking through a Federal agency and have the agency dispense the funds through proration for the individual States. As it is now, each State has its own different agencies to extract fees from the Nation's truckers.

I understand that this committee will meet in Fallon, Nev., on November 1, pertaining to the problems of small community service.

We of the exempt carriers certainly give service to out-of-the-way communities all over the country. As a contract carrier, we are limited to the service we can give to a small shipper and a small community due to the Commission's "Rule of Eight." We are limited to how many shippers we can serve and therefore tend to go to the larger shippers in the larger community.

This restraint as related to the contract carrier limits the amount and extent of service we can provide. I honestly feel the small communities can have the service if these restrictions of the rule of eight are eliminated. Today, the private carriers are growing at a fast rate simply due to the fact the producers cannot get the service they require, quite often due to ICC restrictions.

I also believe that there should be fairness in movement of trailers on flatcars or TOFC. As an exempt or contract carrier, we are not allowed to interline with the railroads on a through rate. In fact, we cannot participate in any TOFC program. We could most probably be more efficient monetarily as well as energywise if we were allowed to participate.

There is an administrative deregulation program which would deregulate all foodstuffs, whether frozen, processed or however preserved. I feel that if this were to take place, the present haulers of fresh fruits and produce would broaden into these areas and leave the fruit and produce industry without sufficient trucks to haul their product.

As you may have surmised by now, I am sitting on the proverbial fence. As I said initially there are certain inadequacies in both the exempt and regulated area. I am neither an advocate of total deregulation nor of total regulation.

One of the interesting points that came to light in the White House working party was the fact that the independents were not so interested in deregulation but resolving the inadequacies in the exempt areas. They felt that their problems would only be compounded through deregulation. In other words, no law could govern those that they do business with as in the exempt haul.

Through deregulation, the biggest accomplishment would be the legalization of the hot-freight broker who is already ripping them off.

I, personally, don't feel that it is in the best interest of the Nation to partially deregulate. If you want to be fair to all, then eliminate the ICC in its entirety so that we will all benefit or suffer, whichever may be the case. I feel it is unfair to partially deregulate so that certain parties may benefit at the expense of others that are regulated. If one part of the transportation system must compete while adhering to the bureaucratic system while those exempt are not required, then you have put one segment at an unfair disadvantage.

Finally, something that is absolutely necessary for this Nation is a uniform weight and length bill. I believe this committee has been made aware of the wasted energy, manpower, and cost which the consumer ultimately pays for. This problem affects the exempt truckers and regulated carriers, alike.

Thank you for this opportunity to present to this committee some of the problems as they relate to the exempt trucker.

The CHAIRMAN. Thank you very much.

All right, Mr. Rudy.

STATEMENT OF KENNETH D. RUDY, COLUMBINE CARRIERS, INC.

Mr. RUDY. Mr. Chairman, my name is Kenneth Rudy and I am founder and chairman of Columbine Carriers, Inc., a motor contract carrier.

Columbine is a contract carrier who depends on the hauling of exempt commodities for over 40 percent of it's gross annual revenue.

I also serve as a director of the Contract Carrier Conference, an association serving motor contract carriers from coast to coast. I have come here today before this committee on behalf of both Columbine and Contract Carrier Conference.

Legislation is necessary to clarify the place of contract carriage in the overall motor carrier and transportation industry. There are significant problems with regard to present regulation. The Contract Carrier Conference has submitted specific legislative proposals to the Department of Transportation and to this committee in lieu of the proposals which call for complete and total deregulation.

Contract carriage and the growth of contract carriage has been historically severely handicapped by the limited-number-of-contracts language or the so-called rule of eight. It is true, the Commission has recently eased their position on the limited number interpretation but the common carriers have taken this issue to court and the final meaning of the rule is far from settled.

Clear-cut legislation in this area would do much to allow contract carriers to compete in the motor carrier marketplace. The restriction of this rule deprives a specific contract carrier from acquiring new business and expanding the financial base of the contract carrier. Likewise, it deprives a specific shipper from using the carrier of his choice.

There are approximately 4,000 contract carriers in the country, the vast majority of which are independently owned. Most contract carriers qualify as a small business under the Small Business Administration's definition. With most carriers being a small business, it is important that they be allowed to expand and achieve a sound

financial base to be in an adequate financial position to handle the requirements of a large shipper to supply a transportation need which cannot be accomplished by a common carrier.

A contract carrier tailors a service to fit an individual shipper's needs, rather than forcing the shipper to adjust his needs to a common carrier's more generalized service. Also, eliminating the limited-number language would allow contract carriers to serve small shippers and shippers located in small towns and otherwise remote areas.

A direct result of the limited-number language is the dramatic growth of unregulated private carriage. The transportation service heretofore available to companies now utilizing private carriage was or is obviously not adequate. The special counsel of the Private Carriers Conference has stated, "Most companies do not want to go into private carriage. They are in it because they have to be. They would prefer to rely, to the extent reasonably possible, on regulated carriers to handle their traffic."

This specialized service could be made available to shippers who otherwise turn to private carriage. Through the use of dedicated or specially designed equipment or services, shippers gain sales advantages and economic efficiencies not available through common carriers. For example, shippers utilizing contract carriers may save substantial sums on packaging costs, knowing their cargo will not be transferred to other trucks or rehandled through terminals.

A shipper's warehousing costs can be reduced or eliminated by a contract carrier's willingness to provide responsive service at any time, day or night, on a schedule wholly dictated by the shipper to serve a shipper's need above all other considerations. Common carriers are not allowed to, and do not, provide that kind of specialized service. A common carrier's obligation is to serve all shippers equally. Thus, the only alternative is private carriage.

A specific result of the limited-number rule is that in 1978, Columbine Carriers derived 41.82 percent of its total gross revenue from the hauling of exempt commodities because Columbine could not expand and achieve a balanced operation by serving shippers of regulated commodities.

Proper legislation would eliminate the inefficiency which results from the limited-number language and we urge Congress to eliminate this language from the definition of a motor contract carrier but still require contract carriers to meet the dedication-of-equipment requirement or to provide a service to meet a shipper's distinct and specific need. Contract carriers meeting these requirements should be allowed to expand and extend their services to additional shippers.

In recent months, much has been said and written about empty backhauls caused by regulations or inadequate regulations. Contract carriers have existed with this backhaul problem. It is true we would like relief by eliminating the number-of-shippers rule but we are opposed to preferential treatment such as expressed in ex parte MC–127, presently pending before the Interstate Commerce Commission.

Briefly stated, United Fresh Fruit and Vegetable Association, the petitioner, has asked the Commission to open a rulemaking proceeding to establish special procedures to permit motor carriers who haul

exempt agricultural commodities to obtain summary grants of authority to haul regulated commodities on the return portion of their movement.

Petitioners have identified a number of problems attendant to being in the motor carrier business—problems that are no way unique to those hauling exempt agricultural commodities; problems such as empty mileage, rising fuel costs, time and expense in dealing with the Commission, et cetera. Petitioner has, however, advanced no arguments focusing on the legality of their proposal or assuming it is legal, why exempt haulers, alone, should have the benefit of it.

The Contract Carrier Conference submits that the special procedures contemplated by the petitioner should not be adopted. If, however, the Commission intends to adopt such procedures, we suggest they should be made available to contract carriers terminating a load under the authority of a permit issued by the Commission.

Thank you.

The CHAIRMAN. All right, thank you.

Mr. Zimmer?

STATEMENT OF RICHARD JON ZIMMER, DIRECTOR OF GROUP TRAFFIC, ORION INDUSTRIES, INC.

Mr. ZIMMER. Mr. Chairman, I would like to waive the reading of my statement.

The CHAIRMAN. All right, it will be made a part of the record in full and you may summarize.

Mr. ZIMMER. Thank you.

Mr. Chairman, my name is Richard Jon Zimmer and I am director of group traffic for Orion Industries.

Orion Industries ships 2,000 different commodities, ranging anywhere from 80 pounds to 40,000 pounds—about 1,000 to 1,200 shipments per day. Most of this traffic travels to various retail outlets, to rural areas one might say. Not all but about half or a major portion is going to rural areas, wherever small retail stores might be.

Orion's primary interest in this hearing is that they do use, in some cases, an exempt form of transportation. We have formulated a distribution program to some rural areas in what might be termed as circuitous-type routing which regulated carriers are not allowed to perform in. We find that by using such exempt agricultural carriers that we are able to save approximately 25 percent.

We also find that it is one of the few methods of transportation today that we can receive a direct service other than irregular route or contracted carriers and the certificated motor common carriers, it is very difficult to get from point A up to point B in a single move. Usually various forms of transloading transpire between here and the ultimate destination point.

We are also here because I've taken somewhat of a personal interest in the regulatory reform issue, especially with the agricultural exempt sector, in that I've watched the labor unions put up huge sums of moneys to lobby against deregulation issue and buy ads in the Wall Street Journal, considered the rock of business ethics.

I've watched motor common carriers suppress transportation entry by blocking that entry by what some might term ridiculous modes of protesting.

I've watched trade magazines publish only statements of proponents of regulation unless that nonproponent of regulation was a significant political figure.

I've watched banks somewhat reluctant to buy any form of regulatory reform because of the prepayment system, whereas they are able to enlarge the amount of moneys in their banks.

And the various traffic organizations and attorneys become concerned that if you make transportation less complex that their very livelihood might well be in jeopardy; at least that is their opinion.

We use motor common carrier quite extensively. In fact, we might say that we have a very complex program to reduce the motor common carrier's costs. We have formulated programs to set up a system whereby all small shipments are consolidated on a dock to their reship centers, or what we might term as reship centers, or to their break-bulk stations, so they don't have to transload on the docks. This is done by an elaborate computer or data-processing system, which is plugged into the various carriers—these are large major carriers—in an effort to increase our transit time, reduce our loss and, hopefully, reduce the carrier cost.

However, we are not allowed to benefit from this. For us to take any cost reduction on any efforts on our own part, might well violate the Elkins Act or various provisions in the Interstate Commerce Act.

It is our opinion that a lot of the rural communities can be well served with exempt sector transportation. We have found that since we have reduced our dependence on regulatory carriers or regulated carriers, that we are able to provide a more efficient service to these rural locations.

I might state at this time that the DOT has just recently completed an examination, or had the University of Pennsylvania complete an examination of unregulated trucking in the New Jersey area and I have, for your review, a copy of the results of that particular examination.

As one might well know, New Jersey has been unregulated for quite some time as a State. And the survey of those who were surveyed demonstrates that 91 percent of the populace agreed with the deregulation system and they liked it. It is shown that the small shipper as well as the large shipper has benefited from deregulation. It is shown that virtually no problem in the rural areas has existed as a result of deregulation.

We do feel that we have experienced severe problems with the exempt status as stated in section 201 or 203 of the Interstate Commerce Act in that the 15 percent backhaul restriction has caused us some problem. It has caused us problems with the ICC in California and various other States, in that the carrier selected or the co-op selected has often violated that rule. And we've determined that that might well be caused by the agricultural industry as somewhat seasonal, one might say; there are many times they have no use for these trucks that they have been able to assimilate.

Now they use co-ops to a large degree because it takes a specialist in the field of transportation to run a trucking company nowadays. The average farmer probably does not have the ability to run transcontinentally.

The problems with these co-ops or one of the major problems with these co-ops is that less people seem to be going into the exempt sector, than had once been experienced in the past. By being restricted to 15 percent of the goods and the other 85 virtually being limited to exempt goods and the 15 percent being nonexempt goods, it is virtually impossible for them to survive with a limitation such as that because they are unable to fulfill a backhaul problem. If you're running a load of raisins to New York City, it might be difficult to get a load back of exempt commodities, back to California.

It is our contention that the exempt sector, given a little more flexibility, is a viable form of transportation in this country and can well be used, if given the ability to perform.

It becomes a great concern to us when special interest groups such as I just stated use a great number of their resources for the continued abolition of a freer transportation environment.

These various exemptions and limitations in the Interstate Commerce Act, formulated back in 1935, were concerned with a problem that we don't have here today. We had an oversupply situation. We had more trucks than we had traffic. But today, we have more of an equal situation where you have an equal amount of trucks to the amount of traffic that is available. And regulation of these trucks should not be so extensive as it once might have been back in the 1930's, during the depression era. A little more flexibility might well procure a cheaper and more efficient transportation system.

Now this is not to say that we should eliminate all regulation nor do we support such a proposal. However, it is our contention that the transportation network legal system as it stands today is far less than desired by the average shipper.

For the large shipper in the western region, we are already deregulated. I control my rates. I control the rates for our industry for the entire United States. I can lower or raise any specific commodity as I see fit. I can lower it in New Jersey, I can raise it in New Hampshire. Although such practices are discouraged by our firm, of course, I do have the ability to do that. I have the ability to do that because I know the legal system of the current transportation network. I know how it works. I know how to use it against itself. I can raise any rate I want to or lower it.

This basically means that under the existing system we have today, that the small shipper or a smaller shipper or any shipper without the technical knowledge that is required in today's transportation environment is virtually at the hands of any large shipper with the technical ability.

Once again, I will state that I can control any rate for any item with my firm. I can lower or raise the rate as I see fit in any size bracket from 8 pounds to 80,000 pounds by the motor common carrier method as seen today.

The CHAIRMAN. By the what?

Mr. ZIMMER. Motor common carrier method—as we see today.

The CHAIRMAN. I didn't quite get whether you ship through exempt carrier or nonexempt carriers.

Mr. ZIMMER. We use all forms of transportation. We use the motor common carrier, we use the exempt form of transportation, co-ops, and such.

The CHAIRMAN. Now how can you use an exempt carrier? Under what circumstances?

Mr. ZIMMER. We can use an exempt carrier in a situation where they are looking for backhaul for a specific location.

It might be, like I've indicated, perhaps raisins to Houston or from Houston and I'm giving them a backhaul back under a situation that might well be used.

[The statement follows:]

STATEMENT OF RICHARD JON ZIMMER, DIRECTOR OF GROUP TRAFFIC, ORION INDUSTRIES, INC., COMPTON, CALIF.

My name is Richard Jon Zimmer. I am director of Group Traffic for Orion Industries. Orion is comprised of various divisions, Hollywood Accessories, Cal Custom Hawk, Pathfinder, which manufacture and distribute hand tools and automotive accessories throughout the United States. Orion ships over 2,000 different items to over 20,000 locations throughout the United States. The average size shipment is approximately 600 pound LTL shipments of which half of all shipments are concerned with what might be termed as rural areas.

Orion's primary interest in this hearing is that past practices of using exempt carriers have provided a direct source of transportation to rural areas at a significantly lower cost. It is Orion's position, that not only should the exempt status of the agricultural sector remain so, but more flexibilities via a lessoning of regulation be urged.

Various divisions of Orion consolidate shipments to rural areas for the purpose of distribution. Often the use of exempt status transportation is used for the purpose of direct deliveries not offered by the non-exempt sector, in conjunction with the significantly lower prices experienced. It has been our experience that the flexibility offered by the exempt sector provides an average 20 percent reduction in cost while providing a system of transportation unique to the needs of our distribution characteristics. Further we often find mutual benefits between exempt carriers and Orion in that we may use our available resources such as fuel tanks, insurance, cash flow, or low cost loans to lower the exempt carriers cost and thereby lowering our costs. This form of mutual assistance is not permitted in the nonexempt sector causing Orion to pay for unneeded services.

During the 15th century, England experienced a severe wood shortage. Wood used in the construction of buildings, houses, ships, and as a primary source of energy, created a shortage and shortly after, price increases. England's legislative body enacted the first resource conservation attempt by passing and making it mandatory to build houses of brick. After several years, the wood shortage became critical and the price of wood tripled. A sub-committee was formed to examine why the shortage became so unprecedented. It was found that it took more wood to fire the bricks than was required to build a house. After many years of battling the brick manufacturer's influence an over-regulated industry was deregulated. Orion now fears that an American brick is being sought by proponents of regulation.

A great deal of economic evidence to the effect that the regulatory scheme devised in the 1930's (during the midst of the depression) has had serious flaws. In other words, the American brick.

Comparisons between the exempt agricultural sector, and operations in a few exempt States, have indicated that the price performance offerings of the exempt sector has usually proven more efficient than those of the regulated sector. This is not to say, that there is no need for some kind of regulation. It is only to say that some of the major elements of regulation embodied in the 1930's system

are incorrect and have outlived their practical usefulness. Since the 1930's, transportation has become more sophisticated and professional. We do not have a massive over-capacity problem before us in the 1970's, as experienced in the 1930's. Rather, we have the question of how to deal with markets, generally in a reasonably close supply and demand equilibrium as with any other industry.

As experienced with the English, the last forty years of economic regulation in the trucking industry has taught us that over-regulation is not helpful to efficiency and productivity. Transportation regulation should not make entry into trucking, or any particular element of trucking so restrictive as to eliminate the basic pricing control methods of competition. Such severe restrictive practices eliminate competitive service to rural areas due to the exorbitant cost of aquiring the rights to service geographical areas that produces marginal volume. Further, complex and costly procedures of a highly regulated system procures a high cost factor to the shipping public. It has been found, that many companies would like to provide service to remote locations badly in need of such service. However, the restrictive entry type system, requiring cumbersome, costly procedures, makes that service prohibitive. Thus a system of restrictive regulation or trucking entry, produces inadequate or poor service, in conjunction with higher cost, particularly to rural areas.

Agricultural carriers should not have such restrictive geographic or commodity authorizations, which limits flexibility in the use of truck equipment. In Des Moines, Iowa (1977), a multi-terminal carrier experienced disruption of service to its terminal, caused by the Federal highway being relocated. The highway being moved caused a 5-mile gap between the highway and the terminal which the carrier in question had no operating authority. One year of court battles took place before authority was granted. Such restrictive regulation only caused disruption of service and often higher prices to the consumer.

Carriers should not be allowed to agree on prices among themselves. Such activities allow carriers to charge more than compensatory rates to the public with little recourse allowed your shipping public. The price of transportation, as with most other industries, should remain on a competitive basis, whenever possible. Without such flexibility, where is the motivation for your shipping public or your carriers to research more efficient methods of transportation? Why should a shipper spend money to find methods of more efficient product handling or help resolve carrier backhaul problems unless that shipper receives compensating benefits? Should rigid price controls be adapted, incentive may be lost for the shipper and carrier to pursue the common goal of cost reduction.

Part 2, Section 201 "The Agricultural Adjustment Act of 1938" and Section 203 "The Agricultural Marketing Act" provides for special exemptions from interstate regulation concerned with the movement of agricultural products. It states that co-ops might be procured to provide transportation for farmers. The value of these co-ops is that one must be a highly skilled transportation specialist to run a small trucking company in todays diabolical economic environment. A co-op is the vehicle by which the farmer might obtain one. However, even the exempt sector is experiencing higher cost and less available transportation caused by burdensome and antiquated regulation. Section 203, although exempt, provides for severe limitation on such co-ops. Fifty percent of all freight hauled by an agricultural co-op must be exempt goods and members of the co-op. Thirty-five percent need not be members of the co-op, however, must still be exempt goods. Only 15 percent of all goods hauled may be non-exempt goods for purposes of backhaul. This restriction provides a severe economic problem for the exempt sector, in that during off agricultural season or crop failures, the co-op equipment is legally rendered useless. Further, agricultural areas are normally rural areas. Movements of food products out and equipment or convenience items in, under the existing limitations, exempt forms of transportation must ship food in as well as out. Causing a backhaul problem.

To increase regulation would cause less equipment to enter the exempt sector of transportation while increasing the cost. It is Orion's hope that the Commerce Commission will lesson regulatory restrictions, which will provide a cheaper, more efficient form of transportation to not only rural areas but major shipping avenues as well.

The CHAIRMAN. All right, Mr. Shepherd.

STATEMENT OF DAVID SHEPHERD, PRESIDENT, ALTA FREIGHT SYSTEMS

Mr. SHEPHERD. My name is David Shepherd.

I am president and principal owner of a Los Angeles Basin trucking company called Alta Freight Systems. Alta performs various transportation services such as cartage for major carriers, piggyback drayage, harbor container hauling, and transloading for my customers.

Recently, Alta acquired Kerner Trucking, expanding Alta's authority an additional 25 miles to Orange County. The price tag for the stated expansion of authority was $136,000. Although I would like to provide an interline service to and from San Diego County, the cost for the rights to do so exceds $100,000. Since the cost to provide such a service exceeds the cost of the required equipment, I have abandoned the idea.

The point I am trying to make is this: The cost of acquiring the authority to provide a service has reached ridiculous proportions and is a direct result of an industry overburdened with antiquated regulations and restrictions.

Under such entry conditions, service to rural areas becomes a market of big carriers who dictate what service will be rather than service influenced by marketing pressures.

Last month, I traveled to various rural communities in Nevada and Utah. My primary goal was to investigate the possibilities of providing refrigerator service to and from Filmore, Mt. Pleasant, and St. George, Utah. My plan was to haul shipments from Los Angeles to these rural communities and haul frozen turkey back. I found that the existing major carriers were unbelievably circuitous and therefore service is less than desirable.

Currently, most existing major carriers effect pickups in St. George, Utah, and transload through Salt Lake City for Los Angeles, Calif. This route is aprpoximately 416 miles from Los Angeles. Since major carriers currently move St. George freight via Salt Lake City, Utah, said shipments travel 1,054 miles or 153 percent more miles than my proposed plan of movement. With the savings in transit time, I could offer a direct service at a lower cost.

My attorney has informed me that my proposed move would violate the exempt sections of the Interstate Commerce Act, part II, sections 201, and 203 (b) and (c); that such a proposed haul of nonexempt to St. George or Filmore of hauling exempt turkeys to Los Angeles exceeds the allowable limitations of 15 percent nonexempt freight.

Further, I have been informed that I must apply for authority before the Interstate Commerce Commission for the right to haul the nonexempt portion of my plan which would take years to complete at a horrible cost.

Under such restrictions, how are rural communities going to be provided with an efficient low-cost form of transportation when large carriers make it impossible to do so?

Unlike the airlines, the trucking industry has a truck to fit the need of any size community. However, with the current regulation limita-

tions we are faced with today, it doesn't make much difference if you can't get the authority to provide the service.

I strongly urge the Commerce Committee to lessen restrictions of entry, especially concerning the exempt sector of transportation, and make it possible for the smaller trucking companies to provide a service that major trucking corporations have difficulty in providing due to exorbitant overhead costs.

Thank you for the opportunity to make my statement.

The CHAIRMAN. Thank you, Mr. Shepherd.

Thank you very much, gentlemen. We appreciate you being here.

Is Mr. Ernst here? Mr. Ernst or Mr. Osborne.

[No response.]

The CHAIRMAN. If not, that concludes our witness list for today and the committee will stand adjourned until day after tomorrow.

[Whereupon, at 2:15 p.m., the hearing recessed, to reconvene in Fallon, Nev., Thursday, November 1, 1979.]

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

Small and Isolated Communities

THURSDAY, NOVEMBER 1, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Fallon, Nev.

The committee met at 10:30 a.m. at the Nugget Convention Center, Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearings will come to order.

It's a pleasure to be here in Fallon this morning. I especially want to welcome the students from Churchill County High School, who have joined us for our hearing. I hope these proceedings will be interesting for them.

The Commerce Committee, which I chair, has jurisdiction over all forms of transportation, including trucking. Today's hearing represents another step that the Senate Commerce Committee is taking in this area. One of the key issues in the trucking debate is the question of service to small and isolated communities.

Some argue that small community service would deteriorate with less regulation by the Federal Government. Others contend that it would improve.

We're in Fallon today to hear from individuals and businesses directly affected by the outcome of that debate. And while I don't expect to learn all the answers today, I do believe that this hearing will help us to understand better the problems of small community service. We're building a record on this issue in order to prepare for legislation.

I've recently said that the goal of both the House and the Senate is to have legislation on the desk of the President by June 1, 1980, expressing the direction that the Congress wishes to take with respect to trucking regulation. After this hearing and the others that will follow shortly, we will be well on our way to resolving the difficult issues facing us.

I may say we've had hearings in a number of cities throughout the country from the east to the west coast. We will be holding other hearings shortly, some in the State of Washington, some in the State of Illinois, and by the time we have completed our hearing session, we will be able to compile a record that all of the committee members can rely on in trying to form their own judgments as to how far we should go in deregulation of the trucking industry.

I'd like to remind the witnesses today that we have a tight schedule, so I would urge them to limit their comments as much as possible. If they have prepared statements, they will be made a part of the record in full and the witnesses can summarize from them.

Is Mr. Noel Clark here yet? Mr. Clark was to be our first witness.

We'll then call on Mr. Mark Aron, who is Deputy General Counsel, Department of Transportation, from Washington, D.C.; and I'm going to ask the witnesses to please speak up, because we don't have a loudspeaker system and we'd like the people in the audience to be able to hear if we can possibly make that work.

All right, Mr. Aron, we're happy to have you here, and you may proceed.

STATEMENT OF MARK G. ARON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY KAREN BORLAUG

Mr. ARON. Thank you.

We do have a prepared statement. We would like to submit it for the record, but we will make a very, very brief summary of that statement.

The CHAIRMAN. Your statement will be made a part of the record in full.

Mr. ARON. Let me also introduce Karen Borlaug, who is with the Department of Transportation and has been involved with some of the studies on small communities.

It's a privilege to appear today before you on behalf of Secretary Neil Goldschmidt. I might say, as an introduction, that we're here today primarily to listen and to hear the views of the people who are going to testify.

Before the administration recommended trucking legislation to the Congress, we were involved in a long consultation process in which we tried to seek out the views of people actually involved in the industry—shippers, truckers, public officials. We hope to continue this process and we see these hearings as part of a continuation of this dialog.

What I'd like to do today, very briefly, if I could, is to present to the committee some of the results of the survey that the Department conducted last week of two towns in Nevada.

Now, as you remember, a few weeks ago Secretary Goldschmidt testified before your committee on the general question of trucking regulatory reform, and specifically on the question of small community service. As he stated at that time, it is our belief that regulatory reform in the trucking area will not adversely affect small community service and that, in fact, the present regulatory system impedes service to small communities.

At that time we introduced a study that we had done on the Pacific Northwest region. That study was really not a study directed at the whole question of small community service, but rather at the specific question of the common carrier obligation and whether carriers are, in fact, forced to serve small communities. I think the general conclusion of that study was that carriers have a fair amount of discretion to choose which communities they want to serve.

At the end of that hearing the committee asked us to do a followup study of six communities, two communities in Nevada, two in New Mexico, and two in Kentucky. We recently finished our study of the two Nevada communities of Pioche and McGill.

Let me first make it clear how we conducted this study, as it was not a totally scientific-type study. Miss Borlaug and an experienced attorney from the DOT went out to Pioche and McGill and they both spent a day in each town talking to people in the community and getting their views as to what type of trucking service was available in Pioche and what type of trucking service was available in McGill. Now, both McGill and Pioche are small communities. Pioche is the smaller community, about 700. McGill is a community of about 1,500 to 2,000. In those communities we found essentially a normal mix of businesses—one grocery store and a couple hardware stores, a gasoline station, cafe, bar, et cetera. Pioche seems to be the more isolated community. McGill is closer to Ely, and it can be considered sort of part of a single economic unit with Ely. Therefore, in discussing the results, we have to bear in mind this limitation that we only dealt with McGill and were not quite exactly sure as to its connection with Ely.

I think we had five basic findings from our interviews. I'm not sure I'd call them conclusions or general indications, they are simply observations. But the five conclusions are as follows:

People are generally satisfied with trucking service both in Pioche and McGill. I think there were two reasons why we found they were generally satisfied with their present trucking service. First of all, the people seem to be quite ingenious in obtaining trucking service. A lot of the trucking service we found was, in fact, private carriage.

The other reason I think they were satisfied is really a question of expectations. What we found in these two communities consistently was really low expectations as to what kind of trucking service would be provided.

Now, the next general observation, as I said, was that a great deal of the trucking service that was available in both of these communities was unregulated service or private carriage. The people in the communities would often go long distances with their own vehicles to pick up good or the shippers or the people who were selling commodities to these communities would often provide private carriage to those communities.

I think the third general observation is that we found a heavy reliance upon the small package service provided by UPS and also by Wycoff, which is a UPS-like regional carrier. People like to use UPS service and they find it more than satisfactory.

Probably the most important thing we learned is that people are very anxious to expand the use of UPS and UPS-like service, and they were concerned about the weight limitations which are presently placed upon UPS.

Fourth, it appears that not all the carriers that we presently believe are authorized to provide service to Pioche and McGill, actually provide service to these communities. In fact, from what we have found thus far, there are four carriers who are authorized to provide service to these two communities, and in talking to the people in the two towns besides UPS, which is a distinct independent service, of the

62-322 O - 80 - 7

four we could only identify one carrier that was providing some type of regular service.

I think this is essentially consistent with what we found in our study of the Pacific Northwest area—that carriers have a great deal of discretion to decide whether to serve communities they are authorized to serve.

Last, what we found was a general feeling that rates were really quite high, although I think this was tempered with the belief that prices are high for everything.

These are our five general findings. As I said, it wasn't a totally scientific study, we went from business to business. Miss Borlaug and the attorney would start off in the morning and look at the telephone directory to identify the businesses in town. But again, one of the prime observations is the tremendous reliance upon private carriage.

There's only one gasoline station in McGill. It relies almost exclusively on private truck transportation for its supplies. The gas, of course, is delivered in the private trucks of the various shippers, but even in terms of auto parts, the owner gets most of his supplies from auto parts dealers in Elko, Twin Falls, Idaho, and Reno. In each case the suppliers would drive private vehicles to the gasoline station and drop off the parts and other supplies.

There were two grocery stores in Pioche. Both of them dealt with an agricultural cooperative in Salt Lake City and again, both used nonregulated trucking. One of the grocery store owners made the observation that the agricultural co-op was really his salvation, that if that didn't exist and he had to rely upon regulated trucking, his prices would increase dramatically and what would probably occur is that his customers would not pay the higher prices and would travel quite a distance to the Safeway in Ely to buy their food.

There were two hardware stores in Pioche and many, many times we've often heard, "Well, if we change the regulated trucking system, how, in fact, will the hardware store get its products?"

Well, what we found in Pioche, at least, is that both hardware stores obtain the great bulk of their goods simply by getting in their pickup and driving more than 180 miles to Las Vegas, loading up the truck and then returning. That's how they get the bulk of their service.

In conclusion, I guess what I could say is that the truck does stop in Pioche and it does stop in McGill, but for the most part, what we found is the truck is an unregulated truck.

This concludes my statement.

The CHAIRMAN. Did you find that the users were using private carriage simply because they could not get service from the regulated carriers who had an obligation to serve?

Mr. ARON. As we said, we consistently found a low expectation on the part of the people. They weren't generally aware of the ICC. We didn't find that people had complained. I think their expectation simply was that if the carriers weren't there, they weren't going to get service from them.

In a few cases we talked to some people who said that they had switched to private carriage because they thought rates were too high, but generally the people did not expect the carriage to be there It was a long-established pattern.

The CHAIRMAN. You indicate that you got a number of comments that the rates were too high. Do you have any indication if the carriage were deregulated, that that would force the rates down? It would seem to me that an unregulated carrier would then be competing with a private carrier, who perhaps is about at the bottom of the market now.

Mr. ARON. The only indication we got on that point was from the grocer person who said that he had compared the rates for his agricultural co-op and the rates of the regulated carrier and that the regulated rates were dramatically higher than the co-op rates.

The CHAIRMAN. You mentioned UPS, and I might say that UPS provides quite good service of the type that they perform in many isolated areas of our State here, but they would not be affected one way or the other whether the trucks were deregulated or not; isn't that correct?

Mr. ARON. One of the problems that many people mentioned was the weight limit on UPS. As far as we know, the weight limits that now apply to UPS in this area are 50 pounds for one package and 100 pounds for all packages to a single destination; Wycoff's weight limits are 100 pounds for one package, 200 pounds for all packages, and many people we talked to said they would increase their use of UPS or Wycoff if the weight limits could be raised.

As I understand it, UPS has, in fact, asked the ICC to raise the weight limit, at least as to the overall weight of all packages in shipment. One of the important provisions in the administration's bill would, in effect, statutorily raise the weight limits for UPS and also for bus carriers, although we found only limited package express service provided by a bus carrier in McGill and no such service in Pioche.

The CHAIRMAN. As a matter of fact, I'm surprised there's bus service.

Mr. ARON. There was bus service.

The CHAIRMAN. Rather limited, at least.

Now, the Department has recommended that the transportation of small shipments less than a thousand pounds be totally deregulated. What effect do you see that as having?

Mr. ARON. What we recommend is as regards shipments for under 500 pounds and we have not recommended total deregulation. What we've recommended is easier entry into this area so that carriers, for instance, like UPS, who are already adjudged fit, willing, and able, could raise their weight limit. However, the administration's bill would keep weight regulation on these small packages. I think the result of that provision would allow for flexibility to UPS, more flexibility to Wycoff, perhaps ease the possibilities for entry of another Wycoff, but at the same time maintain protections for the small communities in terms of rates.

The CHAIRMAN. Do your findings in your recent study of the two Nevada towns parallel the findings of the Department's July study as to small community service?

Mr. ARON. Yes, I think they're really quite consistent. Again, I think the main point of the earlier study was that carriers have a fair amount of discretion in choosing whether to serve or not serve a community and what happens is that, depending upon the economics of the situation, if the traffic is profitable—and UPS seems to be able to make

profits—they serve. If it's not profitable, the carriers reduce the level of service provided or they simply disappear from the market. That's what we found in our earlier study and that's generally what we observed in the two Nevada communities.

The CHAIRMAN. If the Congress did pass some form of deregulation, would the Department recommend keeping some control over the common carrier obligation such as in the airline deregulation bill?

Mr. ARON. I think an important point to be made is the administration's bill would not in any way change the common carrier obligation for LTL carriers. In our early discussions with the truckers they indicated that they had flexibility in determining the amount of service to provide, that determining the level of service was not a problem, so our bill makes no attempt to change the current common carrier standard. And that is our position.

The CHAIRMAN. Karen, do you have anything to add?

Miss BORLAUG. No, Mr. Chairman.

The CHAIRMAN. Thank you very much. We appreciate your being here.

[The statement follows:]

STATEMENT OF MARK G. ARON, DEPUTY GENERAL COUNSEL, UNITED STATES DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the committee; good morning, my name is Mark Aron and I am the Deputy General Counsel of the U.S. Department of Transportation. It is a privilege to appear before you today on behalf of the Secretary of Transportation, Neil Goldschmidt.

I might say that I am here today primarily to listen to the other witnesses and to the suggestions they may have. As you know, before the Administration recommended legislation to the Congress, we engaged in a long consultative process. We talked with truckers, shippers, members of the financial community, public interest groups, and local government groups so that we could learn first hand of the workings of the regulatory system. We think we learned a lot from that process and we have continued to listen. The various field hearings conducted by this Committee and by the House Committee on Public Works and Transportation have provided us with excellent opportunities to learn even more.

However, while I am here today primarily to listen, I thought I could spend a few minutes to discuss the subject of truck service to small communities and some of the early results of the Nevada portion of the study of small community truck service that this Committee requested the Department to conduct. Before doing that, let me briefly set the stage by presenting our view of the basic issues.

Last month Secretary Goldschmidt appeared before this Committee in Washington and made three major points regarding the trucking legislation that is before the Congress. He stated that the Administration's trucking bill would help conserve energy, fight inflation, and improve service to small communities.

Mr. Chairman, many features of the truck transportation system run counter to our national energy conservation and anti-inflation goals. We believe that the current regulatory system—by limiting entry and by exempting carriers from antitrust laws—limits competition and leads to rates that are higher than they would otherwise be. In many areas, the current system also severely limits what products trucks may carry or the routes they make take, and in this way the system needlessly puts empty trucks on the road and extra miles on the trucks, whether they are full or empty.

Reducing energy waste and fighting inflation are vitally important goals, and all of us in the Administration look forward to working with you and the other Members of the Committee in the national effort to meet these goals.

Let me turn now to the issue of small community truck service. Mr. Chairman, as we have said, we believe that the state of small community service is another reason for proposing change, not a reason for resisting it. We have assembled substantial evidence that the present system does not work to assure service to

small communities. Many of the current regulatory practices, such as route and commodity restrictions, may actually impair small town service. For example, the certificates which authorize a carrier to provide service between certain markets often prohibits the carrier from stopping at so-called intermediate points, and serving those usually smaller communities. Agricultural exempt carriers, who are often based in rural areas, cannot haul needed regulated goods on their backhauls to the rural areas where they pick up their next load except in limited circumstances. Both of these practices limit the availability of service to small towns.

It is sometimes asserted that a different aspects of the current regulatory system protects small community service by providing a cross-subsidy between big town and small town service and by forcing carriers to provide small town service which is said to be unprofitable. First, we have found no evidence that service to small towns is inherently unprofitable. Second, we have found little evidence that the Interstate Commerce Commission bars carriers from exiting or abandoning small towns where the service becomes unprofitable. On the contrary, we have found substantial evidence that carriers not infrequently abandon small community service without notifying the Interstate Commerce Commission, which simply does not have the resources to monitor service levels or examine whether carriers are meeting their obligation to provide service. As far as we can determine, when a carrier wants to stop service to a small community, or substantially reduce it, it merely stops or reduces the service.

A study recently completed for the Department, the Breen/Allen study, provides extensive evidence that ICC regulated carriers have great discretion to reduce, and even drop, service to small towns. That study examined the nature of the common carrier obligation and the extent to which it insures that small communities receive service from ICC regulated carriers.

Let me emphasize, Mr. Chairman, that this was the only purpose of the Breen/Allen study. It was not intended to give a complete picture of small town service.

Professors Breen and Allen looked at the ICC regulated carriers authorized to serve small towns in Washington, Oregon, Idaho, Montana, and Utah, towns that I'm sure have trucking needs similar to those of many Nevada towns. One part of the study looked at eight communities. It was found that only 35 percent of the ICC regulated carriers authorized to provide service to those communities did in fact provide any service. Three of eight towns received no service at all from these carriers, who were authorized, and thereby obligated, to provide service. The results of study indicate that ICC regulated carriers not infrequently abandon service to an authorized point without going through ICC procedures.

In other words, Mr. Chairman, we think the evidence shows that most service provided to small towns by ICC regulated carriers is provided because it is profitable for the carrier to do so, not because of any obligation imposed by the present Federal regulatory system.

At this point let me emphasize that the bill submitted by the Administration would not change in any way the law which establishes the "common-carrier obligation" or the present abandonment standard. When we discussed these areas with the trucking community, they indicated "these were not problems" because the present law provided sufficient flexibility.

Also, some fear that even if small community service is not abandoned, that rates will rise. Again let me emphasize that the bill we have proposed would not remove ICC ratemaking authority except in a narrow range. For the first two years, carriers could raise rates by only 5 percent without going to the ICC and, in later years, could raise them by only 7 percent without ICC approval. The heart of the bill is to remove many of the restrictions which today impair small community service. The agricultural exemption would be broadened to allow more backhauling of regulated goods; carriers would be allowed to stop at intermediate points; and a more liberal entry policy would apply for small package service and where present service is poor. We are confident that these changes will improve small town service.

Nevertheless, when Secretary Goldschmidt testified before this Committee on October 2, the Members of the Committee were concerned that existing studies did not attempt to measure the extent to which persons in small towns are satisfied with present trucking service. In response to this concern, the Secretary agreed to study service to two small towns in each of the States of Nevada, New Mexico and Kentucky, and to determine the degree of citizen satisfaction with present trucking service in these towns.

What I am presenting today are interim results of our study of two small Nevada towns, McGill, in White Pine County, and Pioche, in Lincoln County.

Last week the Department sent two professional employees, one economist and one lawyer, to visit for one day in each of these two towns. On arrival, our representatives scanned the local telephone book for all business listings and proceeded to visit businesses and conduct as many interviews as possible.

Mr. Chairman, we do not suggest that the results of this effort are comprehensive, or represent a thoroughly scientific approach. But we worked closely with the Committee staff in developing the questionnaire used and, like you Mr. Chairman, we think it is important to hear first hand from businesspeople in towns like McGill and Pioche. I think that the words of these people, coupled with the impressions gathered by our staff, constitute the kind of birdseye view of small community service that the Committee may be seeking.

Let me start by describing the two towns we studied as best I can.

Both are small. McGill has a population of about 2,000 and Pioche has about 700. Both towns are located near a decent highway, U.S. 93. Both towns rely heavily on trucking service, though both have rail service to their major plants. In addition to having mining related industries, each town has a normal mix of businesses, including at least one grocery store, hardware store, gas station, cafe, and bar. We also learned that residents of each town are concerned about future plans for the MX missile and expect that ultimate deployment would stimulate growth.

The towns differed in several ways. Pioche seems more isolated than McGill. McGill is only about 10 miles from Ely, a town of about 4,000, and many of the citizens and businesses in McGill seem oriented toward Ely, such that it would not be unfair to consider McGill as part of a single economic unit with Ely. By contrast, residents of Pioche are much more concerned about the availabality of goods and services in Pioche itself. Also, McGill has one truly dominant employer, Kennecott, whose fortunes greatly affect the fate of all other businesses in the town. When the Kennecott smelter was closed recently for over one year, several businesses closed, including two grocery stores, a lumber store, and a dry goods store. Pioche has been more stable, though it too is affected by the ups and downs of the mining business. McGill has a ranching community. Our representatives did not find ranching in the immediate vicinity of Pioche.

At this time let me summarize tentative findings from our visits with the businessmen and businesswomen of these towns.

People are generally satisfied with present trucking service to their towns, but they are satisfied primarily because of the availability of service from a great variety of sources and because they expect slow and infrequent service to their community. There is a very significant amount of private carriage in proportion to total truck transportation. People in these towns are enterprising and so are their shippers. They frequently haul their own goods in order to insure satisfactory service that is not perceived as readily available from carriers. So, "the truck stops" in Pioche and McGill, but it is often an unregulated truck.

There is heavy reliance on United Parcel Service and, in McGill, on the Wycoff Co., a regional small package deivery company, for shipment of small packages. Service by other ICC regulated LTL carriers is considered too infrequent to meet service needs. Thus, UPS and Wycoff service is generally considered to be of crucial importance, and shippers indicated that they would use UPS and Wycoff to an even greater degree if their weight limits were raised, something that our bill would do. We also found particularly heavy reliance on non-ICC regulated trucking in the agricultural sector of the economy.

It appears that not all authorized carriers provide service to these towns. We have tentatively identified several carriers who have these two towns on their certificates, but who were not mentioned in interviews as being among the carriers providing service to these towns. This would seem to confirm our view that regulated carriers exercise a great deal of discretion in choosing to serve or not serve a point.

As to ICC regulated LTL carriers, their rates were perceived as too high, though most respondents thought the price of everything was too high nowadays. There were a few complaints about damaged shipments, though there were more frequent complaints about slow service.

Now let's look at some of the particular businesses we visited and the particular things we learned from these visits.

The local cafe in McGill relies entirely on private trucking. Its groceries are supplied by a food warehouse in Ely, which brings the goods to McGill in its own truck.

One dry goods store in McGill is switching more and more of its business to UPS. The store continues to use an ICC regulated LTL carrier, IML Freight, Inc. (IML), for larger shipments, but feels that UPS is cheaper and faster for smaller shipments. The store would give more business to UPS if its weight limit were raised. The store manager had no complaints about service from either UPS or IML. She feels that rates for truck service are high, but that rates for everything are high.

The two ranchers interviewed have had service problems. The smaller rancher has less contact with regulated carriers. He receives a shipment from UPS about once per week and from IML about once per year. The IML shipments are of heavier goods, such as furniture and pipe, and this rancher mentioned that IML would not deliver to the ranch, so he has to drive this truck to Ely to pick up the goods. The rancher thought IML would not deliver to his door because his ranch is off the highway and that IML did not have authority to drop off goods at his ranch. We have not looked at IML's precise authority, but I note that under our bill, people like this rancher could make arrangements for direct delivery on the basis of business considerations alone, without interference from regulatory requirements.

The larger rancher frequently uses his own trucks to get his supplies. He would rather get out of private trucking, but feels he'll have to do even more of his own hauling due to service and rate problems. He owns a 24,000 pound truck and hauls feed in from Reno and Salt Lake City, which are round trips of approximately 750 and 500 miles, respectively. The rancher uses both UPS and IML and would use UPS more if its weight limit were raised. For emergency shipments, this rancher occasionally has packages shipped by air freight to the airport between McGill and Ely, and picks them up with a pick-up truck.

The grocery store in McGill gets "about 95 percent" of its shipments from private carriers, primarily two wholesalers operating out of Salt Lake City. The rest of the shipments come via IML or UPS. The store uses UPS 2 or 3 times per month and would increase usage if UPS had a higher weight limit.

The grocer also noted that many trucks pass through the town, but that few of them stop. Our representatives, while in McGill and Pioche, and while traveling between, also noted many trucks going up and down route 93 that belonged to carriers that do not serve those two towns. So, on the basis of casual impressions, it appears that the provision in the Administration bill that would allow all carriers to make intermediate and off route stops could increase service to these and other towns in eastern Nevada.

The only gas station in McGill relies almost exclusively on private carriage for supplies. The owner gets his gas from the trucks of a major oil company and most of his other supplies from auto parts dealers in Elko, Twin Falls, Idaho, and Reno. In each case, the parts supplier drives its own trucks to McGill and the owner of the gas station buys from supplies available on the truck. These trucks deliver to McGill about once per month. For odd items between shipments, the station owner drives to Ely. The station uses UPS and Wycoff for about five percent of its business and is planning to expand its use of Wycoff to meet a key business need. The owner has frequently had to turn down repair work for lack of major parts which he cannot afford to stock. This repair business has been referred to garages in Ely. The owner has now entered into agreements with large automotive dealers in Salt Lake City who will ship parts on request via Wycoff, with supplies arriving in McGill the next day. The owner hopes the availability of this service will enable him to keep repair business in McGill.

The owner of a sporting goods and general store shared the gas station owner's concern over the need for rapid service. She noted that there's not much opportunity to stock a large selection of goods in White Pine County and that McGill was an "ordering town", at least as regards guns and ammunition. The owner uses Wycoff for shipments where possible because it provides the fastest service. Without the promise of rapid delivery, customers will not place orders.

The needs of the Kennecott smelter in McGill are clearly different from those of the other businesses in town. The plant receives its ore and ships out its smelted product by rail. It uses truck service for parts to keep the smelter going. There is more heavy hauling and thus greater usage of IML and occasional use of contract carriers. The plant receives packages from UPS and Wycoff daily. The plant's purchasing agent mentioned that some packages went via Wycoff rather than UPS because Wycoff has a higher weight limit than UPS. The officer also thought that when UPS began service in McGill about five years ago "it was a big shot in the arm for the area", and he would like to see a higher weight limit for UPS.

Like the grocery store in McGill, the two grocery stores in Pioche depend heavily on private and exempt carriage. One of the grocers in Pioche went on to explain the importance of private carriage to his business. Most of the store's shipments came in the trucks of a grocery cooperative in Salt Lake City to which the store belongs. The grocer referred to that cooperative as the "salvation" of his business and said that he couldn't operate under his present price structure unless he belonged to the cooperative. The grocer was asked what the consequences could be if he were to switch to receiving shipments from an ICC regulated carrier. Since there is no other town for miles, we asked the grocer how could he possibly lose business, even if he had to raise prices. He stated that if he had to ship via an ICC regulated carrier, some customers to the north of town might actually drive to the Safeway in Ely, 110 miles from Pioche, to stock up on groceries. He perceived IML rates as much higher than the rates charged by his cooperative. The store does receive some IML service and receives some dairy products and produce from other private and exempt haulers. UPS shipments, primarily of hardware and mechanical parts, came 2–3 times per month.

The other grocer in Pioche belonged to the same cooperative and also got a large percentage of shipments from that source.

We also found that private hauling is heavily utilized by the two hardware and general merchandise stores in Pioche. Both of these stores regularly drive their trucks to Las Vegas to pick up supplies rather than receive shipments. This is a nearly 400 mile trip and at least one of the stores makes the trip weekly. Both store owners feel that IML rates are too high, and that's why they began hauling their own shipments. Both stores receive shipments via UPS 2–3 times per week and are satisfied with that service. One mentioned that the initiation of UPS service to town five years ago was an important innovation.

Both of the bars visited in Pioche also relied heavily on private carriage over long distances. One of the establishments received 100 percent of its beverages from Las Vegas distributors who drove the goods all the way to Pioche from Las Vegas on their own trucks.

So, Mr. Chairman, without describing in further detail all of the businesses we visited or our methodology, let me briefly review what we think we learned from these interviews.

These towns get truck service that is perceived as satisfactory. It is perceived as satisfactory in large part because enterprising individuals make very heavy use of private trucks and because the towns do not expect extremely regular service from for-hire carriers other than UPS or Wycoff. The citizens realize they are somewhat out of the way and that trucking companies might not be eager to come to them. UPS and Wycoff service is tremendously popular and there was great interest in an increased weight limit for UPS. IML served both towns and its service is generally considered at least satisfactory, and in many cases good. There is some concern about IML rates and speed of delivery, however. There is virtually no awareness of other ICC regulated carriers being authorized to provide service, though we have tentatively identified several other carriers as being authorized to serve these towns.

Lastly, though we do not claim that this was a totally scientific survey, our representatives did visit over half of the businesses in each town and we are confident that a representative cross section of each town's businesses were interviewed.

We think the results are consistent with our earlier statements before the Committee—expanded weight limits for small package specialists and intermediate stop authority would help small town service, just as private and exempt carriage already help. While ICC regulated LTL carriers play a role in providing small town service, particularly as to heavier packages, this role is not dominant and there is no reason to believe the service would not be provided under a reformed regulatory environment.

Thank you Mr. Chairman for the opportunity to appear before you today and present these interim results. We are still processing our interview results and hope to have final results available for the Committee, along with final New Mexico and Kentucky results, by December 1. At this time I would be pleased to answer any questions that the Committee may have.

The CHAIRMAN. Next we'll have a panel. Mr. Jerry White, Inland Empire Freight Traffic Association, Spokane, Wash.; Mr. Frank Larwood, executive secretary, Greater Portland Shippers Conference, Portland, Oreg. All right, sir.

STATEMENT OF JERRY WHITE, TRAFFIC COUNSEL, INLAND FREIGHT ASSOCIATION

Mr. WHITE. Senator, my name is Jerry White. I'm the traffic counsel for Inland Freight Association, Spokane, Wash. I have submitted a written report and appear here today basically motivated to rebut as best we possibly can the DOT's contracted report done by the two economists at Washington State University and published in July relative to the adequacy of service to the small, remotely located community.

In view of the fact that this report was done, shall we say, in my backyard, because this is the area that we purport to represent in the public interest and in the shipper interest in the transportation field, we felt it was tantamount to us to appear here and point out some basic facts, at least major errors in conclusion that this report derived.

It's my personal feeling and, of course, last Saturday I drafted a letter to Senator Proxmire nominating this DOT contract for his Golden Fleece Award, because it appears to me the DOT has paid some taxpayer money to determine what is absolutely obvious to everybody in the business. But the facts they draw from it and the conclusions they draw from it are in variance with the facts and that was the basis of my prepared statement.

I am deeply concerned that a report such as this is so limited in scope in its research as to determine that the large and/or numerous certified carriers do not actually perform service with no examination in that 124-page report as to the cost to a shipping public of receiving common carrier service and then to flatly conclude that these facts developed refute the theory of cross-subsidization that is inherent in our rate structures, and to me that is totally ridiculous. They never once, in gathering evidence, considered cost factors of either the carriers providing the service or the shipper who pays the freight.

If I can bring just one point, accent just one point in this hearing, I think we cannot separate out from the entire continuum of economic considerations that go into serving our small communities in the common carrier system and just study whether or not some major long-line carriers are actually performing PUD service in small communities without really examining the cost picture, because that is the primary issue.

I would certainly open myself to any questions that I can answer, and I'm sure Frank probably has very much the same feelings I do on this subject.

The CHAIRMAN. All right, we'll hear from Mr. Larwood, then we'll have a few questions.

STATEMENT OF FRANK LARWOOD, EXECUTIVE SECRETARY, GREATER PORTLAND SHIPPERS CONFERENCE

Mr. LARWOOD. Senator, I'm executive secretary of the Greater Portland Shippers Conference. I have submitted a prepared statement. If I may, I'd like to go through and just cover some of the high spots in that statement.

The CHAIRMAN. Very well. As I said earlier, all of the prepared statements will be made a part of the record in full if you summarize them.

Mr. LARWOOD. Thank you.

Transportation is a unique business. It is needed by all other business for the sending of raw materials for mass distribution of resultant products; thus the public is very dependent upon transportation not only for each person's livelihood, but also for the necessities of life. Transportation, on the other hand, is very dependent on the public for its rights-of-way over which to provide transport service. These were provided through eminent domain or the right of government to acquire private property for public use. Transportation's uniqueness is inherent in its public orientation.

The conference interest lies in common carriers of general commodities in both less-than-truckload and truckload lots. All motor carriers share the same streets, roads, and highways along with buses and passenger vehicles. What we are really talking about is regulation of common use of our public highways.

Everyone shares in the cost of constructing and maintaining our public highways, whether he is a passenger paying a bus fare, a shipper paying a freight rate, or an automobile owner paying gasoline tax. What, then, should govern fair sharing in the common use for freight transportation of our public highways?

The basics of transportation regulation are stability of service and rates. Freight shippers and receivers have found stability of service to be the more important, although stability of rates is of great value.

Stability of service enables the small-town retailer to keep his inventory small, possibly only a few floor samples. This is because he knows that through regular common carrier service he can obtain overnight or second-morning delivery from wholesalers in larger communities.

He also knows that through common carriers he can ship to any place in the United States or receive commodities from any place in the country without having to go in the transportation business himself.

Stability of rates enables all shippers to anticipate their freight expense for the future, not only only for sales purposes, but also for determining what markets to enter.

Another important feature of rates filed and published under regulatory authority is a standard by which to determine the correct rates on any given shipment. Such rates are also the only means by which regulatory agencies can police discrimination by carriers among shippers. Under such a program, each shipper pays the same amount for the same service that any other shipper would pay. No one shipper is allowed a competitive advantage through lower freight rates.

Common carrier service to small towns is currently supported by regulatory control over entry into the business coupled with rate regulation. The two are interdependent. If carriers are required to provide service to all points within their operating rights, including points where providing service is not compensatory, then they must have a general rate level sufficient to enable them to continue to provide service. Such a policy is not a guarantee of profit for carriers, but the greater need of guaranteed service for shippers and receivers of freight.

Service is very closely tied to traffic volume. Wherever traffic volume is average or above, service is usually good. Whenever traffic volume falls off, service becomes less frequent as carriers wait for enough shipments to make a paying load.

Common carriers have always known that backhauls are important. For a shipper, sufficient backhaul from a given destination helps to hold down rates to that destination. Two-way movements between any city are actively pursued by common carriers. One trucker's backhaul is another trucker's head haul. Increasing trucking capacity through deregulation or any other method will not increase traffic volume. It will only shift shipments from one truck to another.

Our members ship to market areas where there is very little, if any, backhaul traffic even for common carriers. Eastern Oregon points and Washington points are head hauls only. There's very little manufacturing in these agricultural and recreation areas and, consequently, no general commodities backhaul to Portland and Seattle.

Shippers and carriers are interdependent. Shippers need motor carrier service and the truckers need their transportation business. What, then, is the service to be provided and at what price? These are matters to be negotiated with carriers both individually and collectively as conference members.

General rate increases and other matters of general importance to our members are negotiated by a conference representative at carrier bureau rate meetings. We try to reach an agreement satisfactory to both parties at such meetings. When we cannot and believe the facts to be on our side, we call in a third party or the regulatory agency.

Collective ratemaking is not cartel pricing. From the very beginning all the way through collective ratemaking, anyone having an interest in the matter may become involved. The value of these provisions is that the proposed rate is investigated before it is allowed to become effective.

The conference is usually successful in its negotiations with the carriers. It does not appear before a regulatory agency very often. This is both less costly and less time-consuming. In the proceedings in which the conference has appeared, we have found that if we could demonstrate that the facts are on our side, we were successful; otherwise not.

In addition, collective ratemaking makes possible the transportation system throughout the United States, which our members need in conducting their business. As shippers, they want to continue negotiating collectively with all carriers.

In conclusion, I would say that neither shipper nor carrier nor regulatory agency should control transportation. If shippers prevail, they tend to force rates to noncompensatory levels with results that marginal carriers are unable to provide adequate service or operate safely.

When carriers prevail, rate levels rise, but service does not necessarily improve.

When regulatory agencies prevail, too often they make rules and regulations not compatible with the real world.

Each should provide a check and balance against the other.

That concludes my remarks, sir, and I will answer any questions you have.

The CHAIRMAN. All right, Mr. Larwood. Thank you very much.

Mr. White, the DOT found that shippers and receivers of shipments in small communities had turned from relying on common carriers to other means of service. For example, you heard the testimony here about UPS and private carriage and so on, and that these means were serving the communities adequately. Do you agree with that finding?

Mr. WHITE. I agree that UPS gives a very adequate service. Unfortunately, Mr. Aron also brought out one of the prime arguments of unsophisticated people in transportation, that, well, UPS is great, so let's let them haul everything. Unfortunately, UPS would not be great if they were hauling everything. They are a small package service and can operate very efficiently and very economically. As brought out in the DOT report of the small communities within 150 miles of Pullman, they do give a very good daily service.

That report failed to bring out that the people like it and use it because it's one hell of a lot cheaper. They don't talk cost in that report one bit and UPS is a very reasonably priced freight service and a very good freight service.

Wycoff doesn't operate in our territory, but I've heard they're very similar.

Now, many of these little grocery store owners say, "Well, gee, let's let these guys haul everything." If we do that, Senator, they will not be able to provide, at the price they now do, the same service that they now give.

The CHAIRMAN. Well, if you have, let's say, one regulated carrier serving a community, even though you may have three or four that are authorized to serve, and you have private carriage available that the community is using, how is deregulation going to hurt that kind of a situation with respect to the small community?

Mr. WHITE. Well, deregulation, in my opinion, is going to hurt the small community because there is not going to be the major transcontinental, large corporate-type common carrier truckers serving that community on a joint through-rate basis, and that's really the only way those people can be economically served at a reasonable freight cost.

If you destroy the present system, and let's just take—I don't know the carriers that serve the communities in Nevada they were talking about, but suppose we have a small regional-type carrier, he provides generally and his livelihood is serving these remotely located points, and he is able to make it economically because he is probably the only carrier serving, and he's probably operating radially out of some large center, a wholesale center such as Spokane, and the freight carriers are dumping freight on him. If they didn't put that interline freight onto his route, he couldn't afford to economically operate the territory he does operate. He depends, and conversely the long line depends, on being able to interline that freight.

I think the DOT kind of looks down their nose at the concept of traffic pooling, but I think it's absolutely economically essential in sparsely settled areas that traffic be pooled.

The CHAIRMAN. In your statement you indicate very strongly that you believe with deregulation, rates would go up substantially for small communities now being served primarily by independent or

private carriers. Why would that situation occur? Why would the rates go up if they are presently using independent or private carriers?

Mr. WHITE. I didn't mean to imply that independent or private carriers' rates would go up. My reference was to the regular common carrier-type service, rates would increase, because, as in the example of the paper there, where a rate from Chicago to Spokane is the same as the rate from Chicago to Moscow, Idaho, and obviously the costs are considerably different when that freight moving from Moscow, Idaho, moves over to terminal handling, et cetera, the revenue involved in such an interline haul is the same as it would be to Spokane, but the costs of a carrier operation are considerably different.

With deregulation and no ability for joint through-rate establishment, no facilities to take care of that situation, they're going to pay a combination of locals.

Now, the carrier from Chicago to Spokane is not going to change his rate one bit, so what's the carrier from Moscow to Spokane going to do? He's going to establish his own rates.

The CHAIRMAN. I think you may have a point on that. What recommendations would you make to us to improve service to small communities?

Mr. WHITE. I would grant the ICC the power to establish joint through-rates, routes, and divisions of revenue for motor carrier regulation, which is not deregulation. That's tightening the belt, not relaxing it.

I would also indicate to the ICC that I firmly believe we need some more additional services. I think the Commission fails to recognize the motor carrier industry operates—or develops, I shouldn't say operates—they develop in patterns. I think most of us are familiar with airlines where we start out with regional feeder lines into major terminals and then all of a sudden there's a merger and the airlines seem to progress along this route and become major trunk airlines. I think Air West is a classic example of this.

Motor carriers tend to do much the same thing. The Commission seems to be lenient in granting acquisitions or extensions of general commodities authorities, but they don't seem to be too lenient in recognizing that when motor carriers come along and they want to extend and they buy out the little lines, they tend to abandon the little line's service.

The Commission has, in my opinion, at least in the Northwest, failed to expeditiously grant additional authorities to regional-type carriers who really do want to serve these points, and we end up with a diminishing of availability of that type of service.

I think I could put this in perspective. I came to Spokane 14 years ago. At that time we had four major transcontinental motor carriers serving Spokane. Today we have 11. We need 11 like a hole in the head, but we have 11. At that time we had about seven or eight regional carriers who were interested in serving the remote community and today we're down to four. We've waited 2½ years for authority for basically regional carriers.

The CHAIRMAN. Aren't you making the argument there for deregulation?

Mr. WHITE. Not deregulation, no; a little more efficient recognition of the Commission of the needs of regional service. I'm not against the authority, no way. I think if the authority is justified, it should be awarded and we shouldn't have to wait 2½ years to get it.

The CHAIRMAN. Mr. Larwood, you made what I think is a very good point, and that is that traffic volume is not likely to increase. I think this is one mistake that people make in comparing trucking deregulation with airline deregulation.

In the airline business, you had the opportunity to go out and try to encourage more people to fly by lowering the rates and so on, and volume went up very markedly. It went up last year and it went up again this year by deregulation.

In trucking, you can't go out and encourage a shipper to ship more goods, or a hardware storeman to ship more goods into his hardware store if he doesn't have the demand to sell them.

So I think you may have a good point that the traffic volume is probably going to remain about the same. You may see some small upward movement, but I wouldn't think it would be very, very great, and that does give the community a problem.

Now, both of you have spoken about the rate bureau regulations. I'd like to ask Mr. Larwood, would your conference accept some legislative changes to the current method of rate bureau regulations?

We've heard the criticisms that the rates are high because the rate bureaus meet behind closed doors and decide on a rate and the consumer has no input into it. Would you respond to that?

Mr. LARWOOD. Well, there's been a lot of misinformation as to how rates are made in the rate bureau method. I have appeared at rate bureau docket meetings for at least 25 years and have negotiated with the carriers for rates. All the way along, all the way through, even if we have to go before the regulatory agency, we have all the opportunity in the world to put input in there that would support what the rates should be.

The thing that has to be decided, as Mr. White has said, there's a cost involved in transportation, and that cost has to be covered if you're going to expect the truckers to keep on the road. Just a ballpark figure, it costs about $60,000 to put one of these large trucks on the road, and unless you can provide that trucker with enough freight to cover his costs, he has to stop providing the service.

As I say in my statement, we want to continue negotiating with all the carriers under the collective ratemaking idea. We see no reason for changing it.

The CHAIRMAN. Well, if Congress saw fit to continue the rate bureaus, would you have any objection to us imposing a sunshine provision so that those rate bureau meetings had to be in the open and people would know what was being discussed and how rates were arrived at so that consumers would have a feel as to whether they were fair?

Mr. LARWOOD. Well, you have a situation now where anyone that wants to put input into ratemaking can appear before the bureau. The only thing that's done as far as the executive session is concerned is the actual decision.

The CHAIRMAN. Well, that's the whole guts of the problem. If they're going to listen to everybody and then meet behind closed doors to come out with a decision as to what they are going to do, it seems to me that that's one of the weaknesses of the system and one of the things that brings criticism on the rate bureaus at the present time.

Now, I know in the Congress we used to go into executive session and we would do our voting in committee in executive session after we'd heard all the testimony out in the open, unless it involved national security matters. Then we would vote and the members could come out and tell their constituents, "Well, I tried hard for your point of view, but I didn't get it across."

We've adopted a sunshine law. We no longer have executive sessions except in two limited instances. In the Congress we have open meetings for the purpose of marking up legislation. When we have amendments to vote on, the people can sit out in the audience and see how we vote. We can't hornswaggle people as to what's going on even if we wanted to. Do you see anything wrong with that kind of a system?

Mr. LARWOOD. Well, there's one more step involved here. After the rate bureau makes its decision on the rate, anyone who is dissatisfied with it, under present regulatory construction, can appeal to the ICC to suspend and investigate that rate. Well, then is when you have to step up with your facts and your figures to prove who is right and who is wrong.

Because the carriers realize that the shippers can do that, it gives us a bargaining power with the carriers and it's also only prudent on the carriers' part to propose and approve only those rates that they know are within the law.

The CHAIRMAN. Well, you did everything but answer my question. I'm aware of the process, how the process works, but what I am asking you is, would you have any objection if we imposed a sunshine law in the rate bureau operation if we permitted the rate bureaus to continue to operate?

Mr. LARWOOD. I would say it this way: I would have no objection, but at the same time, I don't think it's going to accomplish anything.

The CHAIRMAN. Well, it maybe won't accomplish anything, but at least the perception by the consumers and by the general public might be that here is an open hearing and the procedure did arrive at a fair and reasonable rate in the proper manner.

Do you have anything further, Mr. White?

Mr. WHITE. Well, I was just going to comment on the same question. I wouldn't dodge it, but like Frank, I have no objections. Quite frankly, I wouldn't stand around a day to wait for the vote. I'd go home. It wouldn't make any difference. Even if I could listen, I wouldn't care.

I would like to add in that vein, however, that you don't need legislation. This can all be done under the present act. It's the Commission's ball game; they don't have to approve an agreement. That's the substance of the 297 case right now before the Commission.

In this matter of the meetings, I have taken the position, I don't see anything can be accomplished, I don't think the public is going to

come to these docket meetings anyway. There's very few of us that regularly attend them. My constituency says, "Hey, you're our hired expert." Even when they come to Spokane, I can't get my clients to come to those. They don't care.

That's the only comment I have.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your coming and giving us the benefit of your views.

The next panel we have is Mr. Pete Fundis, Fundis Co., Lovelock, Nev.; Mr. Don Visger, area manager, Pacific Western Systems, Winnemucca, Nev.; Mr. Tom Gallagher, Fallon, Nev.; and Mr. Jack Tedford, Tedford Trucking Co.

You know, I'd just like to make an interesting observation. In addition to the Commerce Committee having jurisdiction over all forms of transportation and many other areas, we have jurisdiction over all forms of communications. Yet so far we haven't been able to make our loudspeaker system work in your hearing room. So that shows you how badly you can get fouled up.

All right, gentlemen, why don't you just proceed. Jack, do you want to lead off?

STATEMENT OF JACK TEDFORD

Mr. TEDFORD. I have a real short statement I prepared, Senator, and I'll kind of skip through it. I do have a few things I want to read.

I want to thank you for having the hearing in Fallon. I won't be very long, so don't get nervous. We're grateful to you for having it here as we think Fallon is a typical example, better than the examples given the committee by the gentleman that was just here before me, because Fallon is almost completely dependent on truck transportation today.

You know, I'm in the trucking business, Senator, but I'm not really here for that reason today. I want to talk about service and service in Fallon and communities like ours. I think I'm qualified to do that; I've been in the business 39 years and I've had 15 years of service in city government which I think gives me a well-balanced feeling between community involvement and knowledge of what this community needs.

I find my position very difficult, Senator. I'm really opposed to rules and regulations and things that are given to us in our personal and private life, and I know you are, too: but I like to say that this case I find that I had to concede on this trucking movement.

I have to say this now, Senator, personally my company will gain through deregulation. I know it will, but I'm willing to forego those things, because I know the importance that there is in having good service in our community. So I concede that to myself and admit that this will be one of the places that regulation is probably important.

Regulation has to be for the public and not for the industry, and if it isn't doing that today, there's something wrong, and it should be changed and corrected.

You see, I'm not here today to offend any carriers or anybody at all. I'm just concerned about Fallon and small communities like Fallon. I think of other communities even smaller and more remotely located,

and you're aware of where they are, Austin, Ely, Eureka, cities like this that are located all over the country.

I realize I have a very limited time to talk to you and I want to take advantage of all that I can. I want to tell you what happened in Fallon, in my opinion, and I think that it's based on fact.

Fallon for many years was served by two trucking companies, primarily the PMT and the Nevada Truck Lines. Both of these companies were well organized and they had terminals in Fallon.

They had a pickup and delivery service and all of the things that went with that, including some kind of a manager on the local level.

Then a few years ago PMT closed theirs and began servicing mostly from Reno with the telephone and the truck. So I saw that as a beginning; it isn't what the customers were used to and what they wanted, and I think they should have what they want and what they need.

Even then, Nevada Truck Lines sold out to IML and you could tell they were going to close the terminal, and they did close it. This was a great mistake. It was a mistake on the part of the ICC and the Public Service Commission of Nevada to allow them to do this.

If they didn't have the power with the rest of their regulation to control terminals; because if it's going to be regulated, it has to be regulated all the way, then they should be given this power to regulate terminals.

So I saw this as the beginning of a real slide in service. I've looked into this and I found that one of the main contributing factors was that in the meantime the ICC apparently had offered more services to Fallon and apparently there were four or five or whatever companies, I'm not even positive today, that were servicing Fallon. In that I saw then what was beginning to happen—trucks were coming in with half loads, and they are today, I'm told.

Sometimes in my yard, when some freight comes in, that's the kind of thing drivers tell me, and I had to realize the pie has got cut too thin. They just kept cutting it and we saw that the telephone and the terminal had completely replaced the dock where people could go.

If this happened, Senator, under regulation, what's it going to be like under deregulation? I think there will be many carriers spring up and go, and I think the same thing will be happening, only it will be affecting the people that are there today.

So I wanted to bring this to you, because it appears to me that some of the more remote areas that I mentioned to you a few moments ago are going to have a harder time. If they do get the service, if the trucks are going to have to go out with partial loads, then the rates will have to go up. There isn't any other way of us talking about it.

I'm trying to be very practical in what I am saying to you today, but I do think we're going to see service of this type continue to deteriorate if we have deregulation. Again, I have to say to you that I'm surely not for Government regulations such as we have today, and it's a whole new subject I'm not interested in talking about. I'm just mentioning, because I want you to know how I feel in regard to this situation.

I think sometimes, Senator, instead of looking at deregulation, we should be looking at correcting the system we have. See if we can improve it and make it better.

62-322 O - 80 - 8

Surely rate bureaus should be meeting out in the open. I agree with you. I've been president of Nevada Motor Transport Association for the last almost 2 years and I've had the pleasure of getting a lot of information from the American Trucking Association, and I've had the pleasure of reading some of your speeches that you've given, and I appreciate them. I thought of the one, I believe it was last month when you talked to the workshop of the ICC people, and I admired your talk and you were absolutely right; Congress has to make the rules, Congress has to do that. It can't be done by these government agencies. They may be well-meaning, but they are not in touch with the people, and I appreciated. I thought it was an excellent talk.

So I know that deregulation of the airline industry, and I heard you discuss it a minute ago, and I realize that it's maybe even something that I'm steeping on your toes, but I know you're not going to hold that against me, but at first it looked good, see, but, you know, I feel like what's going to happen to trucking is beginning to happen. Senator, in a very untimely time on television last week I saw that small communities were not being served. That made me very nervous and kind of fired me up to do something about writing a little talk.

So I had to say this to you in closing, Senator. You and your associates have a tremendous responsibility to make the right decision. I'm sure that after you once make it, there isn't any way of backing out. There won't be any room for that. We have to be sure that we're right and that there won't be chaos from it.

I always like to say if somebody wants me to make changes, and I'm not great for change, and when you have young people working around you, you know how they look at that, but don't rock the boat. If things are going good, don't rock the boat; but if Congress persists on this matter and they approve it, I recommend you back out pretty gradually. I don't want to be defeated and think you're going to do it, but I realize probably at the present time there are an awful lot of people that are with you in the Congress, but if you do, back out, slow and feel your way along. Just the advice from an old fellow in a little town out in the middle of Nevada that you and I have known for a long time. We know each other quite well.

Anyway, I'm very concerned with the service to small communities if it is approved, and I think under regulation it's assured to most of the people, Senator, through the certificates they have. I have an idea that sometimes the servicing of these small areas has to be absorbed by maybe some of the more luxurious routes and maybe that's wrong, I don't know, but that's how I believe they must be doing it. So I think it's real important that we maintain that.

I heard so many times, "Let's deregulate and save money," and I don't think it's going to save any.

I thank you for letting me have the opportunity for being here and that's because you're in Fallon. Thank you. Senator, I've got to tell you, Pete's complaining that you were nice to let me talk first.

The CHAIRMAN. Well, Jack, let me thank you for your comments. They're certainly very valid. I agree with a good many of them, and certainly if we do end up with deregulation in this area, we're certainly going to have to look at it very carefully and not just say it's all deregulated.

As a matter of fact, we did that sort of thing in the airlines as well. For example, we guaranteed service to small communities for a period of 10 years so that no community would lose service. Now, some communities have lost some service and think they are not getting as much as they are entitled to, but that's based on the fact that they wanted a lot more service than they were really able to justify at the time.

I think you made a real fine presentation here and the TV people outside, just before I came in, were interviewing me and they said, "Why a hearing in Fallon?" I wish you had been there; I'd have let you give that statement and that would have answered the question as to why we're holding these hearings out around the country, and particularly Fallon.

I want to thank you and commend you for your comments.

Mr. TEDFORD. Thank you very much.

The CHAIRMAN. Pete, why don't you just——

STATEMENT OF PETE FUNDIS

Mr. FUNDIS. Yes, Senator, I'm from Lovelock, Pete Fundis from Fundis Co. And the things that Mr. Tedford just said are my position, too.

We're in the trucking business, we have ICC authority generally to haul one commodity outbound. Deregulation, open entry, whatever it is, can only help us. But I don't feel it would be in the best interests.

For many years the ICC, on their entry procedures, were very ironbound. The first time we ever applied for authority was in 1964 and I thought we had an excellent case to present. After spending close to $1,400, which in 1964 was considerably more money than it is now, we were turned down and had no authority.

Five years later we applied for the same authority again and we got it with no protest from any existing carriers.

Open entry, or deregulation, either way, that you can haul for whomever you choose, is also the right to not haul for whomever you choose. Which means that a lot of the very cream of the crop of trucking would be picked off at probably very favorable rates. What is left would have to pay exorbitant rates.

There are some changes that could be made, certainly. I think in the last just 2 years probably the ICC has relaxed on its entry quite a bit. You still have to file for authority, get shippers' support, show financial ability, so that you have some kind of a safety operation. I think that's good. It should be required in the future.

The filing of process agents, the filing of insurance, the filing of a tariff. If these people who are clamoring for deregulation, by that I mean owner-operators, and what we respectfully refer to as gypos, if they don't have enough business to do all of that, you wonder how long they will last. Others of us hauled exempt commodities for many years and that's probably what deregulation would do, just make everything exempt. It was a tough battle at times. Sometimes the good competition would be there year after year, but a lot of times you would see a person in for one season and never see them again. And the shippers saved a little money off that person.

One more thing, I don't believe the original intention of the act that set up trucking regulations was to create transportation brokers.

Right now we trip lease home any time because we have no authority to haul commodities back.

The CHAIRMAN. What do you haul outbound, Pete?

Mr. FUNDIS. Difficult dimensions, sir. It's a filter pod.

The CHAIRMAN. Is your equipment such that you could haul many other products back or are you rather limited?

Mr. FUNDIS. Just ordinary flatbed trucks. Anything that can go on a flatbed. We go through other truck lines now. Some of them don't have a truck based in the territory. They're nothing but truck brokers.

The CHAIRMAN. So they have the permit and you work under their permit for the particular products, is that it?

Mr. FUNDIS. That's right.

The CHAIRMAN. And they get a commission off the top?

Mr. FUNDIS. Yes.

The CHAIRMAN. So they're working as a commission merchant to get you a load on the way home, is that it?

Mr. FUNDIS. Yes, I believe they're in the brokerage business, not the transportation business. And some don't even make any pretense of being in the transportation business.

The CHAIRMAN. Of course, that's one of the arguments that a lot of people use for deregulation of the industry, is that you get rid of the trucking brokers, in a sense, and let people go out and get their own loads, you know.

Mr. FUNDIS. Brokers do perform a service, no doubt about that. We operate 18 power units. We couldn't afford to put a man on the road to round up these loads; however, I do think occasionally when you go through these other trucklines the percentage they charge is a little more than it has to be. We're furnishing all of the equipment. They're doing—exempt commodity brokers charge around 12 to 15 percent.

Most of your carriers, when you trip lease under them, charge from 20 to as high as 30 percent. There's quite a difference there. And a lot of that is because of certain regulations they have to go through. But others are because they do have the authority and others don't.

The CHAIRMAN. Do you see any action we could take short of deregulation to get at the empty backhaul problem?

Mr. FUNDIS. I don't think deregulation will cure the empty backhaul problem when you can stand on I–80 and see trucks going both ways. Some have more freight moving out than in. That can't be helped. Therefore, I think that the very fact that entry into the business, authority is easier to get now than it used to be, that should start relieving some of the problem, but the very fact, because a man has the authority to haul one way. I don't know that that should automatically give them backhaul authority, as they say, to bring a load back, because some other carrier must have that load also or he's performing the service at the present time.

The CHAIRMAN. That's the argument we get, of course, one man's backhaul is another man's front haul. And, of course, that was the point that Mr. Larwood made—that you only have so much volume in this business and obviously you will have to have some empty backhaul because of the disparities in shipment and usage. I imagine at some times of the year Fallon ships a lot more goods out than they ship in

and other times of the year just the reverse. Wouldn't that be true, Jack?

Mr. TEDFORD. Pretty much. Most of them are alfalfa, hay, that type of thing. Sometimes I think there should be some way that people that had legitimate hauls or carriers, there may be someway that the regulations could include backhauls without authority. I know that somebody is going to shoot me, just as I said I felt an arrow hit me, but I know what you're saying, and in these kind of days with fuel costs, trucks should be loaded.

I always think everybody is smarter than I am and they can figure it out, but there is someway it can be done. Has to be.

The CHAIRMAN. Let me ask you this, Pete, if there was complete deregulation, would you expand the operation you're conducting at Lovelock?

Mr. FUNDIS. Yes.

The CHAIRMAN. Would you raise or lower your rates?

Mr. FUNDIS. They would be negotiated with the shipper, probably. Our inbound rates would probably be lower than what inbound commodities are coming in for now. I have no doubt about that.

The CHAIRMAN. And if that would occur, where would your competition most likely come from?

Mr. FUNDIS. Everywhere. We're right on I–80, every truck that rolls down there empty is going to ride our shipment saying, "Hey, you all got a load going north?" There's no doubt in my mind.

I think with deregulation we would survive. We're fortunate that we haul for a very responsible shipper. They want to know how long you've been there, if you're going to be there the next day, who's going to handle the claims on freight. A lot of shippers are not going to have just anybody handle their products.

The CHAIRMAN. And you haul for a negotiated rate?

Mr. FUNDIS. Yes.

The CHAIRMAN. You want to trade chairs now?

Mr. FUNDIS. I have one more comment. On total deregulation I can see problems with the road and highway taxes and the Federal use tax. I don't know how States would audit every single person that owned a truck. It would be impossible. In our business we have five owner-operators working for us. We're responsible for the Federal highway use tax on those trucks and we pay the IRS, although that is an owner tax. They make the registered owner responsible for it. If each one of those five individuals were on their own, I doubt if any of them would be paying their tax.

The CHAIRMAN. Under deregulation would those five owner-operators be competitors of yours for the business that is there now?

Mr. FUNDIS. It's possible.

The CHAIRMAN. All right, why don't you switch chairs here.

STATEMENT OF TOM GALLAGHER, NEVADA FARM BUREAU

Mr. GALLAGHER. Senator, my name is Tom Gallagher. I'm here for the Nevada Farm Bureau and we wish to state that we would like total deregulation on the Motor Vehicle Act of 1935. We'd like to see this go back to free enterprise and where everybody can get into the

business. I think it will lower our rates coming into these small, small towns.

I'm also in the trucking business and the livestock trucking business in the State. Our trucking business today, we have hardly any trucks to take these cattle out, out of the State or in the State, for the simple reason they have gone out of business; they could not get a backhaul or else they would be in violation.

We need—hay companies are also having this same kind of trouble. Come in and get a load of hay, come on back, and we cannot bring back a load of fertilizer or anything else. Today we have to do it at cost.

The CHAIRMAN. Well, in this discussion on trucking regulations one suggestion that has been made that we are considering is to expand the exemption on the agricultural products; for example, you say you haul cattle. Now, your cattle are exempt, but you say you can't get a backhaul. What about the hay?

Mr. GALLAGHER. Hay's the same way. If he has a full permit where he can haul all farm products, which most of them don't give out, he cannot haul any farm products back into the State.

The CHAIRMAN. Of course, we've seen a lot of absurdities with respect to farm products. For example, the products right off the farm that are exempt you can haul out, but you can't haul the processed products back, and the fertilizer, I guess, is not exempt, is it?

Mr. GALLAGHER. It's not exempt.

The CHAIRMAN. So you can't haul fertilizer back to grow your farm products. There are a lot of absurdities that have grown up under regulation, which I would hope we may be able to improve on, whether we deregulate or we don't. I would hope that we could at least have some regulatory reform and try to improve the system.

Mr. GALLAGHER. Well, I think if it was deregulated, we could get some of these things done which the farmers are sure looking for, getting deregulation of the act on some of these products so we can get them back on in, and keep our truckers. We're losing truckers by the dozen on some of these things.

The CHAIRMAN. Let me ask all three of you, how much contact do any of you have with the local ICC office in Carson City?

Mr. GALLAGHER. We have one here.

Mr. FUNDIS. Once in 3 years. Are there any ICC people here?

The CHAIRMAN. Yes, I think there are some ICC people here.

Mr. TEDFORD. We're not a predominant—I have a little ICC hauling authority to load ore on the railroad, which I haven't used for years, so I think there would be much reason for them. They have offices, but I think they're spread so thin they wouldn't be able to really and truly do very much for the people except in emergencies and necessity.

Mr. FUNDIS. Senator, I'm not sure, I know a few years ago there were less than 200 ICC field agents. That's almost a ridiculous number for a nationwide police force to police these regulations. That's part of the problem now, the regulations existing weren't adequately enforced for many years.

The CHAIRMAN. I think the number is now less than the number you indicated. I think they've been reduced.

Mr. FUNDIS. They split with DOT somehow; I'm not sure, but there are very few agents in the field.

The CHAIRMAN. Tom, let me ask you this: Suppose we had deregulation. You people, in hauling your farm-to-market goods, were hauling and then getting a backhaul. What's this going to do to the number of people that are in business today? Is this going to force a lot of people out of business simply because you're taking part of the business they're now hauling?

Mr. GALLAGHER. Take my own business; I'm in the cattle hauling. Today we have about five cattle haulers in the State. Why? They had to go start hauling rocks because they couldn't make it in the cattle business, because there was so much dead haul all the way.

Now, if they could get back, say they would go into California and they could haul back maybe baling wire, that would pay half the load. This is the big, big thing that I get from these hay haulers and I get from the cattle haulers. We're getting down in numbers.

The CHAIRMAN. Who are the people that are hauling that baling wire, for example, back to Fallon now? Is it being hauled by a regulated carrier, or what?

Mr. GALLAGHER. I think some of them are hauled by regulated carriers and some are hauled by Farm Bureau trucks themselves.

The CHAIRMAN. By co-ops?

Mr. GALLAGHER. We have co-ops, yes.

The CHAIRMAN. Gentlemen, do any of you have anything further to add?

Thank you very much. We certainly appreciate your being here and giving us your views.

All right, next we'll have a panel of Mr. Terry Kendrick, Motor Supply Co., Fallon, Nev.; Mr. Raymond Ansotegui, Builders Supply Co., Fallon; Mr. James Winan, Winan Furniture Co., Fallon.

Are either of the other gentlemen here? You're Mr. Ansotegui?

STATEMENT OF RAYMOND ANSOTEGUI, BUILDERS SUPPLY CO.

Mr. ANSOTEGUI. Yes.

The CHAIRMAN. Why don't you move right over there where you can use the microphone, Mr. Ansotegui. Very good. Be happy to hear from you.

Mr. ANSOTEGUI. I'm going to be the only one here?

The CHAIRMAN. I guess the other two haven't shown up, but we'll hear from you right now.

Mr. ANSOTEGUI. Senator, this deregulating at first glance looks real good, but when you look at it again, I kind of have my doubts.

As we all know, one of the things that merchants, we'll say, are complaining about is the freight rates are high. We know they are. Deregulating isn't going to help the freight rates any.

I think the freight might get higher than it is right now if it is deregulated. One of the reasons I say that is because, as Mr. Tedford and different ones have already said, when you get a certain amount of freight to haul and they're barely making it, like I say, I don't think this trucking business, I've never been in it except for ourselves, but I don't think it's as lucrative as some people think it is. They only have so much freight to haul and you involve more people to haul it, there's going to be nothing but problems.

Another thing, somebody said, "Well, we deregulated the airlines and they're getting along all right." Whether they are, I don't know, but when you go to an airline terminal and you have a ticket and nobody shows up, you can get you a ticket on another airline, but when you've got 200 pounds of freight sitting on a dock, that freight doesn't have any other way of getting here if some other trucker doesn't think it's a paying load or they can make a dollar on it.

Another thing is, somebody is responsible. If you deregulate, who is going to be responsible? The way it is now, you can call Delta, you can call I. & L., you can call Southern Pacific. Somebody will know where that freight is and try and find where it is. If you don't have that, somebody might say, "Oh, this goes to Mina." Who's going to control it?

The CHAIRMAN. Do you use the ICC certified carriers for most of your freight?

Mr. ANSOTEGUI. Yes, all of it except what little we haul ourselves.

The CHAIRMAN. Have you had any problems from the standpoint of adequate service? Do you get good service from the carriers, the regulated carriers?

Mr. ANSOTEGUI. I would have to say not 100 percent; I would say yes, we have good service.

The CHAIRMAN. You think it is reasonably satisfactory?

Mr. ANSOTEGUI. I think so. We have had no problems to speak of. I realize there are some problems; also, as somebody has already brought up, some of the rules the truckers have to go by were probably adopted in 1932, 1934, and 1935. Things have changed since then. Maybe there should be some changes in the rules, but to throw the whole thing out, I think would be very foolish.

The CHAIRMAN. The argument is made by those who support deregulation that if you deregulate, you would have more entrants into the market and you'd have more people competing and you would get lower rates and you would actually get better service. Do you think that's a valid argument?

Mr. ANSOTEGUI. Absolutely not. Let's, for instance, say that we have three truck lines that are working out of Fallon now under the ICC. Let's say we deregulate and three more come in. There is only one thing that's going to happen, Fallon isn't going to buy any more merchandise, so those three are going to have to split whatever money there is and the first thing you know, the guy that's the weakest is going to fold up and move and maybe the big ones will fold up. Then what have we got? We don't have anything.

I can't see where they're making that much money. Like Mr. Tedford said, when we first moved here we had two depots. If it had been such a lucrative business, one of those depots would be operating now. We have no depot now. I can't see a truckline staying open. I don't think they've made as much money as people think they have.

The CHAIRMAN. What sizes of lots do you normally have shipped in?

Mr. ANSOTEGUI. You mean by weight?

The CHAIRMAN. Yes.

Mr. ANSOTEGUI. Probably 2 or 3 tons, maybe 5 or 6.

The CHAIRMAN. But they're usually less than truckload lots?

Mr. ANSOTEGUI. Yes, absolutely. Well, not always. We get truckload lots, but normally it's—with interstate, though, it wouldn't be

truckload lots, those would be individual lumber haulers that would haul and I guess they are probably interstate, but there are also other wholesalers in California and Oregon.

The CHAIRMAN. Do you have any basic criticisms as to the regulated system as it now operates with respect to your business and your shipping?

Mr. ANSOTEGUI. No; I'm not saying everything is 100 percent on the up and up. I might feel that everything isn't just right, but I think it's going to be a lot worse if it's deregulated.

Again, I have no trucks and I have no intention of ever having any, but I hate to see something that's operating quite well juggled around to where it won't work, and I think this can happen.

Just to get back, when we were in Paradise Valley, BLM was doing—and then I don't really like to talk about—BLM was tearing out brush and seeding acres and acres. Willits Bros. were doing it and they were doing it quite reasonably.

BLM got the idea maybe somebody could do it cheaper, so they hired an outfit out of Texas. I think that Texas bid about a third of what BLM was bidding and they got the job. They hauled in all kinds of machinery from Texas and they didn't know how to get around the rocks. They tore up all their equipment and went broke and they came and hauled the junk off, tractors, weeders, you name it.

I'm afraid this is the same thing that will happen with trucks. You were talking about airlines and saying the airlines are working. Maybe they are; I hope they do, but like somebody mentioned, that's a different game, because those airlines are getting more people every day and they can probably stand for more.

In 10 years, I venture to say, there won't be enough new freight coming into Fallon. Will Rogers said there are no gains without pains, and I think this is one of them.

The CHAIRMAN. Thank you very much, Mr. Ansotegui. You've given us some very, very useful information. We appreciate you being here.

Is Assemblyman Joe Dini here? Joe, do you want to come up and let us hear from you?

Good morning. It's good to see you. I didn't know you were out there till a couple minutes ago.

STATEMENT OF JOE DINI; ACCOMPANIED BY FRANK McGOWAN, CITY MANAGER, CITY OF YERINGTON

Mr. DINI. Senator Cannon, I have with me Frank McGowan, the city manager of the city of Yerington. We're also here representing the Lyon County commissioners. I'm Joe Dini. I represent district 38 in the assembly. My district comprises Lyon County, Storey County, and part of Churchill County.

I don't think I'm here to support or oppose deregulation per se. I think I am here to say that whichever way the Congress sees fit to go, that the rural area, the small area in this country receive adequate service.

Presently, in the area of Yerington, which I am familiar with because that's where I live, we have two freight companies serving us, both providing us with half service, totally inadequate service. You

go down historically, when I was a young kid in Yerington, we had a line called May's Fast Freight. They came back with a full load every day. I think the guy made some money. The unique problem was, the guy wanted a franchise to connect Reno with Los Angeles, so they bought out May's Fast Freight, and at that time we had a revolution in the freight service in Yerington and Hawthorne.

Then along the line came System 99, which became nationwide, so then the freight service continued to disintegrate. It got to the point where, personally, in my shipping, I always specified: "Do not ship System 99," one, because you couldn't get a claim settled; second, it would sit on the dock for a day.

Fortunately, down the road a couple of years ago another freight line came in, Delta. However, when Anaconda did close, it did affect the usefulness of two freight companies coming into town. In the meantime, we do have UPS service, which provides the small package service. We have a concern called Jackrabbit Express out of Reno, only small items, and we have the bus service connects, the LTR bus connects with Greyhound, so if people have to ship out of the bay area small parts, ship it on that and you can get 12-hour service on that.

But our major freight that has to be hauled in the community, we're very unsure of our position with these freight companies right now with regulation. As you know, Yerington lost the mine a couple years ago; we're out actively pursuing industry to come into our area. One of the things we're able to use as our selling point is we do have service to Wabuska. Anything that would deter from the availability of adequate freight service into our community would destroy our ability to attract industry into the area, and I think the regulatory industry agency that's been controlling the industry should take a good look and see if they can improve the service.

We have a couple agencies, a Ward's agency and a Sears agency, that ship out of the bay area. They can't get their freight delivered in 9 to 10 days. That's totally inadequate service for competing services to offer.

The rest of our franchise business in Yerington, like Ace Hardware, Tru-Value, and these people all run their own trucks. We've got 25 trucks coming every week. The beer people, the liquor people, the hardware people, the auto parts have their services up there with their own trucks. Why has it got to that point? Is it more cost efficient or is it the fact that the existing freight companies have not provided adequate service to the community they're serving?

With this, Senator, I think I'll just point out to you it's very important for the communities such as Yerington, if you want to sell our community for industrial development and to also help our existing business people to receive adequate freight service. If deregulation is going to affect the service into our community, then we'd have to oppose it.

The CHAIRMAN. Of course, the argument is made by a number of people that the regulated carriers are not now providing service to the smaller communities, and if you deregulated it, that this would result in new entrepreneurs, small companies coming in and providing that service. I'm unsure as to whether that actually would exist.

I may say that a number of the private people who have their own private carriage do support deregulation because they believe that they might then be able to hire that carriage at a more reasonable cost than having to provide it through their use of their own vehicles, or they provide their own vehicles.

Do you have any comments to add, sir?

Mr. McGowan. No, Senator, I really didn't come here with any prepared remarks. However, at my level of government, I tried to find out what the consensus of the opinion of the public is. In the last 2 or 3 weeks, in talking to the people in the city of Yerington, at this particular time I'd say we're leaning toward staying with the regulated transportation system. However, in the framework of the National League of Cities, there is a committee called Small Cities Advisory Committee and this committee has organized a workshop that will be in Las Vegas at the national convention November 24 through 28, and this is—they are going to go over this whole subject at that convention. You are probably aware of it, and I would hope that a lot of valuable information comes out at that time.

I was also very glad today to find out that my long-time friend, Jack Tedford, is supporting the same theory that we in the city of Yerington, at least at this point, are. We feel deregulation at this time is unwise and inappropriate. However, our situation could change.

The Chairman. I look forward to getting the benefits of the views of your city's organization when they meet in Las Vegas. I've already been invited to attend and I want to attend if I can.

I think that when you consider this particular issue and come up with a position, that information would be very helpful to us and it will be in plenty of time, because we're still going to be holding hearings up until the end of the first part of next year before we really start to mark up a bill.

Mr. McGowan. We'll have representatives there from all over the United States, so you're going to get a lot of input. I hope it's beneficial.

The Chairman. Thank you very much, gentlemen. I appreciate you both being here. It's good to see you both again, Joe.

The next panel we have will be Mr. Richard Beach, Kennametals, Inc., Fallon; Mr. Chris Palludan, Palludan's, Fallon; Mr. M. K. Wallace, Wallace Hardware, Fallon; Mr. Howard Wells and Mr. David Innwood, Wells Cargo, Reno, Nev.

STATEMENT OF RICHARD BEACH, KENNAMETALS, INC.; ACCOMPANIED BY KAY DOUGLAS

Mr. Beach. Senator Cannon, and members of the panel, my name is Richard Beach. I'm here representing the Nevada division of Kennametals, Inc.

As a matter of background, I'm the purchasing agent for that company and a lifelong resident of Fallon.

To my immediate left is Kay Douglas. Kay is the traffic manager for the Nevada division.

We have a prepared statement available. I'll summarize it for you.

The Nevada division of Kennametals produces tungsten carbide, which is a metal produced to make cutting edges in mining tools. Fallon is not the only location that Kennametal is concerned about. Most of Kennametal's 12 plants and many distribution centers are located in small communities. As a matter of information, Senator, in the last previous 10 months, Kennametal in Fallon has shipped via truck 2,073,211 pounds of freight in 465 shipments. An even greater amount of weight and shipments is received by Kennametal.

Overall, we found that the quality of motor carrier service here in Fallon is good. Kennametal's position on the issue at hand is that of opposition to the deregulation of the trucking industry for at least three reasons. The first reason is that the end result of deregulation would probably be a reduction in motor carrier service. This argument has been expressed previously. Basically it's that there would be a short-term boom and rates could decline, or would decline, but eventually rates would go up and the service would probably decrease in a marked way.

Kennametal ships a very high-valued product. Consequently, we're extremely concerned about insurance, claims systems, and even the driving record of a carrier. We question how we can be assured that a carrier does carry proper insurance and is willing and able to honor any claims that we may make on damaged goods.

We also ask ourselves whether or not we will be required to get assurances from each of these carriers, possibly even obtaining certificates of insurance. If that be the requirement, we anticipate that it would require an additional department within our company to obtain and maintain those certificates.

Our second reason for opposing deregulation of the trucking industry is that it would produce inconsistent and unstable freight rates. We understand that presently the rates are scheduled and published. Deregulation would allow the competitive market forces to determine those rates. Thus, if a freight rate is part of a price of a product, deregulation makes price quoting difficult due to the effect of a fluctuating freight rate.

This same thing holds true in the purchase of a product. For example, if a purchase agreement is entered into in November with a shipping date in February, a November freight quote really is useless. The rate could triple between those dates, a factor that would weigh heavily in the consideration of whether or not to purchase the item.

A great deal of Kennametal's motor freight does come in in less than a truckload. Thus interlining, what was spoken of earlier, is a major concern to us. Under deregulation, we question who would be responsible for making the routing arrangements.

Additionally, we ask who would be responsible for obtaining the freight rate quotes from each of the carriers on the line. If this responsibility was put upon us, it would constitute a marked reduction in service, and we feel would actually slow delivery down. If it was put upon the independent or owner-operated carrier, we ask ourselves how that carrier would be able to handle this interlining. The independent carrier is a one-man operation, would he be able to hire a staff and have an office location from which to make these arrangements and obtain these quotes? If that would be required, we question how some of the independent carriers could finance this type of operation.

From our perspective, deregulation will result in poor, if any, interlining done by the independent carrier.

Lastly, we contend that deregulation would have a substantial effect on motor carrier safety. As mentioned earlier, Kennametal ships a very high-value product and thus we're concerned about the prompt delivery of an undamaged product. Our understanding is that independent carriers would operate on a closer profit margin than the larger common carriers. Presumably this would produce poorer safety records. That is, with less capital available for equipment maintenance and possible increased driving hours that would be needed in order to meet high expense to profit ratios, we feel the safety record would become worse.

We also anticipate deregulation would result in less enforcement of minimum safety standards as to equipment condition and driver competency.

So, in short, Senator, Kennametal feels that deregulation would not be in the best interest of the company or of small communities. We do not wish to enter into the trucking business; we only desire to see quality daily motor carrier service to Fallon. We feel that deregulation does not seem to be the method to accomplish that goal.

The CHAIRMAN. What is the form that you ship your products in?

Mr. BEACH. We place them in drums, generally, sir.

The CHAIRMAN. So if you get a damaged or broken drum, you'd lose a lot of product?

Mr. BEACH. Yes, and a great value, even in one drum.

The CHAIRMAN. Do you have a possible alternative? I know that may be a sore subject, but could you use rail rather than trucks?

Mr. BEACH. I think Kay might be able to better answer that question.

Mrs. DOUGLAS. Yes, we do have. We have the small option of rail shipments. We are allowed to ship to some areas via rail. The railroad runs into Fallon once a week, but to make shipments via rail profitable, you have to have full rail cars, which, you know, is a pretty good-sized load, and in this case you are talking about a great deal of money. Also with once-a-week service from the railroad, you're talking about much longer delivery time.

The CHAIRMAN. Let me ask you this: Why do you say that there would be chaos as far as rates are concerned? Don't you think that the rates will be likely to stabilize at some given level?

Mr. BEACH. Well, that's presuming that the market forces would do so. We're concerned about rates, service, being able to accurately quote the price of a product or when buying a product, anticipating the freight charge on that product. The stability of those rates is substantially affected by our free enterprise economic philosophy. That system, as it has operated in other industries, does not necessarily result in the stabilization of highly fluctuating variables. Specifically, we contend freight rates in a deregulated trucking industry could fluctuate greatly in a short period of time, thereby making it difficult to rely on any given rate.

The CHAIRMAN. What distances do you normally ship your product?

Mr. DOUGLAS. All over the world.

The CHAIRMAN. So you're pretty dependent on having an interlining rate that you can rely on for the purpose of uniformity; is that right?

Mr. BEACH. Yes.

The CHAIRMAN. All right. Do you want to switch chairs here?

STATEMENT OF DAVID INWOOD, VICE PRESIDENT OF TRAFFIC, WELLS CARGO, RENO, NEV.

Mr. INWOOD. Senator Cannon, staff members and guests, I do have a prepared statement. My name is David Inwood, vice president of traffic for Wells Cargo at Reno, Nev. I appear here today to discuss the subject of trucking deregulation and/or reregulation. To be brief, for the benefit of those present, I believe I'm well qualified to speak to this matter. I've been engaged in transportation activities all of my working life, a period of approximately 40 years, working in steamship, railroad, airline, motor carrier, and industrial traffic and distribution. Throughout the years, I've been specifically involved with regulation pricing and marketing, as well as general transportation.

Today I urge your committee to consider the following. Economic regulations of motor carrier industry has worked well in Nevada for many years until a point of time approximately 18 to 24 months ago, when the ICC ex parte commenced their own deregulation scheme. During this period, the Commission has relaxed the entry process to a degree that volume traffic has been skimmed off by specific grants of authority to numerous specific commodities, to regular route, on-call carriers, leaving the balance of the miscellaneous shipments to be transportated by the regular route common carriers, such as Wells.

At the same time, numerous grants of authority have been made to other carriers in most of the cities and towns in Nevada, thereby creating excess competition. The excess competition has resulted in the dilution of the remaining traffic available to the carrier served on the various points, thereby resulting in the deterioration of the service to the extent that what service does exist is minimal and occasional and no profit to any one carrier.

An example of overabundance of service is Fallon. A number of certified carriers are serving Fallon: Pacific Motor Trucking; Pacific Motor Express; Delta Lines, Inc.; System 99, Inc.; Milne Truck Lines, Inc.; Nevada Freight Lines; Anderson & Sons; and Wells Cargo on an irregular-route basis. Two or three of these carriers could probably serve Fallon, but certainly not any one of them where any of them could make any money.

I get to a different point here. The regular-route motor carriers continue to be burdened with all of the regulation, the voluminous paperwork for all the governmental and State agencies, and there's no apparent relief in sight. We do not believe that any deregulation scheme would take away any of these costs of reporting the activities of the carriers.

Another point, deregulation of the industry would serve no useful purpose of the shipping-receiving public, because presently the public enjoys the stability of regulated rates and service.

Motor carriers with common interests, and I think we've heard that here this morning, presently band together in common tariffs,

thus allowing shippers-receivers the benefit of common knowledge of competitors' rates. Furthermore, volume shippers enjoy cheap rates on their products. Small shippers enjoy the stability of the rate structure, both rates and service.

Under deregulation, without through rates and service, a shipper in the interior of Nevada would be unable to determine what rate would apply via one route or routes as opposed to the other combination of routes.

And I would like to make, in conclusion, some specific comments. Five or six carriers are presently certified to serve Gardnerville and Minden, approximately 40-some miles south of Reno. Wells Cargo, up until 1 week or 2 ago, or 3 weeks, perhaps, was the only carrier serving Gardnerville, Minden, Jacks Valley, Genoa. We've been giving excellent service.

If the five or six who were certified, or other carriers under deregulation, were allowed to also come in, we could not afford to run the 40-some-odd miles down there to serve those people daily. I am speaking now as a taxpayer and individual. I do not believe in the use of the term "subsidy" or public funding. To me it sounds like money, because it does not take public funds when you go out to the grocery store, it takes money.

And one other comment I heard here this morning, I have asked the hay haulers would they kindly haul steel for us from the Oakland area to the bay area. They are not interested, because they want to get back to Winnemucca where they can haul more hay.

Lastly, the existing regulations apply only to the regulated carriers. It does not apply to those who do not hold certificates. I'm referring now to public safety, recordkeeping, et cetera.

I thank you very much for your time.

The CHAIRMAN. You mentioned that there had been in this area the granting of additional authority. Is this for a certain specific product?

Mr. INWOOD. General commodities. The pie gets sliced thinner each time. It gets down to the point where there's no service of any consequence that you can really rely on and nobody makes any money. People have got to make money in this business, at least a living.

The CHAIRMAN. You obviously don't agree with the theory of those who urge deregulation that the consumers would get better rates if you deregulated because of the new entrants that would come into the marketplace.

Mr. INWOOD. Senator, if I could answer this way, I've sat at rate committees throughout the United States. Shippers have come to those rate committees, whether it's in the sunshine or in the dark. For some reason or other those that have any freight usually get the rates they want. If that's the answer.

I do not agree that rates will be cheaper to Fallon or anyplace else in Nevada or anywhere else in the United States under deregulation, because if the good traffic is skimmed off, we say good traffic moving the right direction, volume lots, somebody is going to have to pay full bore for the 200 pounds that goes to Gabbs or to Silver Peak or some other place in Nevada.

Right now there is a leveling off of that because of the rate structure. The minimum shipments have an operating ratio of about 115 percent.

The 5,000-pound shipments have an operating ratio of about 90 percent.

But because of the ICC's actions, those rates become stable without penalty to any great degree on the other side.

The CHAIRMAN. Is Wells currently serving all the communities that you're licensed to serve?

Mr. WELLS. On an oncall basis we serve practically the whole State of Nevada. On a regular route, we serve only Carson City, Gardnerville, and Las Vegas.

The CHAIRMAN. You don't come through Fallon on your regular route, then, going south?

Mr. WELLS. Yes, we come through Fallon, but our service is to Las Vegas on a regular route. We come through Fallon with anybody that has a truckload of freight.

The CHAIRMAN. Do you maintain a depot here?

Mr. INWOOD. No, because we are an oncall carrier.

The CHAIRMAN. How much business do you haul, for example, into Fallon on a normal basis?

Mr. INWOOD. We're out here two or three or four times a week, because we're serving, for example, Kennametal. I think we picked up two loads Monday.

The CHAIRMAN. Those are full loads?

Mr. INWOOD. Yes, those are full loads. We serve the naval air station with their boxes of film, 50 or 60 pounds, but we do that not because we make a profit, but at the request of the Government.

By the way, I don't mean to usurp Mr. Wells' time here.

STATEMENT OF HOWARD WELLS, SR., CHAIRMAN OF THE BOARD, WELLS CARGO

Mr. WELLS. Senator Cannon and staff, the expert has already testified. I'm an afterthought on this, but I do want to make some observations and I have a statement and I'll read it and it will only take a couple of minutes.

My name is Howard Wells, Sr. I'm a cofounder and chairman of the board of Wells Cargo. Wells is a Nevada corporation and has been in business as a motor carrier in interstate commerce since 1931.

Some years prior to the Motor Carrier Act of 1935, Wells was classified in this bsuiness as a small carrier. We employ approximately 380 people. We are considered to be one of the largest domiciled carriers living in Nevada.

And I am deeply concerned about a few people who wish to deregulate the trucking industry. I am concerned—I am not concerned for myself, but for the public. Having been in the trucking business before the industry was regulated, I can assure you that it is a real jungle, a hodgepodge of rates, service. Claims are not paid, service is not provided, financial responsibility and many other things. And that is the purpose of the act of 1935.

We have now come full circle. Some few individuals, principally within the Government, want to deregulate the industry alleging a cost savings to the public. We're now learning how deregulation has gone in the airline industry, traveling costs have risen, service in many areas

is being curtailed, and in the near future service will be rendered to these areas by subsidized air carriers at taxpayers' expense.

The airline industry is not in any way similar to the motor carrier industry for at least three reasons. There are less than 30 trunkline air carriers as opposed to thousands of certified carriers. No. 2: All of the freight is moving in interstate commerce today whereas there are thousands of people that have never been on a airplane. No. 3: The cost of buying an airplane runs into the millions. The cost of buying a used truck is minimal.

Throughout the years I have been closely involved in the financial end of the trucking business. Prior to regulation it was very difficult to obtain loans for the purchase of equipment. With the regulation of the industry, we are now successful in obtaining loans for the necessary equipment. I can foresee that if the industry is deregulated, we will not be able to purchase or maintain equipment in a safe and reasonable manner.

And I would like to say one thing further, that the Bank of America, the biggest bank in the world, 15 years after deregulation and all the money was loaned to Consolidated Freight Line on an experimental basis to find out whether it could be paid back, that's how bad it was.

So with that, thank you, Senator.

The CHAIRMAN. Well, thank you, Howard. I agree with much of what you had to say there, but I wish the ATA members wouldn't continue to use airline deregulation as a supposed example of failure, because it's not been.

Mr. WELLS. I didn't mean it that way; I was trying to refer to it, Senator, as a different problem.

The CHAIRMAN. There's no question but that it is different. I completely agree with you, but there are a lot of people who say it has not been a success. On balance, it has. The first year's operation shows that the American consuming public, the travelers, saved $2.5 billion as a result of deregulation. Most of the cities in the country have better service now than they ever had before. There are a few exceptions on the small city side where they do not have the extent of service they would like, but no city has lost service completely as a result of airline deregulation or since it started, as we guaranteed.

Mr. WELLS. I didn't mean to imply that. What I was trying to do was two different kinds of regulation.

The CHAIRMAN. I understand, and I agree with you. You can't make a valid comparison between the two, but I just want to set the record straight, because a lot of people say that airline deregulation has not been a success. It has been. We get better service in the State of Nevada as a result of airline deregulation than we ever could have hoped for under regulation.

Mr. WELLS. I agree.

One other point, though, Senator, I would like to make.

Someone here testified regarding the hauling of livestock. That's deregulation, isn't it? Anybody can haul livestock. They've hauled it so cheap that they can't stay in business. That has to be the reason. It's deregulated; anybody can haul livestock tomorrow.

The CHAIRMAN. That's right; the point that was being made there is that if they haul the livestock to market, they can't backhaul. They

have to come back empty. But it is a fact that anybody who wants to go out and buy a truck and can drive it can haul livestock to market, because it's one of the commodities that is exempt from regulation.

Mr. INWOOD. If the Senator pleases, let the record show that if the hay haulers and livestock haulers will call us, we'll be more than thrilled to let them take care of some of our problems between Los Angeles and Las Vegas.

The CHAIRMAN. Maybe we've got a point here that we can get a little better balance to this industry thing. All right, sir.

STATEMENT OF M. K. WALLACE

Mr. WALLACE. Senator, my name is M. K. Wallace. I'm a local merchant here, born and raised in Fallon. I don't feel that I have the information to present any specific facts as far as deregulation is concerned; I'm not that up on the problem. However, as a local merchant, and having been here in business since 1946, I do feel that deregulation would present us possibly with problems insofar as whom we might go back to as far as any claims we might have on lost freight or freight damage.

The way it is, if you have established freight lines, you feel or can rest assured that they are going to probably take care of your complaints, and so on and so forth. I, in my limited knowledge, feel that deregulation is perhaps a little foresighted. From what facts I have been able to determine, it seems like there should be more advice as to service that is going to be rendered to the smaller communities such as Fallon, or out East, and so on and so forth.

I don't feel that a wildcat freight company is going to be in a position to render that service or give you any kind of assurance that your problems are going to be taken care of that you might run into.

The CHAIRMAN. That, I may say, is one of the concerns of the committee—what is likely to happen to service to the small communities, because we certainly want to insure that they are going to be adequately served, and that's one of the very reasons we're holding the hearings out here today.

What size of shipments do you normally use in your business?

Mr. WALLACE. Well, we have probably kind of a unique operation from some concerns insofar as we are associated with Cotter & Co., Tru-Value Hardware, and most of our shipments, most of our merchandise is received direct from Los Angeles by their trucks. However, we do receive numerous shipments from back East, Chicago, down South, so on and so forth. They're smaller shipments, I'd say maybe 8 to 10 a week or 2 to 400 pounds.

The CHAIRMAN. And they come on regulated carriers?

Mr. WALLACE. They come on regulated carriers, and we have no jurisdiction as to how they're to be shipped, or interlocking carriers, and so on and so forth. Of course, if we have problems, which I have several in the making right now, one is a complete lost shipment of 300-some-odd dollars of pocketknives that we shipped out of Chicago, and I have now signed a receipt as having received the merchandise, but now they can't produce it, and that's been going on for 3 or 4 months, but at least I feel it will be resolved sooner or later.

Now, if some wildcat freight company had been involved, I don't know where I'd be.

The CHAIRMAN. Would it help you in your business if, for example, the limit in UPS was increased, say, to 100 pounds?

Mr. WALLACE. We try to ship UPS as much as possible, where it is possible. Yes; it would be an advantage to us. It's a little better service and I don't think better service, but it's actually a little cheaper than where you have to pay a 200-pound minimum regardless of whether you're getting 50 pounds or 500.

The CHAIRMAN. When you order something, you don't select the method of shipment to you; is that selected by the organization you order from?

Mr. WALLACE. By the shipper, because we don't know who might even be servicing the area. We don't ship that much to where it would—if we were receiving tons and tons of wheat, naturally we'd look into it more, but it wouldn't be worth our while to specify a shipper, because they might not even service the area.

We order a lot of merchandise direct from various manufacturers. We do get a lot of merchandise out of San Francisco where manufacturers are warehoused, where they warehouse merchandise, yet the manufacturers are back East.

I had a particular instance that happened—we have it resolved now—but we ordered a carpet and they didn't have it in the warehouse in San Francisco, so they shipped it direct from the factory back in Georgia. There were three interlocking carriers involved; the original Hatfield shipped it to us at Fallon and they billed us at that rate. It some way got into Fresno and Fresno reshipped it to Reno with a $24 freight charge. Then Reno shipped it to Fallon with a $20 freight charge. The Fallon shipper only collected the $20, though—forgot to collect the back freight, which they should have. However, then I got presented with a bill for $115 from the original shipper and another $24 bill from the interlocker out of Fresno, plus $20 from Reno.

Well, having a regulated carrier, I just went to them, wrote them a letter with the facts, so they just came back with an adjusted freight bill, which was the $115 less the other two bills.

Had that been somebody else, either I'm faced with not paying and getting on a blacklist or paying the penalty on the freight.

The CHAIRMAN. In a deregulated environment, it's quite possible you would have nobody to go to to resolve those problems, you might get stuck for all three of the freight bills.

Mr. WALLACE. I would either have to pay all the freight bills or else be on somebody's blacklist for not paying them, whatever the case might be.

The CHAIRMAN. Thank you very much, Mr. Wallace.

Let me ask Kennametals while they're here, this is different from trucking, but as you know, my committee has authority over railroads, too. What's the difference on the shipments on truck and the railroads from Fallon?

Mrs. DOUGLAS. We're still discussing it. As far as I know, the railroad was down again today; we did discuss it, but no progress has been made in any discussions. I think you are aware of where we are in the discussions, we are still once a week. We would like to justify twice a week service, but at this point have been unable to do so.

The CHAIRMAN. All right. Thank you very much.

Next we'll hear from Mr. W. P. Lund, Sweet Candy Co., Salt Lake City, Utah; Mr. Lawrence P. Noble, Jr., DFC Ceramics, Canon City, Colo.; Mr. W. E. Horn, Silverpeak New Foote Mineral Co., Silverpeak, Nev.

All right, gentlemen.

STATEMENT OF W. P. LUND, ASSISTANT VICE PRESIDENT AND TRAFFIC MANAGER, SWEET CANDY CO.

Mr. LUND. Senator Cannon, I appreciate the opportunity of being before your committee this day. My name is W. P. Lund. I am assistant vice president and traffic manager for the Sweet Candy Co.

Sweet Candy Co. is a corporation incorporated in the State of Utah in the year 1900. We've been in continuous operation since that time and the present management is the fourth generation of the family which incorporated that company.

The CHAIRMAN. They put out very good candy, I might add.

Mr. LUND. Thank you, sir.

We employ approximately 125 employees and we manufacture and distribute about 350 different varieties of candy and confectionaries.

We make approximately 25,000 shipments per year to about 3,500 different consignees in at least 2,000 geographical locations, and our shipments average under 500 pounds each. Because of this we feel we have a very definite interest in these proceedings.

Our position is that deregulation would be a disaster to the type of business we do. Over the years, we have seen the nature and the need of our distribution processes change.

I might state this, that we use certified carriers to move approximately 97 percent of our total production; the balance is distributed in a small local area in and around Salt Lake City.

It is our firm belief that deregulation would result in a lessening in the quality of service to the small towns to which we ship and could not help but result in higher cost to the consuming public. We have seen this demonstrated in areas where we have found that even under the regulatory system, carriers have been given authority to step in to offer service in addition to carriers who are already established and who are doing a good job, the result being a division of the amount of freight that was to be hauled and that, in turn, resulting in poorer service and thereby also increased rates.

It is our firm belief that this same condition would prevail if the trucking industry were to be deregulated.

As to the idea of ease of entry, this has already been accomplished to a certain degree. I am constantly besieged with offers from unregulated carriers who would like to haul my freight on a backhaul for any amount that they can get. We feel that this situation would be magnified if total deregulation set in. The result would be that those shippers who had highly profitable freight, meaning large loads between major population centers, preferably the long haul, that shippers with that type of freight would possibly benefit, but that the great majority of the shipping public would pay for that change in the traffic movement. They would pay for it in the poor service that they would

receive and in the higher rates that would have to be charged by those carriers who were not in a position to offer that type of service; by those who didn't bid low enough to get the freight.

We feel that people who live in small towns such as Fallon, and I might say I was born and raised in a town much smaller than Fallon——

The CHAIRMAN. Whereabouts?

Mr. LUND. A little town called Manti in the center of Utah, population at the present time 1,815, and we're proud of the 15.

We feel that people living in these towns are entitled to the same benefits from our society as those living in other localities, to the extent that they can possibly be furnished.

Our product is one which, perhaps, requires a little different type of service than most of those who have testified today. Most of our product does not require refrigeration, but it does require a degree of protective service, protective service in the sense that it requires some special handling, perhaps, some care in loading, and perhaps expedited care in pickup and delivery of the shipments. We have what I think would be termed undesirable freight for an unregulated carrier and we feel we would suffer because of it. We would be forced to change our operation to an operation which would allow us to make larger shipments to points where the freight could be distributed and at the mercy of the distributor.

A point was made by the gentleman from the DOT that they had contacted merchants in, I think it was Caliente.

The CHAIRMAN. Pioche and McGill.

Mr. LUND. Pardon me. In which he stated that one of the reasons that service was all right under deregulation would be that they could use the services of a truck from an agricultural co-op. I don't know who that agricultural co-op is.

I might state this, that we sell to literally hundreds of accounts who belong to collective buying groups, such as the Associated Grocers of Colorado, Associated Food Stores in Salt Lake City. The strange thing is that these merchants find that they prefer to buy direct from us, even though the bill will go through their home offices, because they contend they have more control over the type of merchandise they can buy. They are not at the mercy of the line that the manager of the warehouse decides he wants to carry. Our whole line is available to him.

Another gentleman made the point that hardware companies are running their trucks daily into Fallon and that others are doing the same thing. I would hope that he was not suggesting that every commodity which is sold in a grocery store or in a general mercantile establishment would have to be hauled by the particular manufacturer-distributor. I think the traffic would be so great that your small retailer would probably have to double his staff just to help meet the truck as it drove up to his back door.

The point I'm trying to make here is that these people are entitled to a service which will give them the merchandise they want at the time they need it at a cost which is reasonable.

Great mention has been made here of the possibility of reverting to UPS. UPS does a fine job in a very limited and restricted field. I might state that I personally was approached by the UPS representative and

told that ours was not freight which was perhaps suitable to them and that we might be happier if we found some other means to ship it.

The final point I wish to make is this, we are able to manufacture our product with a foreknowledge of what our distribution costs are going to be. If we were forced to go out onto the market without any knowledge, if we were going to compete with other manufacturers who were hauling their own merchandise to their own stores and we had to have our customers rely on those trucks to haul merchandise to the nonmember stores, it would be impossible for us to remain competitive. As it is, if we feel the need for a transportation service or for a specific rate, we are free to approach the tariff bureaus, to make our presentation to them, and this I have done many times over the 25 years that I have been traffic manager for Sweet Candy. I'm sorry to say they haven't always given me what I asked, but the point remains that a very good relationship has been worked out and the certificated carriers by and large have done an excellent job of handling our product.

The principal complaints we get are on damaged merchandise and that is a problem which would proliferate with unrestricted entry and with deregulation. Our customers would have no place to go, they wouldn't know how to handle their claims. In many instances they may never see the trucker again. So the confidence that we can place in the certificated carrier who is in business day after day is certainly something which we must consider.

And so on balance we would be opposed to deregulation of the motor carrier industry.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Lund. Do you want to switch chairs here now?

STATEMENT OF LAWRENCE NOBLE, EXPORT TRAFFIC AND SALES MANAGER, DFC CERAMICS

Mr. NOBLE. My name is Lawrence Noble and I'm the export traffic and sales manager for DFC Ceramics. I thank you for your time and I presented a prepared statement, but I've heard some comments this morning I sort of have to make reply to.

I use all methods of transportation, bus, UPS, trucks. We export approximately 50 percent of our product worldwide. Many of these customers we have overseas we are required to compete with foreign countries in which we have to be able to detail charges, including transportation. Right now, when I make a quotation to a foreign nation, I'm able to go to one specific carrier or any carrier in a group and obtain the rate.

Under deregulation, which we are opposed to, I might have to go to four or five different carriers, depending on which particular port we would choose to go out. Now I can use any carrier.

The other point is that in this network of transportation we have now it's working. It can be improved, but we feel that with deregulation the problem would exist that, No. 1, we would be unable to offer any concrete figures to respective customers.

We now have a system of tracking our freight. A customer calls us, and believe me, if it's not there, he doesn't call the truckline, he'll call us. We now can go through and actually trace the freight and determine where it is, and so forth.

With an unscheduled carrier, and I also utilize these people in certain instances, I can't always determine where the material is. We do use truck brokers in this case, so we can get back to them and they'll tell us, "Well, he called in last night from Salt Lake City and we think they're moving, but we haven't heard from him since then."

So when a customer calls, we have to be able to give him the information.

We do ship into small towns. Our type of product is used in the mining industry and, as you know, in Nevada everybody's digging for gold. I ship into Fallon, Pioche, Battle Mountain, Reno, Las Vegas, just about any town. Winnemucca, Carlin.

The CHAIRMAN. What sorts of things are you shipping?

Mr. NOBLE. OK, we ship—we make a product which is unique, it's known as—we make crucibles for firing of precious metals.

And in this area here we get a call from a customer, "I'm out of material, I've got to have it right now," so we can depend on a truckline coming in at a given time. We have three scheduled pickups a day and usually we can respond to their needs. We can also pretty well determine by traffic patterns when the material will arrive.

With nonscheduled carriers and deregulation we wouldn't have any control.

Now, most of the time, in my relationship with the trucking industry, if I've got a problem, I can go to them and they'll work with me. However, I do know that if they don't resolve it and I feel what happened is unjustified, I have recourse in going to the ICC. Without ICC to regulate this type of a thing, I'd have to probably run him down somewhere and wouldn't have any idea where he was.

So we feel strongly about deregulation. We feel we should improve the system. We've got a lot of rules that should be changed, but total deregulation at this time, we don't feel—it should be taken back out a step at a time, because this is the way it went in.

The CHAIRMAN. What is the average size of the shipment you make?

Mr. NOBLE. Three thousand and less. However, we ship 15,000 to 20,000 a day. This is our average daily shipment.

The CHAIRMAN. All right, sir. Mr. Noble, do you want to change seats with Mr. Horn here?

STATEMENT OF WILLIAM E. HORN, SILVERPEAK NEW FOOTE MINERAL CO., SILVERPEAK, NEV.

Mr. HORN. Thank you, Senator. I'm William E. Horn from Silverpeak New Foote Mineral Co. in Silverpeak, Nev., and we're proud of our 200 souls.

Our manufacturing facilities are in Silverpeak. We have a shipping-packaging warehouse facility in Mina, Nev. All of our shipping is done from Mina.

Very briefly, our position is that we are satisfied with the situation as it now exists. We're satisfied with regulation. We get adequate service on our full truckload shipments and we are serviced adequately on less-than-truckload lots.

We fear the consequences of deregulation on LTL in that we would suffer either complete loss of LTL service or higher rates on LTL service. We also fear that it would cost us considerably more in time and money and rates would be unpublished and that we would have to shop around for a shipper or for rates in order to make LTL shipments. And from Silverpeak all of our calls are long distance.

We also feel that with deregulation we could be required to do more long-haul shipping on our own. At the present time, why, we receive things, we can receive shipments directly into Mina or into Tonopah and from Silverpeak then we have to go into those communities to pick them up. We fear that we might even lose these services if they were to be completely deregulated.

The CHAIRMAN. That's as a user there. Now, when you ship out, do you just truck to Mina and then do you ship by rail out of Mina or do yo truck from there on as well?

Mr. HORN. We use both truckers and railroad from Mina. We ship approximately, on the average, about 250,000 pounds a month by truck out of Mina and the balance of 1 million to 1,500,000 by rail out of Mina.

The CHAIRMAN. And those truck shipments, do you choose truck service because you can ship into your user's places that have no rail service?

Mr. HORN. Our user generally specifies—Well, if a shipment is less than a rail—less than that which can be conveniently hauled on a full railroad car, we normally ship by truck. In other words, if a shipment is less than 80,000 or 100,000 pounds, it normally goes by truck. If a shipment is 100,000 pounds or more, then it is generally shipped by rail.

We do quite a bit of shipping in overseas containers and these are hauled into Mina on trucks, a flatbed truck, and then hauled into the port in San Francisco. And this amounts to a considerable quantity of material on the average each month.

The CHAIRMAN. Now, if I correctly analyze what you gentlemen have all three said here, I take it you don't believe that you will necessarily get any lower rate and you'd have much less reliable service. Does that seem to be what you're telling us here now?

Mr. HORN. That is what I am urging. We are urging you, at least go slowly on deregulation.

The CHAIRMAN. Well, thank you very much, gentlemen. You've been very helpful to the committee. We appreciate it.

Next a panel of Mr. Chester Sams, Garrett Freight Lines, Pocatello, Idaho; Mr. Wayne Varozza, president, California Motor Express & Thunderbird Freight Lines, Oakland, Calif.; Mr. Allan N. Robison, System 99, Oakland, Calif.; and Mr. David Stewart of Byrne Trucking.

It seems to me we've heard about some of you gentlemen so far here today. All right, gentlemen.

STATEMENT OF CHESTER SAMS, GARRETT FREIGHT LINES

Mr. SAMS. My name is Chester J. Sams.

This morning we heard several remarks by Mr. Aron wherein he made reference to this study conducted under contract to the DOT by Messrs. Green and Allen, Department of Economics, Washington State University, Pullman, Wash. Senator, with your indulgence, I would like to be permitted to read my written statement.

The CHAIRMAN. All right, sir.

Mr. SAMS. My name is Chester J. Sams. I am senior vice president, traffic and marketing, Garrett Freight Lines, Inc., Pocatello, Idaho.

I am in my 44th year with my company, all in varying traffic sales and marketing capacities, and do have an infinite knowledge of the subject matter.

Garrett Freight Lines, Inc., is a regular route common carrier operating extensively in the Western States. It is the major motor carrier in the West, starting from a humble beginning in 1913 as a local cartage carrier in Pocatello, Idaho. We take great pride in the fact that our first intercity operations were basically in small towns in southern Idaho and that our present operations continue to serve the small cities, towns, and villages in these Western States.

We desire to speak briefly on the DOT's contract report DOT–RC–82022, "Common Carrier Obligations and the Provisions of Motor Carrier Service to Small Rural Communities," a study conducted by Dennis A. Green and Benjamin J. Allen, Department of Economics, Washington State University, Pullman, Wash., under contract with the DOT, Research and Special Programs Administration Office of University Research, Washington, D.C., and to comment on Garrett's services within the State of Nevada. We will skip that part, however.

I read the study. It is a harsh indictment against the named motor carriers, and more particularly Garrett Freight Lines. We are both amused and offended by the study in question, amused by the bungling methods used by Messrs. Green and Allen and offended because of the distortions and inaccuracies contained in the study as involving our company. The time allotted will not permit me to detail these charges, but please permit me to offer some comments as to the matter of their data.

Their study covers by geographic description Washington, Oregon, and east of the Cascade Mountains, Idaho, Montana, and Utah north of and including Salt Lake City. This territory is Garrett's backyard. This study mentioned three different sources of published information used to measure actual service, these being, one, the Rocky Mountain Motor Tariff Bureau, points of service tariff. The study, incidentally, later corrects that to more accurately reflect authorized rather than actual service, and we certainly agree as to this. Tariff 118 series is designed to show carrier indices of authorized service. Therefore, while the results of service indexing could result in actual carrier service, it does not portray actual service to all points where carrier index references are shown.

The second source of information was the American Motor Carrier Directory. In the routing section of the guide, a carrier may show its name opposite points in various States. The publisher semiannually

solicits from the carriers listing changes in the forms of additions, deletions, amendments, type of service, restrictions, et cetera. Prior to addition 70 in the fall of 1978, changes in the routing sections were not accommodated by a computer proof listing sheet. Whatever changes were suggested by the carrier were printed by the publisher. If the carrier didn't return the publisher's inquiry form, no changes were made. In essence, the form of retrieving information from the carriers and publishing no-cost routing information was not conductive to declaring actual service conditions. We confirmed the inaccuracy of the MCD information by relating Garrett's actual internal service directory data covering 238 Idaho points of service to the Idaho MCD listing. To point up the only liability, MCD recites the following:

In the State of Idaho, Garrett serves some 23 points not shown in the motor carrier directory. There are actually 12 points listed in the MCD that Garrett serves, but it's not so indicated. There are actually 48 points where the MCD indicates a service but Garrett does not actually serve. We feel this to be typical of all the Western States.

The third informational source for measuring actual service was the telephone directory listing. The absence of a carrier telephone directory listing at small communities is irrelevant to the actual service available and performed. Small communities are primarily freight receiving locations. When customers have outbound shipments, they know to contact the driver by leaving word with other local businesses. Using the study point of Ketchum, Idaho, Garrett has served Ketchum, Idaho, 5 days a week for countless years, both inbound and outbound. Customers know the driver who lives up near Bellevue, Idaho. The actual service exposure relationship between carrier employees and customers of small communities commands convenient contacts. This is a way of life in these areas. Garrett's daily service to its small community customers throughout the West is unrestrained by the lack of telephone directory listings at these small communities. Even the most cursory research would have disclosed this, had they approached the matter in the proper manner. The absence of a phone listing does not, and I emphasize, does not, substantiate the decline or a void in service. Therefore, we believe their use of all three indirect source indicators to measure the level of actual service is replete with unreliable and inaccurate data. Their drawn conclusion, mere assumptions, cannot possibly withstand careful scrutiny.

Not much more.

The study suggests carriers withdraw service to communities in declining counties where the volume of traffic falls below a break-even level. Let me state unequivocally and for the record, Garrett Freight Lines has performed its duty to serve these small communities without regard to the so-called break-even analysis. Currently, in the States of Idaho, Montana, Oregon, Utah, and Washington, Garrett provides direct service to 665 named points. The preponderance of service points are communities with a population base of less than 5,000. In fact, 384 cities, towns, and villages, over 57 percent of the total points served are communities with populations under 500 persons.

Garrett Freight Lines has never attempted to determine the exact cost of service in relationship to revenue in serving the small com-

munities. Therefore, this study seriously errs in attempting to theorize and conclude that Garrett is acting as an unregulated profit maximizer by abandoning small markets below break-even levels.

We take strong objections to the methods employed. We further conclude that this method of using such indirect service indicator was not an accurate device for measuring actual service conditions. In the case of Adams County, Wash., the study alleges 15 authorized points and only 7 being served in the MCD 1975 issue. In Lincoln County, Wash., the study indicates 17 authorized points and only 6 served in the MCD 1975 issue, yet we are unable to make any determination as to the 15 and 17 alleged authorized points because they very conveniently omit this detail. We feel this to be grossly unfair.

In summary, Garrett Freight Lines challenges the source data, questions the methodology used in the study, and disputes the finding that common carriers in the current regulated environment are able to avoid serving small towns in isolated areas if they consider such traffic to be unprofitable. There is absolutely no basis or fact for this conclusion insofar as Garrett Freight Lines is concerned.

If it's possible, Senator, we would respectfully request the committee to withhold its study, if there's any way the Commission can get a handle on this, for further reliability tests and verification of the data used.

Again, thank you for the time allotted for this presentation.

The CHAIRMAN. Thank you very much, Mr. Sams. Are you serving communities where you are, in fact, losing money now?

Mr. SAMS. Oh, absolutely. Absolutely. Countless communities.

The CHAIRMAN. Well, is that because of your common carrier obligation?

Mr. SAMS. Common carrier obligation, Senator, certainly.

The CHAIRMAN. And would you say it's that reason rather than it just happens to be on your regular route structure that it's available for them?

Mr. SAMS. It doesn't happen this way, Senator. We've been doing this for 67 years.

The CHAIRMAN. All right, do you want to change places there?

STATEMENT OF WAYNE VAROZZA, DELTA LINES, THUNDERBIRD FREIGHT LINES, AND CALIFORNIA MOTOR EXPRESS

Mr. VAROZZA. Senator, my name is Wayne Varozza. My statement has been submitted to your committee. I'll be very brief. I think my statement speaks for itself.

I'm president of Delta Lines, Thunderbird Freight Lines, and California Motor Express. We operate over the five Western States, Washington, Oregon, Nevada, California, and Arizona. In those States we serve in excess of 5,000 cities, towns, communities, hamlets.

The very large bulk of the area, or the locations served are very small communities, anywhere from 150 to 5,000 people. We handle 11,000 shipments per day over this territory that we serve and for anyone to think that deregulation would either improve service or reduce cost, it's ludicrous to even think that.

Alluding to your question to Mr. Sams, as far as do we service communities at a loss, yes, we do, hundreds and hundreds of them. The rate structure in the West, and I'm sure this is true nationwide, is totally cross-subsidized. Most of the rates moving into small towns—and I can take Fallon for example, we serve the city of Fallon 5 days a week, every week. It's expensive to serve cities like this. The freight is brought from San Francisco or Los Angeles. It's brought into Reno and rehandled and then it's transported to Fallon and redelivered. The cost is exceptionally greater than the other type of shipment, but we do this for two reasons, because our certificate calls for it and our customers want that service.

I think we do know that rates today are made from a social standpoint as opposed to a purely economic standpoint. If deregulation came about and if rates were allowed to float and find their economic level, then you'd find the merchants and the users in the smaller communities throughout the West, and probably throughout the United States, paying prohibitive rates, and in turn the consumers paying prohibitive prices, or you'd find no service at all. I think it's just that simple.

The CHAIRMAN. What about our rate, let's say, from San Francisco to here? Is it proportional to the rate that is charged from San Francisco to Reno?

Mr. VAROZZA. No, sir, there's very little difference. Let me give you a good example that's very simple. Say, from San Francisco to Sacramento, take just something very simple, and, say, we have a 300- or 400-pound shipment and the charges are $50, and you pick it up—or Los Angeles to Sacramento. You pick it up in Los Angeles and you take it to Sacramento. Both of those are large areas where we have distribution terminals. So we pick it up and move it to Sacramento and we deliver it and we get $50 for it.

Now, the same rate moving to Placerville, which is 50 miles out of Sacramento, or Grass Valley, would probably be $51. Not at all proportional to the distance.

But the work you have to perform to do that additional 50 miles, you can't afford to have a terminal in Grass Valley, nor can you afford to schedule it to Grass Valley, so you move it on a schedule to Sacramento, you put it in a delivery truck, you run it to Grass Valley, your driver comes back 50 miles empty, and you get maybe an extra dollar for it as opposed to delivering that shipment in Sacramento.

Now, the same would apply on a shipment from San Francisco to Fallon. Fallon is 60 miles from Reno. We have a terminal in Reno. The shipment goes to Reno because we can't get enough freight to Fallon, so it would go into a delivery truck and it would run 60 miles, which we do every day, giving good 5-day-a-week service, and come back all the way to Reno empty.

Let me assure you, the rates from San Francisco to Fallon are not much different from San Francisco to Reno, but the cost is considerably different.

The CHAIRMAN. Do you turn around here, for example, and go back to Reno?

Mr. VAROZZA. Yes, we come out here with a delivery truck, or a small truck and trailer, and there's not much business coming out of here, so we turn around and go back to Reno.

The CHAIRMAN. So you have authority to backhaul.

Mr. VAROZZA. If there was traffic here to backhaul, but there's six or seven carriers serving traffic out of Fallon. There's too many carriers now, and I would say service—let's talk about Fallon for a second. I would say service out of Fallon has probably decreased, because there's six or seven major motor carriers servicing Fallon and all that does is diffuse the amount of traffic that each carrier has so it becomes even more unprofitable to do it. There may be days when you have two or three shipments and you won't make your run. Yet a merchant here wants the merchandise that you have.

Deregulation would put probably more carriers in business, it would diffuse the service that you have now, make it even more uneconomical. It's just ludicrous to think of tearing down such a fine transportation system that's been built up in this country, to tear down what's been built up over 40 years because somebody's got some idea in their head that deregulation might be better.

The CHAIRMAN. All right, sir.

STATEMENT OF ALLAN ROBISON, EXECUTIVE VICE PRESIDENT, SYSTEM 99

Mr. ROBISON. Senator, my name is Allan Robison. I'm executive vice president of System 99, and I believe my company was mentioned by Yerington.

I would like to do this, you have my—I hope you have my prepared testimony. I think what I'll do is try and summarize as best I can. Some of the points I'm going to make have already been made. Do you have it there? If not, there are several over here on the table.

System 99 is a general commodities regular route common motor carrier serving 10 of the Western United States. Included in this operation is Nevada Freight Lines, which is a wholly owned subsidiary, and Nevada Freight Lines has irregular route authority to serve Fallon, Nev.

One of the reasons I feel qualified to testify in this hearing is the fact that I, some years ago, in the late 1960's and early 1970's, was vice president and general manager of Nevada Truck Lines and Nevada Central Motor Lines, the first carrier being a motor common carrier and the second being a bus line. Both of those companies served from Reno to McGill, Nev., on a regular route basis, which, of course, included Fallon. Those companies dated back to 1927 and basically their history, in a sense, terminated when they were sold in 1973.

Now, we've heard a lot of testimony here this morning in regard to the fact that service has somewhat deteriorated in the city of Fallon and I think I can give you the other side of what's happened.

During the years since 1927, even up through and about 1973, Nevada Truck Lines performed a daily service to Fallon, Nev., and it did that twice daily. The other main carrier, which was PMT, also served daily and there were other carriers that came in on an on-call basis.

Nevada Truck Lines had a terminal here at Fallon, Nev., and you heard testimony about the fact that that terminal no longer exists, which is true. The terminal serviced the city of Fallon for many years.

One of the other terminals, Nevada Truck Line, had in Reno, Nev., gathered freight in the mornings until about 10 a.m. All of the interline carriers from California brought their freight over to Nevada Truck Lines and gave it to them before 10 o'clock in the morning. Pickups were made in Reno upon customer request in the morning, so all of those shipments were on board at 10, and at 10 the truck dispatched and came to Fallon, Nev. When it arrived, it then was broken by the terminal here in Fallon and the freight was delivered.

So what you have is at that time Fallon, Nev., enjoyed an overnight service from Los Angeles, from California points, the bay area, Sacramento, whatever, because the carriers interlined to Nevada Truck Lines. Second, you had same-date service out of Fallon. Later in the day Nevada Truck Lines would load another trailer and in the evening, because in Nevada we're allowed to run triple trailer combinations, we would put the box of freight going to Fallon and we would dump it off on the way to Ely. This made the second schedule to Fallon.

So here we have a situation where the community of Fallon, with Nevada Truck Lines and PMT, was getting very adequate service.

Now, Nevada Truck Lines sold, and in the interim the ICC had granted other authorities. I had estimated them to be 10, and it looks like testimony here today indicates—there are at least 9. I would venture to guess, and probably not guess but know, that the service is not as adequate as it was in the days when Nevada Truck Lines was serving, simply because there are too many carriers. Again, the pie has been cut too thing.

Now, System 99 today services several thousands of small communities all over the Western United States, just as other carriers here have testified. A recent example I'd like to give you would be a place called Ruidoso Downs, N. Mex. We just recently acquired rights to serve that community. Sundance Lines had it prior to discontinuing service.

When they were trying to sell that authority, they granted several rights to serve Ruidoso Downs. Today the terminal is shut down; there are seven carriers that serve Ruidoso Downs in a matter of just a 2-month period, and today those carriers are serving on an as-loaded basis. In other words, they are coming in there maybe on Monday, maybe on Thursday, whatever, so all seven are coming at various times and serving that community.

What's happened to the merchant, very simply, is before he knew whom he could go to, he now faces the problem of, "I don't know which carrier has it, and I don't know when he's going to come." Again, who's going to come to town when and why cannot be determined, because, in a sense again, the pie is too thin.

One other thing that was mentioned is that Fallon, Nev., enjoys and, under regulation, will continue to enjoy a favorable operating structure. What happens on long distances, and also on shorter distances, is the fact that Fallon gets basically the same rate in freight as does, say, Reno, Nev. Therefore, for the extra miles it takes to get the commodities here in Fallon, the merchant pays the same rate. So today he has an advantage. He's able to keep his customers here in Fallon, whereas if deregulation were to come about, the first problem you've got is the fact that all freight is going to

have to be compensatory, it can be nothing else, which means that all freight will pay its way.

If it's interlined, as was mentioned by Mr. Varozza, the extreme cost incurred in trying to break across a major terminal and put it into Fallon, Nev., is definitely going to mean the cost would go up.

The CHAIRMAN. Would they be able to interline if the antitrust exemption would be removed?

Mr. ROBISON. OK, let me address that.

I have in my testimony, what happens, in essence, is this: I vision if deregulation were to take place, that the first thing you're going to see is that the larger carriers are going to back out of the small communities. Again, cost, purely cost.

Hopefully, there's going to be some small carrier take their place. He sets up a truckline and maybe he used to be a farmer here in Fallon. The only place he can go is Reno, Nev. But in a deregulated atmosphere, every major carrier is going to serve where it's profitable. So if he has a good shipment or a good mark, the major carrier will not stop in Reno; he'll continue on to Fallon, Nev. When he has an unprofitable shipment, he'll stop in Reno and tender it to a smaller carrier. What you then have is the rate the major carrier has to Reno, plus whatever the small carrier charges to Fallon; therefore, his rates are going to climb, probably extremely.

What this tells you about the smaller carrier is the fact that all he's going to get is what's left over that the major carrier doesn't want. That should tell you a little bit about his staying power.

The other thing that will happen under deregulation, I feel, and it's been talked about before, is the fact the only thing carriers can do to survive is to get bigger. And why? Because the only way you can stay competitive in a market is to serve it directly. You're going to have to enlarge your operation and as you enlarge it, you're going to get bigger. The eight largest carriers today only haul 14 percent of the freight.

What you can see is, in the free market the carrier has to get bigger. Just a quick look at some of the foreign nations that have deregulated will tell you that getting big is the whole survival.

You take Australia, for instance, you're only talking about three or four carriers that handle all of the major freight in Australia. Why, again, you have to be big enough to handle every point direct to be competitive.

Fallon, because of its size, only consumes small shipments, in essence. In other words, a community can only order what it can consume. So here's another problem. In the United States today, all of us as carriers, as was mentioned before by Wells Cargo, are basically subsidizing a small shipment. If deregulation comes about, again, everything will be compensatory; that small shipment of necessity must rise. Again, Fallon will be hit by higher costs, delays, and increases. Today the ICC delays increases, maybe intentionally, maybe not. Thousands of dollars were absorbed by the motor carrier industry by that timelag. I think it's significant to note here that the Consumer Price Index from 1972 to 1978 rose 64 percent. Now, the consumer is the one that caused the 64 percent, the ICC caused the 41 percent, in that same time frame.

Now, another point is the air cargo industry, and I think you are aware of that; we talked about it earlier. The rates climbed 80 percent while ours rose 7 percent. Now, again, I think the reason for that is that the rates were depressed when they started, so of necessity, they had to rise when deregulation took place. That doesn't even talk about the fact that the insurance value changed, which gave the public something less than it had before.

You heard several people from Fallon talk about the fact that if a small carrier started up, or a one-truck operator picked up a shipment on a collect basis or on a c.o.d. basis, what insurance does he have, one, that his shipment is going to get delivered; two, is the c.o.d. going to get collected; three, if the c.o.d. is collected, will he ever get his money back; and four, if there's a claim, who is going to pay the claim? Because that one-truck operator doesn't have the staff or a point which the Fallon merchant can call.

I'd like to propose three solutions. One, I call the Noel Clark method. I didn't know he was not going to be here today. I'm kind of disappointed that he isn't. For many years, the Nevada Public Service Commission, as you are aware, has kept a very strong, viable transportation system in the State of Nevada, and he did that purely because of the fact that he kept the carriers strong, kept them serving. He commanded the service, but he also kept them strong, which meant that the rate structure was proper for them to handle it. I think if we go back to this point of regulation—if we can put one carrier in rather than deregulating several carriers.

The other thing I think we can do is stop having carriers run circuitous routes. Let's save some fuel, let's save some cost.

Point No. 3, why doesn't Congress enact some type of a law to allow triple-trailer combinations. That way it gives you more safety, the costs will go down, the consumer will benefit.

My conclusion, in closing, I agree with you, Senator Cannon, that the time has come for Congress to take whatever actions are necessary to insure that the ICC does not embark on a course of action that will dismantle the motor carrier industry throughout the United States. The lack of factual information and impact to the industry and Nation have been apparent in the new policies enacted by the Commission which has and is creating uncertainty.

Thank you very much.

The CHAIRMAN. Well, thank you for a very interesting statement. I hope you won't get us involved in this triple-trailer subject now. We're trying to get the uniform weights and lengths issue resolved first. If we can do that, then maybe we can talk about whether to have triple trailers or not. It was a very interesting statement.

STATEMENT OF DAVID STEWART, DIRECTOR, COMMERCE AND LEGAL AFFAIRS, BYRNE TRUCKING, INC.

Mr. STEWARD. My name is David Stewart. I am director of commerce and legal affairs for Byrne Trucking, Inc., Medford, Oreg. My background includes doctoral degrees in business administration and educational psychology. I have been affiliated with the motor carrier industry since 1956, steadily since 1965.

In my years in the industry, and research generally into practices of the industry, I have found that the type of service we render to the shipping public demands an amount of regulation which personifies the business characteristic of interstate trucking.

Byrne Trucking, Inc., is a class I carrier, which hauls building materials, iron, and steel articles and machinery and forest products between California, Oregon, Washington, and Idaho. In the scope of our service, we provide joint line as well as single line service for shipping customers. Byrne has a sales force which daily solicits freight transportation in truckload quantities.

Byrne Trucking is opposed to general deregulation of the trucking industry. We believe that Congress had valid reasons to create the Motor Carrier Act of 1935 and still has valid reasons to control a regulatory body in 1979 and 1980. There is no question that the Interstate Commerce Commission needs modernizing to bring our transportation policy within the guides of the national need. However, we believe that the responsibility for any massive changes rest with the Congress.

In its role as a quasi-legislative/quasi-judicial body, the ICC has enacted many rulemaking procedures which have generally influenced the various modes of transportation relegated to interstate commerce control. This is and has been a mandated principle which has been accepted generally by the industry, with exceptions certainly available to appeal.

It is, however, the opinion of Byrne Trucking and me that massive changes in the structure of the ICC must be mandated by laws enacted by Congress, just as the Interstate Commerce Act originally became law February 4, 1887. Realizing that the agency which is oldest is held generally in good esteem through nearly 100 years of administrative process probably prides itself in self-resurrection, it would be tragic to allow an agency the total control of resurrection when the hue and cry has mandated a renewed act. This renewed act can only be successful if Congress, and Congress alone, sees fit to bring the ICC into the 21st century. In view of the changes in public attitude toward regulation and government control, it is especially imperative that wisdom, thoughtfulness, and the free enterprise spirit be adopted through congressional law and the act either be continued by an act of Congress or that a new Interstate Commerce Act be written by Congress.

In 1887 our Nation was young and aggressive. We saw a need for fairness and loyalty to the public. That principle has not changed and cannot be modified with any degree of success.

Thank you very much.

The CHAIRMAN. Thank you.

Let me ask all of you, would any of you gentlemen find any problem if Congress were to try to rationalize the so-called exempt commodities area now? For example, you heard me talk about the fact that certain farm products to market are exempt and other products that come back to go on the farm are not. You have cattle on the hoof that are exempt, and processed meats are not exempt. Is there some rational approach that we could bring to this particular problem that you think would be helpful?

62-322 O - 80 - 10

Mr. SAMS. I would like to field that question, Senator. I think the word today, rather descriptive, has been used on more than one occasion, "disaster." This would be disastrous for my company, Garrett Freight Lines, because we operate from an agricultural producing area, the intermountain area into California, and this is our backhaul situation. Our head haul, our front haul, as you would term it, is from the Pacific coast into this sparsely populated intermountain area.

What they're asking for, Senator, is to have us relinquish all of our general commodity traffic on their return haul. Again, just plainly stated, it would be absolute disaster for our company and other companies operating in this area.

Mr. ROBISON. May I also comment? I agree. The problem about Fallon, Nev., for instance, is if you would allow deregulation into this commodity area, what's happened in Fallon is it's consuming these products they want a backhaul on, but it's a head haul for the carrier that comes into this community.

If you give it to somebody else, you weaken your own regulated system, in my opinion.

The CHAIRMAN. Mr. Sams, you mentioned in your statement here that you serve several small locations in Nevada that you served up until approximately 6 months ago when it became economically impossible to continue service on a daily basis. Do you service them on a less-than-daily basis or did you discontinue service? Some of these you name are, Wells, Elko, Carlin, Lovelock, and Fernley.

Mr. SAMS. Well, the answer has been provided by the previous witness. The only way to keep viable operations to these small communities is to provide them with service at an interline point. Now, we used to, up until 18 months ago, enter into a pooling arrangement. More recently, we've gone into convenience interlining.

The CHAIRMAN. What do you describe as convenience interlining?

Mr. SAMS. That's a convenience to me, Garrett Freight Lines, but it's also a convenience to the carrier at Salt Lake City on traffic to the East. It's a convenience to that little carrier. It keeps him viable, it gives him the needed tonnage, and it's a convenience to use, because, economically speaking, we cannot, with all this traffic divided among the many long-haul carriers, we couldn't possibly come out to a viable profitable operation ourselves.

THE CHAIRMAN. You gave, as an example, Lovelock. How do you serve Lovelock now?

Mr. SAMS. We interline at Reno, Nev., and traffic from the East, coming this direction, we interline it all at Salt Lake City, Utah.

The CHAIRMAN. But you interline with whom?

Mr. SAMS. It says there two carriers, the one carrier at Salt Lake City is Motor Cargo. This is in my statement. We interline traffic to the remaining points with R&R Transportation Co. over Reno on traffic originating in California and with Motor Cargo at Salt Lake City on all other traffic.

The CHAIRMAN. So what you're saying is that you actually serve them by interlining with some other carrier, even though you do not stop there.

Now, how do you arrange your division of fees between yourself and this R&R Co.?

Mr. SAMS. We maintain through rates and it's a division on that through rate.

The CHAIRMAN. Would you be able to do that if you didn't have the antitrust immunity?

Mr. SAMS. Absolutely not.

Mr. VAROZZA. I might add, Senator, on an interline basis, the rate is charged the same as if it were the same carrier from point A to point B.

The CHAIRMAN. And the carriers themselves make the division?

Mr. VAROZZA. Yes.

The CHAIRMAN. What you're saying is that, if we deregulate, what you would probably do is have somebody make your big hauls into Reno and then it would be up to the guy with the pickup truck if he wanted to get it and haul it out here. But he in turn is going to have to collect for his own haul. And the fare would have been paid by the person who was buying to Reno and he has an added fare to pay to Reno.

Mr. ROBISON. The person shipping never knows his cost until it's over. He does not know his transportation cost until he ships. We have a real problem in that area.

The CHAIRMAN. Thank you very much, gentleman. You've been a good help to the committee.

Let me ask now, we had a few witnesses that were not here when we called earlier. Is Noel Clark here?

UNIDENTIFIED VOICE. Senator Cannon, he will not be here.

The CHAIRMAN. Mr. Don Visger, is he here? Mr. Terry Kendrick? Mr. James Winan? I guess that's all.

That concludes our witness list. Is there anyone here that wishes to testify that has not been called?

All right, Hammy, we didn't have you on the list. We're glad to hear from you.

STATEMENT OF HAMMY KENT, NEVADA CATTLEMAN'S ASSOCIATION

Mr. KENT. I'm appearing here today on behalf of the Nevada Cattleman's Association, and I would like to read our statement.

We are pleased to have the chance to express concern as regards the effects of deregulation of trucking on fuel consumption.

We in Nevada have seen many livestock truckers held up in their operations the last few years because of high fuel costs and because inflation in general has made this industry uneconomic. All of Nevada's trucking regulations are probably among the most reasonable.

We can see the need nationally to reduce, if necessary, stumbling blocks in the trucking industry. Lower load weight and length restrictions in the interior States make real obstacles in the shipment of beef and other meats as well as cattle. Lower limits there would be less fuel consumed.

Truckers have indicated that they could haul more weight if fuel used per pound of cargo would be less. We strongly feel the Federal Government should correct the lack of uniform deregulations between States with consequentially less cost to the consumer.

It is our understanding that many ICC certificates of authority provides that trucks can haul only one way, or may specify that only certain products commodities may be hauled to specific locations with no provisions for return loads. The Federal regulations involved with backhauls and exempt products and commodities should be relaxed to relieve these roadblocks that increased fuel consumption of trucking costs.

Another unnecessary regulation we are aware of is a regulation that restricts some truckers from using certain highways. In many instances it discourages some trucklines from even hauling into some areas. We could understand this regulation on roads that are too narrow to allow safe use of trucks but in most cases we understand that the roads are of an adequate width to be used safely. Relaxing this regulation would again benefit the consumer.

In conclusion, we would stress the need to reduce the number of restrictive regulations on trucks that tend to add to excessive fuel consumption, cost to the consumer. We can concur with the present conclusions in this regard and urge Congress to take appropriate action.

The CHAIRMAN. Thank you very much, Hammy. A number of the points that you've made there are points that we certainly have been considering and will continue to consider.

That uniform weight and length issue—we've already had some hearings on that. I'm hopeful that Congress will get a solution to that sometime this year. Certainly the circuitous routing that has already been mentioned earlier today is a problem that we do need to address in whatever legislative form we come forth with after we've completed all of our hearings.

Thank you very much.

Is there anyone else that desires to be heard? Yes, sir.

STATEMENT OF VIRGIL GETTO

Mr. GETTO. I'm Assemblyman Virgil Getto, and first of all I want to thank you for coming to our community and holding this hearing, and also commend you. Fallon is probably one—is a typical rural community.

Rural communities are having problems in many areas, not only in services from the trucking industry, but also in medical services and many other services that we find the services going to the large areas because of high costs of operation in many of the other fields.

The trucking industry is the same way. Not to be redundant, one of the areas that I want to point out is the fact that—and has not been pointed out—is the individual consumer in the rural areas has probably been hurt more than any other group. The merchant is still being serviced quite well, but the individual that used to, for example, order something and could go down to a local depot—as one of the previous people testified, Nevada Truck Lines had a depot here. You order something, you go down and pick it up. It was good service. Of course, because of the confusion or the number of carriers we have now, this has been deteriorated to the point that we do not have a depot any more.

The CHAIRMAN. I didn't ask Mr. Robison about that. How do you actually get your freight? When they bring it out here, what do you do with it?

Mr. GETTO. Usually they'll phone the consumer or deliver it, but what happens, and I'm speaking of what happened in my case, if they can't reach the party by phone, then the goods are hauled back. So we do not have the services that we had before.

I'm not condemning the carriers for it; it's just a simple fact that you have to operate by volume. I do in my business and my business has changed and so has theirs.

I'm not speaking in favor of deregulation, because I am afraid if we deregulate, we'll probably have more of what we have now. In other words, we have too many carriers coming in and if we deregulate, we'll have more, and then the service will get poorer.

I feel that the Congress should take a look at the ICC that you have now and try to improve upon it and find some ways to service the rural areas a little better. We definitely have a problem. I mean, you've heard all sorts of testimony today, but I don't feel deregulation is going to solve the problem.

That's about all I have to say. I'm sorry that my testimony is so brief. I've been out of the country. I was over in China and the Orient and just got back last night and I found out about the hearing today.

It was interesting to note that I listened to a speech by the president of the chamber of commerce in Hong Kong and his speech was on the commerce and also providing public transportation. They have a severe problem over there, too, about the same as ours.

Also, that I'm also chairman of the public committee, inter-legislative committee studying our public service commission. I want to point out that probably some of the complaints we've had from the agriculture side actually arise from our own regulations by our public service commission. For example, you can't haul livestock at all in the State of Nevada without having a franchise and many times there are not enough franchised people in the area or maybe have a franchise and not using it. So this is a State problem and not an ICC problem. For instance, in fact, in this State you couldn't haul cattle to the other end of the State without having a franchise to do it.

Thank you very much.

The CHAIRMAN. Thank you very much, Assemblyman Getto. I'm sorry I didn't realize that you had a statement.

Mr. GETTO. I didn't prepare a statement. I wasn't going to make a statement, but I thought since I was here, I would offer a few words and at least point out that I'm not in favor of complete deregulation. I think you should take a look at ICC. I definitely feel that you should open it up and apply the sunshine law and I think for public hearings, if for no other reason, it would certainly help. That's about it. I feel that if you deregulate completely, it would be chaos for the small communities, and especially if you did it, you know, in one slam bang. At least if you did it, phase it in.

But we have problems now being serviced, and I think it will be a lot worse.

The CHAIRMAN. Thank you very much.
Anyone else that desires to be heard?

STATEMENT OF JACK KELLERSTRASS, TERMINAL MANAGER, IML FREIGHT

Mr. KELLERSTRASS. My name is Jack Kellerstrass. I'm the terminal manager of IML Freight in Reno.

I'd like to give you a sequal to the Nevada Truck Lines story. As Mr. Robinson mentioned, Nevada Truck Lines did have a terminal in Fallon. We have probably the only service over to Ely, Nev. In fact, we're the only carrier to Ely other than some of the nonregulated carriers, on an on-call truckload basis.

I was involved with Mr. Newel Robison, the owner. He stayed on and was an employee of IML Freight after several years when we bought out Nevada Truck Lines.

First of all, I want to make this comment. There were as mentioned several times, only two carriers in Fallon, PMT and Nevada Truck Lines. They, Nevada Truck Lines, gave excellent service to the Fallon community. As Mr. Robison mentioned, they did have twice-daily service down to Fallon. When they sold out to IML Freight, and not many weeks after, Delta Truck Lines got their authority, and Systems 99 got their authority also, and it was stated, I believe, not more than 10, there were probably 11 carriers in Fallon right now.

We still come down here on a daily basis, even though we closed the terminal because of economics. We come down here and the man is based in Reno. The average amount of freight that we haul is 2,500 to 3,000 pounds a day, total. This doesn't justify the man, equipment, et cetera, to come down to Fallon.

We have a large account in Fallon, Kennametal. We do a lot of shipping for them, and if it wasn't for them, I don't believe Fallon would pay even a portion of the amount of cost we put into it.

Another example I'd like to mention is the route we have from Reno to Ely. Now, we handle on a regular basis freight over to Ely. Now, our certificate, IML had authority to Ely. So when we bought them out, the certificate of authority we have is from Reno to Salt Lake City via Ely, Nev. Now, that's where our certificate is on the IML authority and we're the only carrier in there. We take everybody's freight in there. Just to show you what the small cities do as far as cost in trucklines, I'd like to give you just about four figures. The total revenue for the Ely, Nev., terminal, and that's from Salt Lake City to Ely, from Reno to Ely, is $250,000 for the 10 periods of this—well, up till October 6 of this year.

If you just take our line haul cost only, and that's paying our line driver, fuel, depreciation on the equipment, comes up to $138,000. If you take the Ely terminal expense, and that's the salary, all the other costs built into the Ely terminal comes out to $109,000, leaving a total of $3,000. This $3,000, in 10 periods, has to pay for all the wages of the Reno terminal to pick up the freight and all terminals throughout the United States to pick up the freight for Ely, which doesn't compensate at all.

Now, deregulation, to my knowledge, came in to help the small cities and the small people to be able to compete on a halfway decent basis to the larger shippers. Now, on an ICC regulation, and under ICC enforcement, we cannot do things for the large shipper that we are not willing to do for the small shipper. The same thing with the small towns and the big towns.

So if you deregulated, the people would really get hurt. It wouldn't be the big shipper, it wouldn't be the big city. The one that would really get hurt is the small cities. We serve Austin and Eureka every schedule we go out. We go three times a week. They wouldn't even see a truck. Or if they didn't want to have the service, the large shippers would take the freight into the large city and give it to the small carriers, but they would pay a premium to have their freight hauled over to them.

So just in conclusion, I would say that for the small towns, the small shipper, deregulation is their salvation. If it wasn't for that, they'd pay a premium for all the freight that they have.

The CHAIRMAN. Wait a minute; you mean regulation is the salvation.

Mr. KELLERSTROSS. I'm sorry, I did say that. Under regulation is their salvation. Under deregulation, they'd pay a premium for everything that they haul.

The CHAIRMAN. Thank you very much.

Anybody else who would like to make a statement?

If not, that concludes the hearings at this time.

Thank you very much. We appreciate all those who have participated.

[Whereupon the hearing was adjourned.]

ECONOMIC REGULATION OF THE TRUCKING INDUSTRY

Small and Isolated Communities

MONDAY, DECEMBER 3, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Reno, Nevada.

The committee met at 10 a.m. in the Capitol Room, MGM Grand Hotel, Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order.

Today the Senate Commerce Committee continues its ongoing inquiry into the question of economic regulation of the motor carrier industry.

The committee has held a number of hearings this year, both in Washington and other areas of the country, concerning very important issues involved in the current debate on trucking deregulation.

We're delighted to have join us today a Senator who played a tremendously important role in many of the transportation issues the Congress has faced in the last few years.

Last year Senator Kennedy and I worked very closely together to cosponsor and pass the Airline Deregulation Act. As I remember it, I wrote the part allowing the discount fares and he wrote the parts permitting the airlines to increase their regular prices.

Senator KENNEDY. He's going to do the same way this time.

The CHAIRMAN. I'm not sure he remembers it the same way. In any case, the pioneering efforts of Senator Kennedy and the Senate Judiciary Committee on the trucking issue have made our task much more manageable.

For the benefit of those here today that may not be fully aware of the issues that will be discussed in this hearing, I would like to very briefly explain the background.

The trucking industry in this country is regulated in many respects by the Federal Government. As a general rule, if an individual desires to go into the trucking business, he or she must get authority from the Interstate Commerce Commission in Washington. In addition, the prices for those trucking services must be approved by the ICC.

There are several exceptions to this general statement, such as the hauling of fresh fruits and vegetables, which is exempt from Federal regulation, but generally both entry into the trucking business and the prices charged are federally controlled.

In addition, the trucking industry enjoys a rather unique privilege with respect to setting rates to charge the public. The trucking industry is allowed to collectively discuss its rates without having to be subject to the antitrust laws that are applicable to most other businesses in the country.

At issue before the Congress are proposals sponsored by Senator Kennedy and others to reduce regulation of the trucking industry and to eliminate the immunity from the antitrust laws now currently enjoyed by the motor carriers. These are the general issues that will be addressed today.

The leadership of both the Senate and the House have pledged themselves to resolving the issue by no later than June 1 of next year. Thus, this is a most important hearing, coming at a very important time.

We have a very limited amount of time and some interesting witnesses to hear. Accordingly, I urge the witnesses to summarize their testimony to leave adequate time for questions and answers.

Also, I'm sure some of the witnesses are currently involved in litigation before the ICC and we would request that there be no reference to these specific questions, which we have no desire to hear here today.

Mr. Kennedy?

STATEMENT OF HON. EDWARD M. KENNEDY, U.S. SENATOR FROM MASSACHUSETTS

Senator KENNEDY. Thank you very much, Senator.

It is a great pleasure to be here today and participate with you in this hearing. Last time we were in Nevada was a year ago when we participated in the signing ceremony for the Airline Deregulation Act of 1978. The act was one of the major achievements of the 95th Congress and the people of Nevada and the rest of the Nation should know that this achievement was due in large measure to the persistent efforts of Senator Cannon. He was able to guide a complex and controversial bill through the committee, through the Senate, through a Senate conference committee with skill and tenacity that won him praise from all sides.

In the succeeding year airline deregulation has proved to be a very great success, and I was proud to be a part of that effort. I am gratified to know that you are now devoting the same sustained attention to problems dealing with another transportation industry, trucking.

Today, as the Commerce Committee moves to conclude its hearings, I am especially pleased to have this opportunity to examine with you a few of the major areas in which reforms are most sorely needed.

What we have in the trucking industry is a system that controls who can enter the industry and what they can carry. It is a system that protects existing carriers from competition that might force them to reduce their rates. It is a system that allows existing carriers to charge rates as high as the market will bear, and it is a system in which too many consumers pay too much for trucking services.

Spokesmen for the industry maintain in these hearings, as they have in yours, that comprehensive regulation is in the public interest. They told us that without the ability of those firms to fix prices, small communities would lose trucking service.

For my part, I have found these arguments without merit. As things now stand, small communities receive service not because the ICC refuses to serve them, but because many communities find such service profitable.

In 1948, President Truman warned Congress that giving trucking and railroad companies the right to fix prices would result in serious harm to the public. In President Truman's words, "Power to control transportation rates is power to influence the competitive success or failure of businesses."

President Truman was right. The time to act is now. Our country deserves a more equitable and rational system of transportation pricing and those most affected, shippers and the carriers themselves, deserve to know what that system will be. We must resolve the current uncertainty and replace it with a system that better serves the public interest.

Mr. Chairman, I congratulate you for the efforts in pursuing this issue to a logical and reasonable conclusion. I look forward to moving with you as expeditiously as possible. Working together, I know we can again secure passage of a bill that is fair, reasonable, and will be in the interest of all American businesses and all American consumers.

The CHAIRMAN. Thank you very much, Senator Kennedy.

Our first witness will be the Honorable A. Daniel O'Neal, Chairman of the Interstate Commerce Commission, and he will be followed by the Honorable John H. Shenefield, Acting Associate Attorney General, Assistant Attorney General for Antitrust, Department of Justice.

We'll hear from both of the witnesses and then proceed to the questions.

Chairman O'Neil?

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. O'NEAL. Thank you, Mr. Chairman, Senator Kennedy.

The Commission looks forward to continuing to work with this committee and with the Congress in developing a response to the effort to improve regulation of trucking within the next several months.

My testimony today focuses on what we feel are the central questions of reforming motor carrier regulations.

Let me emphasize first that a comprehensive review is necessary for two reasons. First, the elements of regulation—entry, rates, and collective ratemaking are tightly intertwined and should be considered together.

Second, the problems which spark this review are fundamental and should not be dealt with in a piecemeal fashion.

To achieve national goals for transportation, the Congress has two basic tools available. One can be characterized chiefly as regulatory. It includes the preservation of existing ratemaking procedures, including general rate increases and the Commission's investigation and suspension powers; reaffirmation of the Commission's discretionary authority to grant antitrust immunity for collective ratemaking; scrutiny of proposed rate increases to insure that collectively developed rate levels do not result in excessive returns to the motor carrier industry;

vigorous enforcement of the common carrier obligation; elimination of unnecessary restrictions on routing; and no further liberalization of the entry policy.

To the extent the regulatory approach is useful in achieving a national goal, it seems to have greatest currency in the general commodity—LTL segment of the industry. The goals of the industry would include protection of small carriers, insurance of service to small communities, and avoidance of increased concentration in the industry.

A solid majority of the Commission favors less regulation and more competition in all sectors of the trucking industry. However, the Commission is divided over the appropriateness of using limited regulatory initiatives to achieve social purposes which the marketplace may not be able to achieve. Indeed, the Commission is divided over the value of some of those social goals. An example of a social goal in dispute is the function of small businesses.

There are several reasons why the Commission favors less regulation in general.

First, the Commission is concerned that collective ratemaking has resulted in excessive rates, impeded adjustments to reflect changes in market conditions, and limited pricing and marketing innovation. Further, we feel the general rate increase is a poor mechanism for setting rates to reflect widely varying market conditions.

The second basic tool available to Congress is to place greater reliance on market competition. The elements of this approach would include: entry requirements limited to the question of fitness with emphasis on safety; freedom for individual carriers to adjust rates within limits; and the elimination of collective ratemaking or some adjustment of collective ratemaking.

We think our view on this type of approach is reflected in some of our own recent actions on reform proposals. For example, we have agreed to consider a Commission staff proposal to remove most regulatory barriers in the truckload sector. Further, in the area of fitness, we are conducting a complete review of current policies and possible improvements.

We strongly recommend that in your deliberations you give careful consideration to developing a new motor carrier charter based on increased reliance on competition and market forces. There are many possibly combinations mixing the competitive approach with the regulatory one.

There are many compromises that are possible, but we feel that there are some irreconsilable contradictions between the two approaches which rule out certain mixed approaches.

For example, we think pricing flexibility is incompatible with collective ratemaking. Thus, we feel to the extent collective ratemaking is continued, it is crucial to insure that any broad pricing flexibility the Congress might provide is given to individual carriers and not to rate bureaus or any other combination of carriers. That is to say, that there should be no free zone, in our judgment, for rates that are set collectively.

Before closing, I'd like to note briefly two other major issues that we haven't spent much time on thus far.

The Commission has tentative views on two key issues which are of particular importance to the debate over the general commodity LTL sector.

It is argued that small communities are better off with regulations. The basis for this argument is that the class rate structure does not reflect the higher costs of providing service to widely scattered locations, and that the Commission's enforcement of the common carrier obligation prevents or inhibits carriers from cutting costs on service to small communities by reducing the level of service.

We think if any cross-subsidy does exist, it is limited in scope. It does not appear that carriers are providing service at less than variable cost.

There is also a concern that with less regulation, large firms would be able to drive out their competitors with lower rates and better service. Central to this issue is the question whether there exist benefits due to large size in the general commodity industry. We are sensitive to the argument on one hand that there is a social benefit in the promotion of small businesses, and on the other that increased concentration could mean maximum realization of economic efficiencies. However, we think it first must be resolved whether any advantages to large size exist in the trucking industry, and if they do, how significant they are. The Commission is beginning an analysis of the general commodity LTL sector, which will address both issues raised here; that is, both the small community issue and the small carrier issue. Naturally, we would be glad to share that analysis with the committee and with the other Members of Congress as soon as it is completed.

The CHAIRMAN. How soon do you expect that to be concluded?

Mr. O'NEAL. Well, I think the small community aspect should be completed within the next 45 days. We actually have an internal draft now. Thus, I would think it should be available fairly soon.

The other aspect will take a little more time.

That concludes my summary statement. I would be pleased to try to respond to any questions you may have.

[The statement follows:]

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, Members of the Committee: Mr. Chairman, I am pleased to have this opportunity to present to this Committee the Commission's views on the general issues underlying motor carrier regulation and potential avenues for reform. As Chairman-Designate Gaskins and I noted in our November 1 letter to you, the Commission is pleased by your commitment to review the existing statute and to complete Congressional action on a new charter for motor carrier regulation by June 1st of next year. In that same letter, we also pledged our full support to the Congress in those deliberations. It is in keeping with this pledge of cooperation and assistance that I offer these remarks today.

While the Commission stands ready to provide this Committee with information on any specific substantive issue or legislative provision, my testimony today will focus on what we feel are the central questions in reforming motor carrier regulation. More detailed comments on particular aspects are appended to this testimony.

THE NEED FOR A COMPREHENSIVE REVIEW

First, I would like to stress the need for a comprehensive review of motor carrier regulation. Our experience at the Commission leads us to believe that the elements of motor carrier regulation are tightly intertwined. In our view, it is

not possible to adequately develop a policy on ratemaking, for example, without also treating entry and the desirability of antitrust immunity for collective pricing.

But even more importantly, we feel that the problems in motor carrier regulation which have sparked your efforts as well as our own reform proposals are fundamental in nature. As you noted in your speech at the Reston conference last month, it is not at all clear that legislation enacted nearly 45 years ago in economic conditions vastly different than those we face today is an appropriate charter for guiding government involvement in the operations of the motor carrier industry. It would be unfortunate, in our view, to miss this promising opportunity to conduct a comprehensive review of motor carrier regulation. A piecemeal legislative approach would not remove the current uncertainty over the future course of regulatory policy that now plagues the motor carrier industry, shippers, and for that matter the Commission itself.

THE FUNDAMENTAL CHOICE IN MOTOR CARRIER REFORM

The second point I would like to stress is that beneath the myriad details of existing regulatory policies and reform proposals, there are really two basic approaches open to the Congress. There are possibilities for approaches which combine the two under certain limited circumstances. However, I would like to spend a few moments discussing each of the basic approaches in some detail.

On one hand, the Congress can make the fundamental decision to rely primarily on direct regulation to control rates and service in the motor carrier industry. Implementing this approach, however, requires a set of decisions on the individual elements of a comprehensive regulatory program that are fully consistent with a reliance on direct regulation.

The basic elements of the chiefly "regulatory" approach would in our view include the following:

Preservation of existing ratemaking procedures including general rate increases and the Commission's investigation and suspension powers;

Reaffirmation of the Commission's discretionary authority to grant antitrust immunity for collective ratemaking, perhaps with reforms limiting carrier voting to joint rates in which they actually participate;

Continued scrutiny of proposed rate increases to ensure that collectively developed rate levels do not result in excessive returns to the motor carrier industry;

A vigorous enforcement effort to ensure that carriers fulfill their common carrier obligaitons in providing service;

Elimination of unnecessary restrictions on routing, stopping points, commodities, etc. which lead to increased fuel consumption and inefficient carrier operations; and

No further liberalization in entry policy.

The elements noted above do provide the general basis for an internally consistent charter for motor carrier regulation. The use of regulatory tools, to a greater or lesser extent, is necessary if Congress believes that there are important purposes which the marketplace cannot achieve. The continuation of collective ratemaking, for example, requires a parallel reliance on direct regulation to control maximum rates and carrier profitability. Continuation of general rate increases and collective ratemaking requires a parallel effort to greatly step up our admittedly limited efforts to strictly enforce the common carrier obligation, especially service to small comunities.

It is possible to fashion a new charter relying primarily on direct regulation. In fact, some would argue that this approach could be used to pursue social or political goals, particularly in the regulation of the general commodities—less-than-truckload (LTL) segment of the industry. One example is the protection of small carriers through regulatory restrictions on the expansion and operations of larger carriers. Another is the creation of an enforced scheme of cross-subsidies allowing carriers to charge some shippers higher than normal rates to subsidize service to other shippers such as those located in small communities. Yet another example is the use of regulatory devices to present the continued growth of certain LTL-general commodities on the grounds that their growth, any increased concentration in the industry, and any associated growth in their political power might pose a regulatory problem too difficult for our political system to manage.

Though the Congress is certainly free to fashion this sort of charter for the motor carrier industry as a whole or for the general commodities—LTL segment

only, we suggest that this approach might perpetuate some of the problems experienced under existing regulatory policies and fail to achieve the benefits which may be realized only by placing greater reliance on competition. The Commission does not generally favor the regulatory approach for precisely that reason.

For example, the Commission is now, as you know, in the midst of a review of the antitrust immunity provided for collective ratemaking in the motor carrier industry—Ex Parte No. 297 (Sub-Nos. 3 & 4). While no final decisions have been reached, the Commission is concerned that the collective ratemaking process operating beneath the protective umbrella of antitrust immunity has resulted in excessively high rate levels, impeded adjustments in rate levels to reflect changes in costs, demand or other market conditions, and stultified pricing and marketing innovation within the industry. The Commission is also giving serious consideration to the view that antitrust immunity may not be necessary at all to successfully negotiate on a bilateral basis all the normal cooperative arrangements, such as interlining agreements and joint rates, common to the industry.

The Commission also feels, for example, that the general rate increase is a poor mechanism for setting rates to reflect widely varying market conditions. And, though strict maximum rate regulation is necessary if collective ratemaking is to be permitted, there will always be limits to our ability to assess costs and revenue requirements with sufficient accuracy to always ensure both that carriers earn an adequate return and that shippers are protected from unreasonably high rates.

Finally, a system of regulatory restrictions directed toward the protection of a particular subgroup of carriers—small LTL carriers, for instance—might well spring from a motivation quite different than the undiscriminating protectionism of the current system. However, it still presents many of the same regulatory problems that have proved so difficult under the current system and which have tended to promote inefficiency, higher rates, and poorer service.

The second basic approach to reform in motor carrier regulation is to place greater reliance on competition and market incentives to control rates and ensure service. In contrast to the long-term commitment of private and public resources to regulatory activities under the first approach described above, a greater reliance on competition is largely self-enforcing. It does, however, require careful planning to assure a smooth transition to a more market-oriented motor carrier industry. And, as in the direct regulation approach, the elements of a motor carrier policy based primarily on competition must be internally consistent.

If the Congress should make the fundamental decision to place greater reliance on competition to ensure fair rates and adequate service, the basic elements of this approach would, in our view, include the following:

Entry barriers would be largely removed to allow carriers freedom to enter and exit particular markets at their discretion. This would require lifting territory and most commodity restrictions, the exception being those directly related to safety.

Entry requirements would remain in the area of carrier fitness with a particular emphasis on safety. Authority to operate might also be conditioned upon the maintenance of an acceptable safety record.

Carriers acting individually would be permitted to automatically adjust rates within limits to adapt to changing circumstances such as seasonal fluctuations in demand, new opportunities to attract traffic, increasing costs of operation, or competition from other carriers.

Collective ratemaking would be eliminated or in the alternative be offered as an option for those carriers who prefer collective rates under rate of return standards to pricing flexibility. Rate bureaus would be free, of course, to act as the publishing agents for individual carriers.

The Commission's general attitude toward a motor carrier charter based primarily on competition can best be judged by reviewing some of our own reform proposals. Let me offer a few key examples. In the Motor Carrier Task Force Report issued May 1979, the Commission staff recommended removing most regulatory barriers to entry in the truckload segment of the motor carrier industry retaining only a review for fitness. The Commission has agreed to publish this proposal for public comment in Ex Parte No. MC–135, Master Certifications and Permits. The Commission is now voting on whether, in Ex Parte No. MC–107, Transportation of Government Traffic, to use the master certification system to ease entry restrictions in government traffic.

The Commission staff also recommended that the Commission develop a system of flexible pricing for the truckload segment of the industry. The proposed system would allow carriers acting individually to move prices freely within a zone of reasonableness. This flexible pricing scheme will be included in the proposed rulemakings under Ex Parte No. MC–135 for specific segments of the industry. In addition, the Commission will shortly vote on a flexible pricing proposal titled Ex Parte No. MC–137, No Suspend Zone—Motor Common Carriers of Property, which would propose creation of a minimum zone for rate changes applicable to all segments of the motor carrier industry and address a series of generic questions associated with flexible pricing.

Finally, in the area of fitness, especially motor carrier safety, the Commission is conducting a complete review of current policies and possible improvements. The Commission feels that safety, in particular, is one area where direct regulation is needed to protect the public. Furthermore, we believe that safety enforcement is not in any way antithetical to a greater reliance on competition. We will share the results of our fitness policy review with this Committee and ensure that our separate recommendations and legislative provisions in the enforcement area are kept consistent with these findings.

While the Commission's steps to date have been limited in scope, it is clear that our reform efforts are primarily centered around the increased use of competition. We strongly recommend that this Committee in its deliberations give careful consideration to developing a new motor carrier charter based on an increased reliance on competition and market forces. The Commission has found that this approach offers potential solution to the problems we face under the existing regulatory system: ensuring rates which reflect the costs of providing service, adequate operating and marketing flexibility for carriers, and the maintenance of strong incentives for carriers to provide good service to shippers at reasonable rates, to achieve the most efficient operations possible, and to find innovative solution to technical and marketing problems.

The Commission intends to make the full record in both MC–135 and MC–137 available to this Committee and the Congress generally to aid in the consideration of this approach. In addition, over the next few months the Commission staff will complete several studies which deal specifically with issues relating to the less-than-truckload (LTL) segment of the industry. In addition, as we noted in our letter following the Reston conference, the Commission may initiate proceedings designed to explore the applicability of similar entry and ratemaking reforms to the general freight—LTL industry. We hope these efforts will expand our knowledge of this crucial segment of the motor carrier industry and we intend to provide this information to the Committee as it becomes available.

THE CONSTRAINTS ON MIXED APPROACHES

The Commission feels it is essential to keep the contrast between the competitive approach and the regulatory approach in mind throughout the debate over the development of a new motor carrier charter. At the same time, however, we realize there are many potential charters open to the Congress which mix aspects of the competitive approach with the regulatory approach. After all, we feel that even a charter based primarily on an increased reliance on market incentives would rely on direct regulation to enforce safety and other fitness considerations. For example, the Congress may wish to consider a "mixed" approach in dealing with the general commodities-LTL segment should it wish to pursue the social and political goals I mentioned earlier. However, given the many possibilities for mixing the two approaches in any new charter, we feel compelled to point out that, in our view, there are some irreconcilable contradictions between the two approaches which rule out certain "mixed" approaches. Allow me to offer two examples.

Nearly all of the motor carrier reform proposals developed by the Commission, the Administration, and Members of the Congress include a system allowing flexible pricing. This Committee is thoroughly familiar with the benefits of pricing flexibility, having dealt with the issue in the case of the airlines and household goods movers. The rationale for easing the regulatory restrictions on rate changes rests on the belief that competition among individual carriers will limit the ability of any one carrier to charge unreasonably high rates. Pricing flexibility, then is incompatible with collective ratemaking. It is crucial, there-

fore, to ensure that any broad pricing flexibility the Congress might provide is given to individual carriers and not to rate bureaus or any other combinations of carriers.

Congress might also consider explicitly adopting the principle that in all cases motor carriers should be able to charge rates which cover the cost of providing that service. This principle is at odds, however, with the use of rate, entry and service regulation in an attempt to force carriers to provide service they find to be unprofitable. A commitment to compensatory rates, then, is incompatible with attempts to enforce cross-subsidization through a set of regulatory mechanisms. However, it is important to note that a commitment to compensatory rates is *not* equivalent to ignoring service problems in any particular community or area. There are other means available to the Congress or the States of providing direct incentives for carriers to serve these particular locations should that be deemed necessary.

SMALL COMMUNITIES AND ECONOMIES OF SCALE

Before closing, I would like to briefly note the tentative views of the Commission on two key issues that are likely to receive particular attention in the legislative debate. They are especially important in considering the effects of motor carrier reforms in the general freight LTL industry.

First the Commission recognizes that the provision of service to small communities is a serious and thoroughly legitimate concern in devising a new motor carrier charter. The concern has been expressed that small communities would be adversely affected by the elimination of regulation and by the primary reliance on competitive forces. The basis for this argument is that the class rate structure does not reflect the higher costs of providing service to widely scattered locations, and that the Commission's enforcement of the common carrier obligations presents or at least inhibits carriers from cutting costs on service to small communities by reducing the level of service.

Evidence exists to indicate, however, that if any cross subsidy exists at all, it is limited in scope. It does not appear that any carriers are providing this service at less than variable cost. The use by the carriers of "arbitrary charges" in some markets would seem to erase any benefit to small communities in those instances. And a number of published analyses have raised questions about the existence of any cross subsidy at all.

The Commission is undertaking an analysis of this issue as part of our study of the general commodity sector of the trucking industry and we will be glad to share that analysis with the Committee when it is completed.

But, even if such a cross-subsidy were to exist, the Commission believes that this is not the most efficient way to promote service to small communities. A cross subsidy may contribute to some social or political goals. It is undoubtedly the prerogative of the Congress to define and adopt such goals and decide the extent to which some shippers should subsidizes others. However, we feel strongly that any forced transfer of this sort is best explicitly considered and approved by the Congress by direct subsidy rather than a cross subsidy.

In addition to the service to small communities issue, there is a general concern that any significant liberalization of the existing regulatory system would result in the growth of large trucking firms based on their ability to drive out competitors with lower rates and better service. Central to this issue is the question as to whether there exists benefits due to large size in the general commodity industry. The Commission is sensitive to the argument that there is a legitimate social benefit in the promotion of small businesses, and that these benefits would be diminished if the general commodity industry were to become concentrated into a small number of very large firms. But the Congress must keep in mind that this can only happen if there are real advantages associated with bigness, and if the Congress or the Commission by regulation limits this increase in concentration it will deprive the public of the benefit of these efficiencies. The members of the Commission do not agree on whether greater weight should be given to the promotion of small business or to the maximum realization of economic efficiency. A basic issue, of course, is whether any advantages or large size exist and, if they do, how significant they are. The Commission is analyzing this question in the context of its study of general commodity carriers. We will share that analysis with you when it is available.

This concludes my testimony, Mr. Chairman. I realize that these comments are general in nature but we feel strongly that the Congress needs to keep in mind

62-322 O - 80 - 11

these fundamental policy choices as it plunges into the details of various reform proposals. The Commission would eagerly welcome the opportunity to comment further on any specific issues, reform proposals, or draft provisions at the Committee's request. I would be pleased to answer any questions you might have at this time.

APPENDIX A

COMMENTS ON SPECIFIC LEGISLATIVE ISSUES

Because there is no single legislative proposal before the Committee nor any clear indication of the scope of the Committee's efforts in reforming the existing statute, it is difficult to provide detailed comments on specific provisions with an assurance that they will be relevant. The comments included below rest on implicit assumptions regarding the breadth of the field of alternatives the Committee and the Congress might consider. This should not be read as an implicit recommendation by the Commission to consider only incremental changes in the existing statute. Rather, these comments simply indicate some problem areas in the current law which trouble the Commission.

ADMINISTRATIVE CONSIDERATIONS IN DEVELOPING A NEW CHARTER

The Commission would urge the Committee and the Congress to consider the administrative feasibility of any new motor carrier charter they might put in place. We hasten to add, however, that this factor should not override more basic and far-reaching policy considerations. Under the current regulatory system, the Commission is faced with a substantial administrative problem in managing the enormous flow of applications for operating authority.

Should the Congress adopt an entry policy that is less restrictive and provides much broader operating authority, this problem would be largely solved. Narrow commodity restrictions and fragmented service areas not only result in inefficient trucking operations, they also add to the number of operating rights applications we must process. If some other course is taken, the Congress should address this problem since it involves substantial costs to the Government and the industry, and could jeopardize the implementation of any new policy.

The Commission continues to search for ways to reduce these administrative costs which are a problem not only to the Government but also to the carriers themselves. One promising area is the possibility for simplified procedures. For example, a bill to simplify the Commission's appellate procedures was submitted in the last Congress as S. 2374.

GENERAL EXEMPTION AUTHORITY

Should this Committee and the Congress decide to maintain a comprehensive regulatory program, it might be desirable to provide the Commission with authority to exempt from regulation certain classes of motor carriers or motor carrier services. By dispensing with regulation in areas where it clearly serves no useful purpose, the Commission would be able to focus its attention and resources on those areas where regulation is most needed. We think that the recent exemption of rail movements of fresh fruits and vegetables provides startling evidence of the success of this approach.

FINANCE ISSUES

In the *Toto* case [1] we decided to permit private carriers to apply for for-hire authority. One of the questions that has been raised since that time regards the extent to which the Commission should regulate the securites issues of those carriers. The current statute provides that motor carriers subject to our jurisdiction must file an application and obtain approval prior to the issuance of securities and the assumption of obligations and liabilities.[2]

We believe a solution to this problem should be worked out very soon. Otherwise, it is possible that some private carriers will be reluctant to apply for for-hire authority. Should that happen, the public would fail to enjoy the benefits of competition and the carriers of improved operating efficiencies which this decision

---

[1] Toto Purchasing & Supply Co., Inc., 128 M.C.C. 873 (1978). Discussed and confirmed in the policy statement in Ex Parte No. MC–118, served November 20, 1978.

[2] 49 U.S.C. 11302.

was intended to foster. While we currently are considering an administrative remedy to the problem,[3] we are bringing the matter to your attention for possible investigation.

We would also like to point out that both section 11302 (issuance of securities) and section 11343 (consolidation, merger, and acquisition of control) contain exemptions which turn on the dollar amount involved in the transaction. Those dollar amounts have remained unchanged for many years. We suggest if the Congress retains these or similar provisions in any new legislation, these amounts be revised to reflect the inflationary trend in our economy.

Finally, we would suggest that the current prohibition of section 11323 against freight forwards or persons affiliated with them acquiring control of other carriers subject to the Commission's jurisdiction should be eliminated. There is no similar prohibition with regard to acquisitions by other carriers and the freight forwarder prohibition has resulted in much confusion and unjustifiable results.

Vice Chairman Stafford has the following separate expression:

My position on these issues has been stated in my various dissents over the last several months. We are making changes with no knowledge as to the full impact upon the daily operations of a trucking company. Likewise, we have no idea whether smaller communities and shippers can survive what is conceded to mean higher rates and less service for them. It is critical that before adopting legislation in this area, we solicit and consider all of the views on the extremely controversial issues.

Pure economic theory cannot work in the real world. Historically, we have made accomodations which reflect the practical operations of our daily lives. Questions about the relationship between decontrol and the impact on rates and services must be carefully analyzed before changes are made. Otherwise, the harm done will be irreparable. At a time of economic downturn, we can ill afford to make a bad decision.

In sum, I believe we have reached a critical junction. Unless we are willing to look closely at these issues, then I fear we may permanently jeopardize a stable national transportation system.

Commissioner Clapp, concurring:

The difficulties which have surfaced in obtaining a majority for any expression of Commission position on this subject reflects, I think, not only the spectrum of Commission opinion on some of the matters included in this testimony but also the lack of hard data relating to these questions. Comprehensive review of motor carrier regulation clearly is needed and I am optimistic that the efforts by the Congress, the Commission, and other interested groups will be fruitful.

Some of my reservations about the statement relate more to tone than to the positions taken. I agree that competition is an extremely important consideration in motor carrier regulation. I think the Commission has been correct in its steady expansion over the past year or two of the role of competition in our deliberations and, absent Congressional instruction to the contrary, I would expect the trend to continue. But one must ask whether there should be limits and if so what limits. For example, I should not like to see an emphasis on completely open competition lead to ultimate concentration of control in a handful of carriers with a commanding hold on the marketplace. Such concentration, if it occurs, makes the need for regulation greater. Industries such as the beer industry with no readily apparent economies of scale other than marketing or advertising have shown strong trends toward concentration in recent years. The Commission should retain whatever residual power is necessary to prevent or cope with this result. This does not necessarily require the degree of regulation we have exercised in the past.

The "social benefits" discussion is not developed sufficiently. I believe it is a proper function of government to look beyond strict dollars and cents considerations in instances where important social benefits to society are involved. A pure economic yardstick is often too gross a measure, and the statement seems to me to place too much emphasis on that.

The treatment of the small communities question here, while somewhat more restrained than some colleagues would prefer, goes further than I would like. We need more hard facts on this subject which obviously is of central concern

---

[3] In Ex Parte No. MC–118 (Sub-No. 1), Proposed Policy Statement Concerning Jurisdiction over Securities Issuances for Companies Obtaining Authority Under MC–118, served May 30, 1979, we proposed to waive applications under section 11302 for certain carriers.

to communities, shippers, and carriers. It may well be that the statements made here will prove to be accurate but I do not think we know that yet. At this point, I would have preferred more neutral treatment of the subject with reference to the continuing efforts of the Commission to obtain a better reading of the situation.

I believe, too, that the statement would have been more complete had the potential benefits of some limited regulatory approaches been developed for the consideration of the Committee.

Commissioner Trantum, with whom Commissioner Alexis joins, commenting:

I am in general agreement with the testimony; however, I would more clearly convey these three points:

First, I view the testimony's discussion regarding the existence of cross-subsidy as open to misinterpretation. According to the Commission's staff surveys and analyses at this time there is no empirical evidence of systematic cross-subsidy created by the Commission's regulatory practices which benefit small shippers or rural areas.

Second, I would urge the Congress to examine carefully the important equity question which arises if one assumes that cross-subsidy exists. That question, of course, is: "Who pays?" If one believes that the class rate structure "does not reflect the higher cost of providing service to widely scattered locations" and that the common carrier obligation prevents carriers from reducing or eliminating services to these markets, current regulatory policy gives the trucking industry the power to decide which shippers to take money from and which to give it to without their consent. While such transfers may contribute to a social goal, I would emphasize, as does the testimony, that it is Congress' responsibility to determine to the payers and beneficiaries of such income redistribution.

Third, I would urge Congress to consider more closely the issue of protecting small carriers. If one believes that it is important for the Commission to ensure the existence of small carriers, the Commission, under a regulatory charter, would necessarily intervene directly to order the size distribution of firms in the market. This is no trivial matter. Such a policy would entail consciously restricting route awards to "large" carriers. The "promotion of small business," therefore, under a regulatory charter would necessarily come about by protecting the routes of smaller firms from larger firms, but not vice versa. Assuming economies of scale, this goal also is achieved at the cost of higher rates to shippers and consumers.

Admittedly, there is a possibility that some firms would grow with less regulation. However, it is not obvious that more competition would jeopardize the role of the small carrier, even in the general freight sector. After all, success in the trucking industry depends mainly on the equality of management. We observe many large trucking firms in financial distress and many smaller firms growing rapidly. Placing a regulatory cap on growth would likely reduce the incentives for efficient carriers to grow and provide their lower cost services to more shippers.

OFFICE OF COMMISSIONER GRESHAM,
November 30, 1979.

MEMORANDUM TO CHAIRMAN O'NEAL

I vote to approve the draft testimony prepared by Commissioner Gaskins (designated "Statement No. 2"), with the changes recommended by Commissioner Christian and subject to the following changes:

(1) Page 3, lines 14 and 15—Delete "of existing ratemaking . . . increases and".

I do not believe that the preservation of general increases is a basic element of the "regulatory approach." Under a modified regulatory approach, I can visualize, as one possible alternative, a no-suspend zone of reasonableness which would apply only to individually published tariffs and which could gradually replace general increases.

(2) Page 4, line 8—Delete the entire line ("no further . . . policy") and in its place insert the following: "some degree of economic entry controls."

In my opinion, the "regulatory approach" is not confined merely to a continuation of the status quo with regard to entry control. There are other options

available within the framework of the "regulatory approach". For example, Congress could choose to continue a regulatory approach that applies to motor carriers which closely parallels the present regulatory laws which apply to railroads. In this motor carrier legislation, Congress could give the Commission general exemption authority similar to that which the Commission now has regarding railroads.

(3) Page 4—Delete the sentence which begins on line 8 from the bottom of the page and substitute the following: "It is possible to fashion a charter which relies primarily on direct regulation and which also places less reliance on competition than the Commission and the current charter do.

(4) Page 5 (a) Line 14—insert the following after "policies": "and additional problems".

(b) Delete the sentence which begins on line 16 ("The Commission . . . reason.") and in its place insert the following: "The Commission does not favor a regulatory approach which is less competitively oriented than the existing regulatory charter. In fact, the Commission's endeavors in recent years reflect its view that Commission policies must rely more heavily on competition and the market place than they did in the past."

(5) Page 6, second complete paragraph, line 5—Delete "of the current system," and in its place insert the following: "which, until several years ago, was perpetuated by Commission decisions."

(6) Page 6, second complete paragraph—Revise the last sentence of that paragraph to read as follows:

"However, it still presents many of the same regulatory problems that proved so difficult in the past under Commission policies which were in place until several years ago, and which tended to promote inefficiency, higher rates, and poor service.

(7) Page 8, line 2 of the only complete paragraph—Delete "based primarily" and in its place insert the following: "which relies heavily".

(8) Page 10—Delete line 3 and insert the following in its place: "which gives recognition and express approval to the Commission's current policy of increased reliance on competition and market forces."

(9) Page 10, line 6—Substitute "statute" for "regulatory system".

(10) Page 11, line 3 from the bottom of the page—Substitute "pros and cons" for "benefits."

(11) Page 13 (This refers to page 13 of Chairman O'Neal's draft which Commissioners Christian would substiute for page 13 of the draft prepared by Commissioner Gaskins.)—modify the second complete paragraph so that it would read as follows.

"A subsidy may contribute to some social or political goals, such as the promotion of service to small communities. However, it is unquestionably the prerogative of the Congress to define and adopt such goals and to decide whether there should be subsidization, and whether this should take the form of a direct subsidy or a cross subsidy. We believe that Congress should address this issue."

If a majority does not approve my changes, I will issue a separate expression. If, due to the short time limitations, my separate expression cannot be finished in time for its addition to the testimony, my vote should be attached to he testimony submitted by the Chairman on December 3, 1979, along with the following statement:

"Commissioner Gresham will submit directly to the Senate Committee a written separate expression detailing his position. This procedure is necessitated by the time constraints within which the Commission was required to act."

ROBERT C. GRESHAM.

Attachment.

SEPARATE EXPRESSION OF COMMISSIONER GRESHAM TO THE STATEMENT OF A. DANIEL O'NEAL, INTERSTATE COMMERCE COMMISSION

I endorse the majority's written testimony to the extent that it emphasizes the need for a comprehensive review of motor carrier regulation and raises some of the serious questions which must to answered before material changes are made in the laws which now govern regulation of the motor carrier industry. However, I believe Commissioner Clapp has detailed very appropriately some of the serious shortcomings of the majority's statement, and I concur in his views. Additionally, I feel obliged to express certain personal reactions which this testimony evokes.

First, early on in this testimony the majority states that there are two basic approaches available to Congress—the "regulatory approach" and the "increased reliance on competition approach"—as well as other approaches which combine elements or various proportions of each of these two basic approaches. Thus, after reading the first two or so pages, one could logically assume that the majority believes there are many options available to Congress.

Wrong! Why? Because the remainder of the testimony appears to be geared toward convincing its recipients that there is one, and only one, approach which should be given any consideration. The majority's "singular approach attitude" is even reflected in its somewhat misleading description, on pages 3 and 4, of the basic elements of a chiefly regulator approach. For example, the majority includes among these elements both the preservation of general rate increases and a prohibition against further liberalization in entry policy. I personally do not believe that either of these are absolutely essential to a chiefly regulatory approach. Under a so called "regulatory approach," I can visualize a no-suspend zone of reasonableness which would not apply to any rates except those proposed individually by one carrier and which would provide the means for the gradual replacement of general rate increases. Also, I do not believe that a continuation of the status quo with regard to entry policy is absolutely essential to a "regulatory approach." In the 4–R act, Congress chose to give the Commission exemption authority which applies to the rail sector. Congress could elect to do the same with regard to motor carrier transportation. It could direct the Commission to grant specific exemptions from motor carrier regulation whenever such action is necessary for the promotion of effective competition. This is just one example of a regulatory framework which includes further liberalization of entry policy.

My concern about the majority's overly narrow definition of the "regulatory approach" is not merely one of semantics. Rather, it stems from the feeling that the definition is a biased one which emanates from the majority's narrow "singular approach attitude" and attempts to portray regulation as a rigid, static, and all or nothing concept, a view which I do not share. I believe that there can be various levels of regulation, which in turn can incorporate any degree of reliance upon competition which Congress believes is appropriate. Further, I feel that it is less than fair to infer that regulation is static, rigid, or necessarily anticompetitive, particularly in light of the major changes in the Commission's entry policies during the past several years, which reflect a dramatic shift toward an overriding reliance on competition.

I fear that the majority's narrow attitude will tend to goad participants in the regulatory debate into similar all or nothing positions. Such polarization can only serve to feed the flames of emotionalism at a time when we are faced with issues which require reason and clear thinking.

Another problem with the majority's position, as I see it, is that it leaves one with the impression that Ex Parte No. MC–135, and the related subnumbered proceedings which are to be initiated by the Commission, have already been decided by a majority of this Commission. This turn of events unfortunately will also encourage the polarization of views. Again, I must note that such polarization, accompanied by the normally related emotionalism, will in the long run be counter productive. A closed mind, more often than not, fails to ask all of the questions which should be answered in the search for the best solution to any problem.

In the search for the best resolution of the current regulatory debate about motor carrier transportation, we can of course look to the changes that have been made in the statutes which apply to air and railroad transportation. Along these same lines, it would seem that as part of the pursuit for answers, the differences between motor carrier transportation and air and railroad transportation as well as their similarities must be studied and taken into consideration.

In summary, if I were asked to express our own views at this moment in one paragraph, I would deliver the following statement:

Congress is not faced with an all or nothing resolution to the current dilemma about regulation of motor carrier transportation because it has numerous available alternatives, which range from increased direct regulation to the opposite extreme of total deregulation. The Commission's increasing reliance upon competition, as reflected by its (and my) decisions, during the past several years, obviously reflects the majority's collective belief that more competition was necessary in the motor carrier segment of transportation. However, the Com-

mission has now reached a point where it believes Congressional direction is necessary before any further liberalization of entry policy can take place. The Commission intends, in the near future, to institute various subnumbered proceedings to Ex Parte No. MC–135. In these proceedings the Commission hopes to collect sufficient data to determine whether it believes that entry policy, as it affects various segments of motor carrier transportation, should be more or less liberal or should be unchanged. The Commission will submit to Congress all of the information gathered in these proceedings, as well as the Commission's recommendations which will give careful consideration to the information it gathers.

[The following information was subsequently received for the record:]

DECEMBER 19, 1979.

Mr. DAN O'NEAL,
Chairman, Interstate Commerce Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: For the purposes of completing the record of the hearing in Reno, Nevada, before the Senate Commerce Committee, I am requesting a written response to a question which because of time limitations, I was not able to ask:

Question. In your written statement you assert that if Congress chooses the competitive market option, "collective rate making would be eliminated, or in the alternative offered as an option for those carriers who prefer collective rates under rate of return standards to pricing flexibility." Are you saying that Congress should contemplate a system in which there could be two different regulatory arrangements for carriers, depending upon which they prefer?

I would appreciate a response at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

EDWARD M. KENNEDY.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., January 16, 1980.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR KENNEDY: In your letter dated December 10, 1979, you asked for additional clarification of a portion of former Chairman O'Neal's prepared testimony dealing with collective ratemaking. As you noted, the testimony stated that should Congress decide to adopt a pro-competitive approach to motor carrier reform "collective ratemaking would be eliminated, or in the alternative be offered as an option for those carriers who prefer collective rates under rate-of-return standards to pricing flexibility."

This statement was meant to suggest several points. First, any comprehensive motor carrier reform legislation that relies primarily on enhanced competition must encourage individual pricing by motor carriers. Considered alone, this, of course, would strongly suggest the elimination of anti-trust immunity for motor rate bureaus.

However, we realize that some carriers may feel that they could operate more effectively under a regulatory system which allowed collective ratemaking. More importantly, they may believe this even if the Congress provides in accord with the Commission's comments in the December 3rd testimony (1) substantial rate freedom for individual carriers but denies this freedom to collective bodies, and (2) rate-of-return regulation limiting the profitability of those firms who choose to use the collective ratemaking process.

If the Congress felt that the continuation of anti-trust immunity, as an option to the exercise of substantial pricing freedom by individual carriers, did not threaten the success of the reform efforts, it could follow this course. I do not believe the Commission meant to imply in the testimony that this was a desired course of action.

Developing and implementing parallel regulatory schemes in this fashion would be difficult and there is no guarantee that this approach might not obviate or

sharply reduce any benefits obtained from the implementation of a mechanism for flexible pricing.

As former Chairman O'Neal noted in his December 3rd testimony, the Commission is now considering proposals for flexible pricing in Ex Parte No. MC–137, No Suspend Zone—Motor Common Carriers of Property, and also in Ex Parte No. MC–135, Master Certificate and Permits. In MC–137 the Commission intends to explore many general issues involved in flexible pricing including the one you have pinpointed in your letter. The Commission also intends to share the information and analyses developed in these proceedings with the Congress.

I hope this explains in sufficient detail the portion of the testimony noted in your letter and is responsive to your question. If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,

DARIUS W. GASKINS, Jr.,
Chairman.

Commissioner Charles L. Clapp concurred with the following separate expression:

"I do not agree with the fourth paragraph of page one to the extent it tends to prejudge the outcome of our review of motor carrier regulation. We should preserve all of our options until we have given these matters thorough consideration."

Commissioner George M. Stafford dissented with the following separate expression:

"I have serious doubts that this dual approach is feasible. I reiterate my concern that the Commission's testimony of December 3, is based only on speculative theory."

The CHAIRMAN. All right. Thank you, Chairman O'Neal.

Next, we'll hear from Mr. Shenefield.

STATEMENT OF JOHN H. SHENEFIELD, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. SHENEFIELD. Mr. Chairman, I'm pleased to be here today and participate in this important hearing and discuss the crucial legislation.

And on the way to my major point, which is that we ought to look seriously at the authorized price-fixing provisions of the current statutory scheme, I'd like to call your attention to three important national issues on which this legislation has important bearing: Inflation, energy waste, and excessive Government regulation.

First, with respect to inflation, it's perfectly clear that the extent to which current regulation holds rates up at above the level at which they would be competitive, that that regulation contributes to the inflationary spiral.

Second, to the extent to which the restrictions impose unnecessary obligations on carriers, it is probably apparent that deregulation causes unnecessary energy waste and indeed the Department has estimated that to be in the hundreds of thousands of dollars.

And third, it is necessary that the trucking industry is almost alone in this period of calling for less Government intervention in the economy in asking for more Government intervention. In other words, the Commission wants to subsidize unprofitable markets, that is, wants the Government to tell it which markets it can serve.

Now, the major point of my message, Mr. Chairman, and Senator Kennedy, is that price fixing, even though it is wrapped up in the cloak of Government approval through the Interstate Commerce

Commission, carries with it enormous costs and, in the interest of the consumers, should not be tolerated.

But I'd like to focus on six, five or six clear points that should demonstrate to you, I hope, that abolition of the approval of this authorized price fixing would not carry with it a number of disadvantages that have been argued. And I refer specifically to the industry claims that loss of antitrust immunity for motor carrier rate bureaus would mean the end of joint rate publication and interlining; the prohibition of commodity classifications and joint safety programs; the elimination of service to small communities, and the onset of chaos and destructive competition.

Mr. Chairman, very briefly, joint tariff publication is not now prohibited by the antitrust laws. Moreover, joint tariff publication does not require collective rate fixing or ratesetting. Those are views that are confirmed by enforcement by the antitrust division and confirmed also by the Interstate Commerce Commission specifically in the *Florida Specialized Carriers* case. Joint tariff publication can be carried on in a total practical way today without collective ratemaking.

With respect to interlining, negotiations between carriers that do not compete with one another, the typical interlining situation, do not violate the antitrust laws. Agreements for the division of revenues on through routes, where the carriers do not compete, do not violate the antitrust laws.

Where the carriers do compete to some extent, either on a fraction or on the total through route, there is an antitrust problem, but skillful and careful antitrust advice and careful attention to detail can avoid the unnecessary costs and permit the formulation of entirely appropriate joint route tariffs. That can be done in a variety of different ways that we can discuss later on.

With respect to all known ratemaking functions of the rate bureaus, such as traffic surveys, compilations of data, information gathering, joint research, safety surveys and the like, the antitrust laws do not prohibit that in any other context, in any industrial context, and they would not prohibit it in this context.

With respect to joint commodity classifications, some have argued elimination of the immunity would also eliminate the potential for joint commodity classifications. That is not correct. The question is whether the current system, administered as it currently is, is unnecessarily complex, is unnecessarily arbitrary, and unnecessarily anticompetitive.

Our view on that subject is that improvements can be made in the way the classification systems are currently organized, but even in a nonderegulated world, or in a deregulated world without the power of rate bureaus to back up rate bureau classifications through refusals to do otherwise, even something like the current classification organization would be entirely appropriate.

Service to small communities, it has been alleged, would suffer in a deregulated world. That does not seem to us to be the case.

First of all, the common carrier obligation, which is that portion of current law that is argued to support, to require carriers to serve small communities, is, from all appearance, not effective in so doing. No carrier certificate has ever been revoked for inadequate service; it's doubt-

ful whether the ICC can tell with precision which carriers are supposed to serve which small communities, much less which carriers are serving.

But, and more importantly, service to small towns is profitable. That's why it is currently being undertaken, given the absence of any enforcement mechanism to compel it, and there are a variety of studies that show that the service is quite profitable, else the carriers wouldn't be engaging in it. If it is thought necessary, however, to subsidize specific service to small communities, then the agency would argue in favor of a direct and explicit subsidy.

Finally, the question of destructive competition. It is argued that destructive competition will ensure in this industry absent some kind of collective ratemaking potential and protection, and that's based on a series of faulty economic premises, namely, that in this industry, fixed costs are high in comparison to total cost and that barriers to entry must be high so that de novo entry is difficult.

In fact, the case here is that fixed costs are low in proportion to total cost and it's very easy to get into the trucking industry and thus the kind of cutthroat competition that it is sometimes assumed should take place should not take place.

Mr. Chairman, in conclusion, let me mention one issue that has come up in a kind of a latter-day way, the so-called derivative immunity for shippers.

A law review article has been published, I use the term loosely, that argues that there is a derivative immunity for shippers. I would take the position that there is no respectable legal argument based on statute, based on legislative history, or based on applicable cases that in any way supports that proposition.

Shippers, when they act in concert, do so subject to the antitrust laws. Shippers, after the enactment of the legislation to which you address your attention, would be in no different situation than they are today.

Mr. Chairman, that completes the summary of my statement.

[The statement follows:]

STATEMENT OF JOHN H. SHENEFIELD, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you today to discuss the Trucking Competition and Safety Act of 1979, and, in particular, Section 107 of the Bill which proposes to repeal the provision permitting auhorized price-fixing by motor carriers.

Since last July, you have heard testimony from shippers, consumer groups, the Administration, and from the industry itself. On the one hand, you have heard Secretaries Adams and Goldschmidt, Dr. Schultze and Dr. Kahn testify for the Administration that ICC regulation of trucking contributes to our nation's most pressing problems: inflation, energy waste, and excessive government regulation. Dr. Kahn testified that each year, regulation of the trucking industry costs consumers at least $5 billion. He talked about the super-normal return on equity which ICC regulation permits the industry to earn. He testified about the almost 400,000 tariffs filed with the ICC in 1978, and the governmental and private costs arising with such a system. And in the energy area, the Federal Energy Administration has estimated that certain operating restrictions alone cost the nation millions of gallons of wasted fuel annually.[1] Small and large shippers, farm representatives, various state officials, and others have also testified in support of S. 1400.

[1] Potential Fuel Conservation Measures by Motor Carriers in Intercity Freight Markets, Charles River Associates, Inc., Cambridge, Mass. (Prepared for FEA) March 1977 at 1–10.

On the other hand, you have heard the industry testify—or rather, some members of it—that continued government regulation is desirable and in the public interest. They have argued that the very elements of the regulatory system that other witnesses have assailed, namely, entry, backhaul, and routing restrictions and collective ratemaking, are all necessary for the welfare of the general public.

I will not revisit in detail these arguments. I would like, however, to discuss from a slightly different perspective the issues that this Committee has been struggling with for these many months.

First, the energy issue. "[T]rucks rattling empty along the nation's highways," as President Carter put it, is a direct result of government regulation. Any thinking American must be appalled. There was a time when no one cared about such waste. But those days are gone forever. Recent events in Iran and elsewhere demonstrate vividly that our energy problems go far beyond high prices for foreign oil. At risk instead is access to sufficient supplies of oil in the short term to keep American industry—including the trucking industry—running at all. If we are to liberate ourselves from unhealthy dependency on foreign oil, we simply must find ways to make it possible for industries to operate in the most efficient way possible.

The commercial trucking industry consumes over 20 billion gallons of gasoline and diesel fuel annually.[2] Regulations that restrict entry and operations are utterly inconsistent with efficient use of these precious fuels. Prompt passage of S. 1400 is an essential step if the fuel-intensive trucking industry is to squeeze every drop of value out of the billions of gallons of fuels it consumes annually.

At a time when other industries are denouncing government regulation, and are demanding that government regulators cease and desist from intruding into the life of American business, the demands of the trucking industry—which wants and lobbies vigorously for the continuation of government regulation—are curious indeed.

There demands are curious because the trucking industry, like all other American industries, is supposed to be profit-motivated and is indeed highly profitable. The ultimate responsibility of every trucking firm's board of directors is to earn as much profit as honest and efficient management will permit. In spite of this free enterprise truism, the trucking industry has told this Committee that it wants government to order it to serve and (it claims) subsidize unprofitable markets; that it wants government to set its prices in conformance with the public interest; and that it wants government to tell it which markets it can serve. The industry tells us that it wants this continued government intervention, not for the purpose of making greater profits for itself—which I, at least, would find to be a credible argument—but rather because such intervention is in the public interest.

In fact, the industry's public interest claims are designed to wrap the private monopoly profits which the regulated trucking industry earns in respectable public interest clothing. For the twelve months ended June 1978, the average rate of return on equity for the eight largest trucking companies was almost 27 percent, almost double the average return on equity for all manufacturing. For the comparable period in 1979, the figure is in excess of 22 percent.[3] In 1977, 98 of the nation's largest trucking firms earned a rate of return on equity of almost 20 percent[4] which prompted the ICC staff itself to acknowledge that excessive profits were being earned. The data released by Senator Kennedy last July show that concentration in the general freight sector in individual city-pair markets is extremely high, with the top four carriers accounting for 62–64 percent of the average, and with ratios in very many cases ranging between 70 and 90 percent. The only interpretation that common sense will allow of the trucking industry's vehement opposition to S. 1400 is that regulation in its present form is good for piling up excessive bottomline profits.

Mr. Chairman, our nation is presently engaged in a difficult struggle to bring under control diverse and numerous forces that contribute to our energy and inflation problems. S. 1400 provides this Committee and the Congress with an

---

[2] *Fact Sheet on Fuel,* published by the American Trucking Associations, May 21, 1979.
[3] ICC Bureau of Accounts, Large Class I Motor Carriers of Property Selected Earnings Data (October 9, 1979).
[4] ICC Bureau of Accounts, Large Class I Motor Carriers of Property, Selected Earnings Data (April 8, 1978).

opportunity to take direct action that will give a positive boost to our national efforts to solve these problems. The times compel that we look beyond the narrow and protectionist arguments of special interest groups and look instead toward policies that will benefit our people as a whole. Prompt passage of S. 1400 would benefit all Americans.

Let me now explain why one particular provision of S. 1400 is essential, namely, Section 107 which makes illegal price-fixing by motor carriers.

Of course, the industry euphemistically calls this behavior collective ratemaking, but it is nothing less than naked price-fixing—the kind of activity that in unregulated industries constitutes a felony under the Sherman Act.

ICC sanctioned price fixing is a fundamental cause of the excessive rate levels maintained in the industry. The fact is that, in the motor carrier rate bureaus, competitors jointly establish rates to maximize joint profits, just as the members of any other price-fixing cartel would do. Other regulatory controls can, and should be viewed as devices designed primarily to prop up these cartel rates, and prevent the erosion of the excess profits generated by them. Thus, entry restrictions prevent newcomers from entering easily into markets where monopoly profits are earned, and ICC ratemaking authority enables rate bureau members to tie up, delay and even prevent rate cutting by rate bureau member and nonmember carriers. The simple truth is that the government—here the ICC—has all too often served not as public protector but as cartel manager—a kind of regulatory cop acting to prevent competition from breaking the cartel rate.

No matter what you call it, the rate bureaus fix prices, and in the process interfere with the "central nervous system of our economy."[5] Such harmful activity should be permitted to continue only upon the strongest showing that competitive rate-setting in the trucking industry will not work and that second best solutions, such as government monitored cartels, are essential to the achievement of important public benefits that could not be achieved in any less anticompetitive manner.

Mr. Chairman, in the past two years, the rate bureaus have been given a full and complete opportunity to demonstrate such public benefits, before this Committee, and before the ICC in the various Ex Parte 297 proceedings. Notwithstanding this exhaustive record, the rate bureaus have failed to establish that even one public benefit is traceable to motor carrier price-fixing.

Let me begin by listing the industry claims. It is asserted that loss of antitrust immunity for motor carrier rate bureaus will mean the end of joint rate publication and interlining; the prohibition of commodity classifications and joint safety programs; the elimination of service to small, rural communities and the onset of chaos and destructive competition. Further, a new, and in my opinion, novel argument recently has surfaced, that shippers will lose some kind of "derivative" immunity which they purportedly now enjoy under Reed-Bulwinkle. I would like to point out why each of these arguments is utterly devoid of merit.

JOINT TARIFF PUBLICATION

One of the most frequently repeated justifications for rate bureaus is that they are necessary to facilitate joint tariff publication, a desirable joint venture that reduces expense and inconvenience. However, the Department of Justice has stated on numerous occasions that (1) price fixing is not necessary in order to facilitate the joint publication of rates; and (2) the joint publication of rates that are independently set is not prohibited by the antitrust laws.[6] The ICC, too, has rejected the notion that joint tariff publication necessarily requires collusion on rates.[7]

Our statements are confirmed by our enforcement decisions in two recent antitrust civil actions. In *United States* v. *Motor Carriers Tariff Bureau*,[8] the Department recognized the legality of joint tariff publication by entering into a consent judgment with the Motor Carriers Tariff Bureau that specifically allows joint tariff publication. And in *United States* v. *Southern Motor Carriers Rate Conference, et al.*, the court issued a final decree enjoining intrastate rate-fixing, but

[5] *United States* v. *Socony Vacuum Oil Co.*, 310 U.S. 150, 226 n.59 (1940).
[6] *See* Comments of the Department of Justice filed before the Interstate Commerce Commission in Ex Parte No. 297 (Sub-No. 4).
[7] *E.g., Florida Specialized Carirers Interstate Rate Conference*, 555 ICC 623, 635 (1977).
[8] Civil Action No. 77–1973 (D.D.C., Oct. 24, 1978).

permitting the continuation of joint tariff publication.[9] The Department had recommended this relief to the court.

Thus, it is possible to have a single agency tariff composed of rates that have been unilaterally adopted by the carriers that are parties to the tariff. All that is required is for a party to organize the items by commodity, in alphabetical order, and to publish the tariff. Such jointly published tariffs can be standardized in a manner similar to those currently on file, and made convenient and easy to use. This activity can be carried out without immunity from the antitrust laws.

INTERLINING

The trucking industry argues that joint rates for through routes would be severely curtailed or eliminated if antitrust immunity were repealed. This argument, too, is based on a misunderstanding about the kinds of joint activities prohibited by the antitrust laws.

Price-fixing among competitors is prohibited. Carriers that interline freight between themselves in order to construct a through route for a particular shipment, however, are not direct competitors. Therefore, the antitrust laws do not apply to joint-rate negotiations beteen such noncompeting carriers. Similarly, agreements for the division of revenue for interline services between carriers participating in a particular movement do not violate the antitrust laws, if the interlining carriers do not offer directly competing services over the route in question.

There are situations where two ro more carriers with competing single-line routes beteen two points may also offer interline service between such points through the interchange of freight at some intermediate point. Under such circumstances, joint rate or division of revenue negotiations between carriers that are also single-line competitors would and should present antitrust problems.

However, the inability to negotiate joint rates or the division of revenues does not mean even in these circumstances that interline service would have to be discontinued. Such service could continue, without fear of antitrust exposure even when there were competing single services operated by both connecting carriers. In such instances, carriers could unilaterally either publish proportional rates, or simply apply local rates. Under the present regulatory system, use of the latter in particular would result in rate increases in excess of the cost of providing the service. However, under the competitive system contemplated by S. 1400, such rates should tend toward the actual cost of the interline movement. Similarly, if proportional rates are used, competitive forces on each segment of the interline movement should result in total rates for through traffic that reflect the cost of providing the service. Therefore, under the Administration's Bill proportional rates, or sum of the local rates for through traffic, should be no higher than cost considerations would justify.

Thus, we are convinced that the absence of antitrust immunity will not interfere with the provision of efficient routing alternatives, including interline movements at the lowest cost possible. Moreover, it should also be recognized that current regulatory barriers to entry create artificial incentives to interline as in many cases carriers with incomplete operating authority are not able to provide single-line service. The Administration's Bill, by liberalizing entry standards, will help solve this problem.

NONRATEMAKING FUNCTIONS

The industry argues also that immunity is necessary in order to protect valuable nonratemaking functions performed by rate bureaus. This contention, however, is erroneously based on the assumption that antitrust immunity is required for activities such as the Continuing Traffic Study, other traffic surveys, and joint safety programs. Trade groups in many unregulated industries perform virtually the same safety and information gathering and disribution functions as motor carrier rate bureaus do without collectively setting prices, without antitrust immunity and without fear of antitrust prosecution.

For example, the Antitrust Division has recently stated to the Civil Aeronautics Board that the positioning of certain provisions on airline tickets is

[9] *United States* v. *SMCRC, et al.*, Civ. Action. No. 76–1909A, entered Sept. 13, 1979. See paragraphs 6(c), (d) and (e).

simply not likely to be an area of competition among airlines and therefore antitrust immunity is not necessary for joint standards-setting with respect to ticket design.[10] Similarly, joint research activities that are not designed to curtail or elimiate price competition and are properly carried out are consistent with the antitrust laws. In that regard, paragraph 6(e) of the SMCRC final decree, mentioned previously, specifically permits defendant rate bureaus to provide statistical and other economic data and advice to any carrier that wishes to utilize such information. Therefore, continuation of these nonrate-making functions by carrier organizations will not be placed in jeopardy by the elimination of antitrust immunity.

JOINT COMMODITY CLASSIFICATIONS

Classification is the grouping of commodities by transportation characteristics. Under the current regulatory structure the commodity classifications, upon which most class rates are based, are fixed by the largest group of carriers with antitrust immunity, the National Motor Freight Traffic Association ("NMFTA"), composed of over 7,000 interstate and intrastate carriers.[11] This classification system is an integral part of the collective ratemaking system, as the classifications voted on by the carrier members play an important role in determining all commodity and point-to-point trucking rates.

While a classification system or systems is a desirable rate-setting tool for shippers and carriers alike, the existing system is both anticompetitive as well as outdated and needlessly complex. As we pointed out to the ICC, in the hands of the NMFTA, the classification system has also been administered in an arbitrary fashion.[12]

The creation and administration of a classification system do not require collective action by the motor carriers. The existing classification rate bureau could be efficiently replaced by a group or several groups of independent professionals supported by the sale of classification books and responsible only to their shipper and carrier customers, under the overall supervision of the Commission. A shipper or carrier that desired a classification modification would have its suggestions considered by an impartial board of experts, not a group of horizontal competitors. And an independent, profit-motivated service would have a strong incentive to consider unique and innovative classification ideas to meet customers' demands and to attract new subscribers. Those who disagreed with the decision of any particular service could always seek out another classification service or file their own classification tariff with the Commission.

All of this could be accomplished without antitrust immunity. If the motor carrier industry were liberated from the dictates of the existing classification rate bureau, we believe that a simplified classification rate system, based on weight and density and the use of "released rates," [13] would likely emerge. Such a system would produce a much more efficient motor carrier rate system. Such innovations have been stifled by the existing anticompetitive classification system.

Thus, the issue is not whether classification systems are in the public interest; we agree that they are. Rather, the real question is whether the present motor carrier rate bureau's grip on the classification process produces public benefits. We believe the evidence is convincing that it does not, and that the elimination of antitrust immunity would bring about a more efficient system.

SERVICE TO SMALL COMMUNITIES

It is said that collective price-fixing facilitates service to small rural communities that would not otherwise be provided because it permits extra profits to be earned in higher yield urban markets which can be used to finance loss operations in small towns. This theoretical construct has as its foundation several assumptions that cannot withstand analysis, and therefore this justification for collective rate-setting must fall.

---

[10] *See* Answer of the Department of Justice in *Air Carrier Rules Governing Failure to Operate on Schedule or Failure to Carry,* CAB Docket No. 35361, Nov. 13, 1971, at 3.

[11] Classifications in New England are set by the New England Motor Rate Bureau, Inc.

[12] *See* Answer of Department of Justice in Ex Parte 297 (Sub-No. 4), *National Motor Freight Classification Agreement* Section 5a Application No. 61, dated Nov. 8, 1978 at 21–22.

[13] "Released rates" are rates which impose no liability on the carrier for lost or damaged freight. The shipper is responsible for insuring himself against such hazards, but he would pay a correspondingly lower rate for the transportation service. *See* Answer of Department of Justice in Ex Parte MC 98 (Sub-No. 2) dated June 12, 1978.

Let us assume that collective rate-setting does result in extra normal profits in some markets. (In fact, I believe strongly that it does, as I pointed out earlier.) The real question is—what would good business people do with those extra profits given a choice—keep them, or give them away? The question answers itself: they would keep them unless the government forced them to give them away.

In fact, the proponents of the cross-subsidy argument do claim that such compulsion exists under the present system in the form of the common carrier obligation that accompanies the certificates that the ICC issues.

An examination of the facts show that, in many instances, the common carrier obligation is a myth. Under the present regulatory system, there is no practical compulsion to serve at all. First, any carrier can abandon undesirable services by merely cutting back and eventually ceasing service. Is one pick-up a month good common carrier service? Second, no carrier's certificate has been revoked for providing inadequate service since the passage of the Motor Carrier Act in 1935.[14] Third, and most importantly, the ICC has limited capacity to determine which carriers are authorized to serve any particular town and which are providing the service. That being the case, the Commission has no power to enforce the so-called common carrier obligation. Given the thousands of routes, the tens of thousands of commodities carried, and the impossibility of defining operationally just what is "adequate service," it is quickly apparent that the ICC is witout the ability to force 17,000 carriers to serve unprofitable routes.

Therefore, carriers undoubtedly do what one would expect them to do, given a choice—they keep the extra profits and serve only those markets that are profitable. This expectation is borne out by the record. I previously noted the above-normal profits earned by the industry over the years. The record also demonstrates, however, that service to small communities is provided because common and private carriers find it profitable to do so, not because 17,000 truckers are fearful that the ICC may catch them if they cut back or eliminate service.

A 1977 study conducted by this Committee showed that 75 percent of the common carriers serving small communities believe that the business they obtained was "desirable." This figure jumped to 93 percent for the larger small communities with populations between 10,000 and 25,000.[15] Similarly, a recent Department of Transportation study of trucking service to selected small communities, the results of which have already been described in detail to this Committee,[16] fund that transportation service to these small communities is adequate overall not because of regulation, but because these towns rely on several types of trucking to satisfy their transportation demands, including UPS, private trucking, parcel post, bus package express, short-haul interstate carriers and other small shipments specialists. On the other hand, the study found that regulated common carriers are able to avoid serving small communities and isolated places if they wish.

In sum, it appears that the cross-subsidization and common carrier obligation arguments simply do not hold true. Common carriers in the current regulated environment are able to avoid serving small towns and rural areas if they consider such traffic to be unprofitable. Moreover, small communities are now served by other types of interstate trucking, and these services could well expand in a less regulated environment as greater price competition develops and as restrictions on entry and carriers' operations are removed.

SHIPPER IMMUNITY

In recent months a novel argument has surfaced from the proponents of collective ratemaking to the effect that shippers currently have some type of "derivative" immunity from the antitrust laws under the Reed-Bulwinkle Act.[17] Let me

---

[14] *Report on the Commission's Compliance Program,* a report by then ICC Vice Chairman, Charles L. Clapp, August 1979.

[15] *The Impact on Small Communities of Motor Carriage Regulatory Revision,* U.S. Senate Committee on Commerce, Science and Transportation, June 1978, p. 101.

[16] "Common Carrier Obligations and the Provision of Freight Transport Service to Rural Small Communities," by Denis Breen and Benjamin Allen, Washington State University, prepared for the U.S. Department of Transportation, July 1979.

[17] A. Popper, *Shipper Antitrust Liability in a Rate-Deregulated Market; Fundamental Inquiries and Analysis* (Sept. 4, 1979) (American University, Independent Faculty Research).

state in the most unequivocal terms: There is no respectable legal argument, based either on the statute itself, legislative history, or the relevant case law that would support in any way the proposition that shippers currently have derivative immunity from the antitrust laws through the Reed-Bulwinkle Act. Currently, if shippers act in concert to establish the prices that they will pay for transportation services, that activity would be a violation of the Sherman Act. Currently, if shippers act in concert to boycott a carrier or carriers who decline to meet shipper rate demands, such activity would be a violation of the Sherman Act. Therefore, the repeal of Reed-Bulwinkle will have no effect on the substantive rights of shippers under the antitrust laws in any way.

In a world without antitrust immunity for motor carriers, it is asked whether or not shippers will be able collectively to present their demands to rate bureaus.[18] However, in such a world, there would be no need for anyone to present any demands concerning rates to rate bureaus, because rate bureaus will not be setting such rates. Individual carriers will be establishing rates independently of one another. Second, collective activities that shippers might engage in with regard to individual carriers will be subject to the antitrust laws—just as they are subject to those laws at the present time.

Because the issue of shipper immunity has recently been the subject of a great deal of uniformed speculation, the Antitrust Division has prepared a report dealing with this issue which is attached to my written comments.

DESTRUCTIVE COMPETITION

Finally, the trucking industry claims that collective rate-fixing is needed to protect the financial viability of motor carriers. The claim is that without collective ratemaking, competition among motor carriers would become destructive. This notion is based on a basic misunderstanding of the nature of the economics of the motor carrier industry. The theory that competition will be destructive and cause undesirable concentration in an industry requires the presence of two economic characteristics: (1) the ratio of fixed to variable costs must be high; and (2) entry barriers must be high so that *de novo* entry is difficult.

If the ratio of fixed to variable costs is high and demand is variable, then firms who have the natural incentive to price below total costs in times of slack demand, so long as they cover out of pocket or variable costs, will be able to price quite a bit below total cost. Obviously, if the process continues for a sufficient period of time, some firm or firms will go out of business. This phenomenon becomes destructive for us all if entry barriers are high, because it means that, when higher levels of demand resume, new firms will be unable to replace the capacity lost by previous exits, and the remaining firms may be able to act less competitively than had previously been the case.

Neither condition exists in the trucking industry. The ratio of fixed to variable costs is quite low.[19] In other words, a very high percentage of a motor carrier's costs varies as output changes. Therefore, the first characteristic necessary for destructive competition to occur is not present in the motor carrier industry.

As far as the second requirement is concerned—that entry barriers must be high so that de novo entry is difficult—the nature of the trucking industry makes it clear that that is not true. The relative financial ease of entry into the industry means that there is little likelihood of permanent increases in concentration resulting from destructive competition. This also makes predatory pricing or cutthroat competition unlikely. Cutthroat competition only makes sense when driving out a competitor gives the surviving firm some degree of long-term monopoly power. This is simply not likely to happen in the motor carrier industry.

A concommitant part of the cutthroat competition argument is that once a trucker has driven out a competitor and established itself as a monopoly power, the surviving firm will be in a position to gouge shippers by charging rates high above the cost of providing service. This argument is a red herring because in a competitive trucking industry the concept of the "captive shipper" is simply inapplicable. Any carrier that tries to exact monopoly profits from a shipper would soon lose that shipper's business to a competitor. I want to emphasize, however, that the inapplicability of the captive shipper concept to the trucking

[18] *See* A. Popper, *supra*, at 33.

[19] Fixed costs are not significantly higher than 10 percent. See James C. Miller, III, "Economic Deregulation of Trucking" in *Report of the Advisory Panel to the National Commission for the Review of Antitrust Laws and Procedures* (1978), p. 7.

industry is very dependent upon the element of competition being present in the trucking industry. That is why artificial administrative barriers to entry and operating restrictions must be removed so that easy entry and rationalized operations by new carriers will be possible. Indeed, the concentration data presented by Senator Kennedy strongly suggest that the dominance of some markets by a relatively small number of carriers is the result of artificial restrictions on entry.

CONCLUSION

The costs in terms of energy and inflation associated with the inefficiencies of the regulated trucking industry are becoming greater each day. As I stated at the beginning of my testimony, we can no longer afford the luxury of a governmental system that imposes such costs. Passage of S. 1400 is a direct and positive action which the Congress can take to reduce trucking rates and inefficient fuel consumption. The elimination of collective rate-making is an integral and essential part of this overall effort, and is a key part of the Administration's Bill.

COLLECTIVE ACTIVITY BY SHIPPERS IS NOT EXEMPT FROM THE ANTITRUST LAWS: A RESPONSE OF THE DEPARTMENT OF JUSTICE TO "SHIPPER ANTITRUST LIABILITY IN A RATE-DEREGULATED MARKET; FUNDAMENTAL INQUIRIES AND ANALYSIS" BY PROFESSOR POPPER

(By Elliott M. Seiden, Chief, and Douglas C. Ross, Attorney, Transportation Section, Antitrust Division)

I. INTRODUCTION

In 1948, Congress enacted the Reed-Bulwinkle Act. 49 U.S.C. § 10706.[1] The Act gives motor common carriers the right to apply to the Interstate Commerce Commission for approval of agreements between two or more carriers relating to rates, allowances, classifications and divisions. If the Commission approves an agreement, the statute states that "the antitrust laws . . . do not apply to parties and other persons with respect to making or carrying out the agreement." 49 U.S.C. § 10706(b).[2]

As a result of the passage of the Reed-Bulwinkle Act, motor carrier associations (known as "rate bureaus") file agreements with the Commission and, pursuant to these agreements, act collectively to set rates. There is no question that without the antitrust immunity afforded these rate bureaus, such price-fixing would be per se illegal under section 1 of the Sherman Act. *United States* v. *Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940); *United States* v. *Joint Traffic Association*, 171 U.S. 505 (1898); *United States* v. *Trans-Missouri Freight Association*, 166 U.S. 290 (1897).

On September 4, 1979, Andrew Popper of American University's Washington College of Law, published an article in which he claimed that the Reed-Bulwinkle Act also confers upon shippers an immunity from the antitrust laws when they engage in certain collective activities. A. Popper, "Shipper Antitrust Liability in a Rate-Deregulated Market; Fundamental Inquiries and Analysis" (Sept. 4, 1979) (American University, Independent Faculty Research) (hereafter cited as "Popper").

Popper only briefly discusses the nature of the collective action which he asserts is immunized from antitrust attack. He assumes that "collective action involves a process of general agreement between shippers which range (sic) from commodity classification questions to projected pricing of direct transportation needs, as well as other common collectively resolved matters." He further states that he is describing "action where a group of shippers act in

---

[1] Until the recent recodification of the Interstate Commerce Act, the provisions of the Reed-Bulwinkle Act were contained in section 5a of the Interstate Commerce Act (codified as 49 U.S.C. § 5b). However, the Interstate Commerce Act was recodified on Oct. 17, 1978, Pub. L. No. 95–473 92 Stat. 1337) and all citations in this memorandum are to the new Act.

[2] Prior to the recodification of the Interstate Commerce Act, section 5a (9) of that Act stated: "Parties to any agreement approved by the Commission under this section and other persons are . . . hereby relieved of the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement * * *."

concert to achieve a desired end, either in communicating price demands to carriers or rate bureaus, or in communicating other service variables to the carriers or their representatives." Popper at 1–2.

The author argues that repeal of Reed-Bulwinkle would strip shippers of this antitrust immunity for their collective action, leaving them exposed to prosecution under the antitrust laws. The article concludes with the statement that "collective negotiation by associations . . . must stop" after repeal of the Reed-Bulwinkle Act. *Id.* at 33.

This memorandum first establishes that shippers do not presently enjoy antitrust immunity when acting collectively, as the Reed-Bulwinkle Act does not immunize their joint conduct. Repeal of Reed-Bulwinkle will therefore leave unaffected the legality of shipper collective action.

The second section of this memorandum emphasizes a more fundamental reason why repeal of Reed-Bulwinkle will not expose shippers to some "new" antitrust liability. If the Act is repealed, carriers will no longer be able legally to set rates jointly. Therefore shippers will no longer approach rate bureaus with rate demands and there will be no possibility of incurring antitrust sanctions.

II. ARGUMENT

A. Shippers do not today enjoy an exemption from the antitrust laws for actions taken collectively

Popper admits, at the outset of his discussion on immunity, that the Reed-Bulwinkle Act does not expressly immunize collective actions by shippers. He therefore concludes that if shippers are to enjoy antitrust immunity, such immunity must be implied. However, in arguing that an implied immunity exists, Popper confuses strands of the state action doctrine, developed in *Parker* v. *Brown*, 317 U.S. 341 (1943), with traditional judicial methods of implying an antitrust immunity from a regulatory statute. This section of the memorandum separates these strands and demonstrates that neither supports the claimed immunity. A fortiori, intertwining the two strands can only create confusion, not an implied antitrust exemption.

1. The *Parker* v. *Brown* "state action" doctrine, is irrelevant and cannot be used to support an implied exemption from the antitrust laws for collective shipper action.

After observing that if shipper antitrust immunity exists it must be implied, Popper claims that "[t]he traditional approach of the Supreme Court relating to implied immunity has focused on two 'non-explicit' immunities, both based on constitutional compulsion." Popper at 3. One of these is the "traditional immunity . . . embodied in *Parker* v. *Brown*, as modified in *Lafayette* [*Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389 (1978)] involving the state action doctrine." *Id.* at 4.[3] After describing the doctrine as one which immunizes "activity which has been the subject of *state* regulation", Popper correctly acknowledges that this doctrine cannot support the antitrust immunity he claims shippers enjoy. Nevertheless, on that same page Popper supports his claim of derivative antitrust immunity for shippers under Reed-Bulwinkle by citation to the state action cases: "These criteria are applicable assuming *Parker* v. *Brown* . . . as modified by *Lafayette* . . . in the state action area forms a valid parallel."[4] *Id.* at 4 n. 16.

There is no support in law or logic for this approach to an implicit immunity assertion. Popper has made no effort to explain why principles developed in the state action area might form a valid parallel for implying an immunity from the Reed-Bulwinkle Act. He instead has assumed that there is a parallel. This assumption is based on a thorough misunderstanding of the state action doctrine

---

[3] The other traditional immunity Popper describes is the *"Noerr* doctrine" which stems from *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight*, 365 U.S. 127 (1961). As Popper does not attempt to use this "doctrine" to support his claim of shipper immunity we do not know precisely what he had in mind. The *Noerr* doctrine holds that persons may act in concert to petition governmental agencies, without fear of antitrust exposure, even when the government action sought would be anticompetitive in effect, if adoped. For example, the *Noerr* doctrine would protect joint actions before the Congress or the Commission by ATA members or shippers seeking to preserve the right for motor carriers to fix prices. However, rate bureaus are not governmental bodies, and joint shipper activities with respect to rate bureaus have no colorable *Noerr* protection.

[4] The "criteria" Popper extrapolates from the state action cases for implying an immunity are "initial consideration of general competitive consequences and some form of continuing regulation."

and a curious lack of concern for the traditional judicial approach to implying an exemption from a regulatory statute.

The state action doctrine was developed in response to the demands of federalism. *Parker* at 351. It imposes limits on the extent to which the federal antitrust laws may impinge on acts required or authorized by state law. The issue Popper claims to be examining is whether a federal statute—the Reed-Bulwinkle Act—impliedly exempts shippers from federal antitrust law. The state action doctrine, rooted as it is in concerns of federal-state conflict, can have no relevance to "the reconciliation of two ostensibly conflicting enactments [here, the Reed-Bulwinkle Act and the Antitrust laws] of a single sovereign." Handler, Antitrust—1978, 78 Colum. L. Rev. 1363, 1378–79.

As this discussion indicates, Popper plainly cannot "assume" that criteria he has extrapolated from the state action cases may profitably be used to determine whether shippers enjoy an antitrust immunity. This issue may be resolved in only one way: by ascertaining the express or implied intent of the Congress when it enacted the Reed-Bulwinkle Act.[5]

2. Shipper antitrust immunity for collective action may not be implied from the Reed-Bulwinkle Act.

If there is merit to the claim that shippers are to be accorded immunity from the antitrust laws when acting collectively, the immunity must be derived from the Reed-Bulwinkle Act itself. The Act does not expressly grant this immunity, as Popper concedes. However, the Act does immunize carriers acting pursuant to approved agreements. Courts have frequently held that such specific exemptive provisions indicate that Congress did not intend further exemptions from the antitrust laws. *Carnation Co.* v. *Pacific Westbound Conference*, 383 U.S. 213, 217 (1966); *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 350 (1963); *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 357 (1963); *Georgia* v. *Pennsylvania Railroad Co.*, 324 U.S. 439, 456–57 (1945); *United States* v. *Borden Co.*, 308 U.S. 188, 198 (1939); *Marnell* v. *United Parcel Service of America, Inc.*, 260 F. Supp. 391, 399–400; 402 (N.D. Cal. 1966).

Therefore, a court will not imply an exemption for joint activity that Congress has not explicitly exempted, except where there exists a "plain repugnancy between the antitrust and regulatory provisions." *United States* v. *Philadelphia National Bank*, 374 U.S. at 351. *See also Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 682–683 (1975) (collecting cases). In such circumstances, the exemption will be implied "only if necessary to make the [regulatory] Act work, and even then only to the minimum extent necessary." *Silver* v. *New York Stock Exchange*, 373 U.S. at 357; *Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 691 (1975).

If these standards are applied to the issue here, an antitrust exemption may not be implied unless there is a "plan repugnancy" between the Reed-Bulwinkle Act and the antitrust laws as applied to shipper collective action. The exemption can be fashioned only if it is necessary to make the Reed-Bulwinkle Act work.

Popper contends that shipper immunity follows naturally from the statutory scheme:

It is safe to say that under the Reed-Bulwinkle Act, it is anticipated that shippers will have input into the rate establishment process to a significant degree to optimize the flow of information vital to the establishment of collectively produced rates. To have this input become a critical part of a statutory scheme and then to impose liability on shippers for such activity would be inconsistent with Congressional intent.

Popper at 4. The inconsistency Popper perceives simply does not exist. Undoubtedly, Congress expected that shippers would communicate their views on various rate proposals to carriers in the rate bureau setting. See H.R Rep. No. 1100, 80th Cong., 1st Sess. 12 (1947). Nowhere in the House Report accompanying the Act, however, is there any indication that Congress expected that shippers would negotiate collectively with the carriers and reach agreements on what rates they would pay. Of course, shippers may submit their views to rate bureaus

---

[5] Given the irrelevance of the state action doctrine, Popper's repeated references to *United States* v. *Southern Motor Carriers Rate Conference*, No. 76–1909 A (N.D. Ga. March 20, 1979) are similarly irrelevant. Proper at 4, 6–7, 8, 14, 20. At issue in that case was whether state regulation of the defendant rate bureaus immunized them from antitrust attack. The case therefore was one where the state action doctrine was legitimately an issue.

individually, or even collectively, if such activity does not include an agreement by individual shippers not to seek different rates for their own account. The Sherman Act bars collective action only if it is in restraint of trade, and such "lobbying" by shippers has no apparent restraining effect on trade. However, it is not necessary to the proper functioning of the regulatory scheme for shippers to band together and agree on rates to be paid to the carriers.

Indeed, such agreements would actually be repugnant to a regulatory system that reserves to individual carriers the right to take independent action. If shippers were to agree not to seek independent action, such an agreement would clearly frustrate that aspect of the regulatory system. An exemption for such collective activity would certainly violate the teaching of Silver that an exemption will be implied "only if necessary to make the [regulatory] Act work, and even then only to the minimum extent necessary." Silver at 357.

As the foregoing suggests, Popper's definition of shipper collective action covers a great deal of activity. Much of this activity may not violate the antitrust laws. However, it is not the primary purpose of this memorandum to consider when particular concerted acts by shippers are, or are not, proscribed by the antitrust laws. Rather, the fundamental point of this memorandum is to demonstrate only that the antitrust laws do cover shippers' collective activities right now and that shippers must therefore take account of the possible antitrust consequences of their joint activities.[6]

B. After repeal of the Reed-Bulwinkle Act, collective rate-setting by carriers will cease. Consequently, shippers are in no danger of being exposed to some 'new' antitrust liability for collective rate negotiation

Popper argues that the Reed-Bulwinkle Act provides an implicit antitrust exemption for shippers acting collectively to communicate rate and service demands to rate bureaus. He then claims that repeal of Reed-Bulwinkle will somehow harm shippers by stripping them of this purported immunity. However, he does not explain of what value to shippers this immunity could possibly be after repeal of the Reed-Bulwingkle Act.

Should the Act be repealed, carriers will no longer be able legally to gather in rate bureaus and collectively set rates. As there will no longer be a forum for collective rate negotiation, it will be impossible for groups of shippers to join together and communicate price demands to groups of carriers. Consequently, even if it is assumed that there exists an antitrust exemption for collective shipper action in rate bureau negotiation, the immunity will be of no use after rate bureaus stop fixing rates. Repeal of the Reed-Bulwinkle Act cannot expose shippers to antitrust liability for rate negotiations that will not take place.

CONCLUSION

Shippers need not fear that repeal of the Reed-Bulwinkle Act will cause them to be exposed to the threat of antitrust prosecution. Shippers do not presently enjoy an exemption from the antitrust laws for their joint activities. Repeal of the Reed-Bulwinkle Act thus cannot affect the interplay of the antitrust laws and shipper activities. Moreover, after repeal of the Act, carriers will no longer be permitted to fix rates collectively. Therefore, an immunity which would allow shippers to collectively negotiate rates with rate bureau members would prove to be of little use: such rate negotiations will no longer occur.

[The following information was subsequently received for the record:]

[6] Section VII of Popper's article deals with the legality of the exchange of information among shippers. Popper at 22–30. The inclusion of this section in the article is indeed curious. Apparently Popper believes antitrust norms do not today apply to such exchanges of information. Such a conclusion cannot possibly be supported, even if it is assumed arguendo that Reed-Bulwinkle does immunize collective shipper activity. The reason is clear: if Reed-Bulwinkle somehow provides an immunity, it can do so only for shipper participation in a rate bureau setting. The Act cannot possibly reach activities of shipper associations in exchanging information, as these activities are unrelated to the focus of the Reed-Bulwinkle Act which is collective rate-setting by carriers.

DECEMBER 10, 1979.

Mr. JOHN SHENEFIELD,
Acting Associate Attorney General, U.S. Department of Justice,
Washington, D.C.

DEAR MR. SHENEFIELD: For the purposes of completing the record of the hearing in Reno, Nevada, before the Senate Commerce Committee, I am requesting a written response to questions which, because of time limitations, I was not able to ask:

Questions:

1. Carriers argue that there will only be combination rates, not joint rates for through routes, if we eliminate the antitrust immunity. You seem to suggest this on p. 11 of your statement, where you talk about "local rates." Are the carriers correct?

2. (a) How is the present classification system "anticompetitive?" (p. 13)
(b) How is it needlessly complex?"

3. On page 9 of your statement, you say that there is antitrust liability if shippers "act in concert and establish the prices they will pay for transportation services." But shippers don't establish the rate, do they? The carriers do.

4. Why shouldn't we allow the carriers to continue to run their classification bureaus? Why can't they themselves hire the "professionals" that are needed? Why must we insist that classification be done wholly independently of the carriers?

5. If Congress decides not to eliminate antitrust immunity completely, but merely curtails it somewhat, would shippers need any antitrust immunity of their own to continue to deal with them?

I would appreciate a response at your earliest convience. Thank you for your attention to this matter.

Sincerely,

EDWARD M. KENNEDY.

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL ANTITRUST DIVISION,
Washington, D.C., January 23, 1980.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This will respond to your letter of December 10, 1979, to Acting Associate Attorney General Shenefield requesting a written response from the Department to questions, which, because of time limitations, you were unable to ask Mr. Shenefield at the hearings in Reno on the Trucking Competition and Safety Act of 1979.

As you know, the enactment of motor carrier regulatory reform legislation is a high legislative priority of the Administration and the Antitrust Division of the Department of Justice as well. On January 14, 1980, I began discharging my responsibilities as head of the Antitrust Division, and I wish to assure you that I, no less than my predecessors, assign the highest importance to the passage of the Trucking Competition and Safety Act of 1979.

Because of my own close interest in the passage of this legislation, I recommended to Mr. Shenefield that I use the occasion of our response to your December 10, 1979, letter to reiterate the Division's strong support for this legislation. Perhaps more importantly, I wish to express my personal and considered support for the Antitrust Division's analysis of long standing, that certain desirable practices that are utilized routinely by thousands of motor carriers throughout the motor carrier industry, such as interlining conducted pursuant to joint-line rates, would not be placed in jeopardy by the removal of antitrust immunity as proposed in this legislation.

Notwithstanding our efforts to reassure carriers that joint rates for through routes are not proscribed by the antitrust laws, you correctly point out in the first question directed to the Department in your letter that:

Carriers argue that there will only be combination rates, not joint rates for through routes, if we eliminate the antitrust immunity.

The carriers are just as incorrect in this argument in 1980 as they were in 1948 when the same argument was used to persuade the Congress to enact the Reed-

Bulwinkle Act in the first place. Because there have been so many claims and counterclaims concerning the applicability of the Sherman Act to joint motor carrier activities, I will address this issue in some detail.

As I understand it, "combination" rates for interline movements consist of the sum of the local rates of the individual carriers participating in the interline move. under the present regulatory regime, adding up the sum of local rates to derive a combination rate would often result in a total through rate that would be higher than a single-line rate for a comparable through movement. Therefore, interlining carriers who wish to participate substantially in the through traffic market charge a "joint" line rate that is equal to a comparable single-line rate, and therefore lower than a combination rate would be. Obviously, if joint-line rates are prohibited under the antitrust laws, the total rate charged to shippers wishing to utilize the interline services of two or more carriers might go up. Of course, in the competitive environment envisioned by the Trucking Competition and Safety Act of 1979, all rates—including local rates—should tend toward the actual cost of the interline movement, as Mr. Shenefield pointed out at page 11 of his statement. Therefore, under the Act, combination rates should often be no higher than the true cost of providing them, and one would not expect that motor carriers would wish to negotiate lower joint-line rates if they failed to cover the actual costs of providing the service.

Nevertheless, for the sake of argument, let us assume that even with the enactment of the Trucking Competition and Safety Act, joint-line rates that covered cost would be lower than comparable combination rates. The question that presents itself is whether such obviously desirable and, I might add, often procompetitive activity is somehow proscribed by the antitrust laws. I wish to assure you that it is not.

First, the vast majority of interline operations present no antitrust issue of any kind. There is simply no credible argument that carriers who interline freight in contiguous markets and who are not themselves direct competitors over the through route would, by virtue of the interline arrangement alone, be engaged in price fixing prohibited by the Sherman Act.

One situation in which the Antitrust Division might have some concern would entail competing single-line carriers wishing to provide interline service in the single-line market. There, collectively setting the actual rate to be charged for the joint-line rate could serve as a facilitation device for fixing the prices of the carriers' single-line rates. This would not necessarily be the case. Merely establishing the interline arrangement as a supplement to competing single-line services, and agreeing on an appropriate division of its revenues, would not be viewed as price fixing, absent any agreement regarding competing single-line rates. With the advice of counsel and the assistance of the Division through its Business Review Procedure, 28 C.F.R. § 50.6, carriers can surely adopt procedures for interlining that will not result in price-fixing agreements. Other American industries manage to pursue their businesses without violating the antitrust laws; we should expect no less of the trucking industry.

The interline/joint rate issue is simply not an issue that inevitably presents complicated antitrust questions. Claims that this desirable activity is always impermissible under the antitrust laws may be good politics, but such claims rest on faulty antitrust analysis.

The Department's answers to the other questions presented in your letter to Mr. Shenefield are contained in the attachment to this letter. I appreciate this opportunity to comment on these important issues and I would be pleased to provide such further comment as you, Senator Cannon or the Commerce Cmmittee feel appropriate or desirable.

Sincerely yours,

SANFORD M. LITVACK,
Special Assistant to the Attorney General.

Attachment.

Question 2. (a) How is the present classification system "anticompetitive?" (b) How is it "needlessly complex?"

Answer. In order to describe how the present classification system is anticompetitive and needlessly complex, it is necessary, first, to review how the current classification system is established and enforced.

The National Motor Freight Classification system is developed, policed, and maintained by the National Motor Freight Traffic Association (NMFTA), the most powerful group of carriers with antitrust immunity. It is the largest rate bureau, with 3,535 interstate members and 3,804 intrastate members, and it fixes the classifications which form the basis of collective ratemaking in other bureaus.

That is, when a shipper tenders a particular commodity to a rate bureau carrier for transportation at a class rate, the carrier first consults the NMFTA tariff book to identify what class the commodity belongs in—it might be class 100, 150, 200 etc., and then the motor carrier looks up in its regional rate bureau tariff book the actual rate for the shipment, based on the rate bureau's mileage formula and the NMFTA's class. Therefore, the NMFTA does not fix the rates themselves; rather, NMFTA establishes for all member carriers—by agreement—a crucial first step in the fixing of the ultimate rates.

Through a complex internal bureaucracy, NMFTA effectively enforces adherence to the rate bureau cartel system, and, thereby influences all aspects of motor carrier transportation—the format of tariffs, the rules carriers apply when handling shipments, and the rates themselves.[1] (The workings of this internal bureaucracy are described in more detail at p. 5, infra.)

The NMFTA establishes motor freight classifications by assigning relative values to the following factors for each of hundreds of thousands of individual commodities:

1. Shipping weight per cubic feet (density).
2. Liability to damage.
3. Liability to damage other commodities with which it is transported.
4. Perishability.
5. Liability to spontaneous combustion or explosion.
6. Susceptibility to theft.
7. Value per pound in comparison with other articles.
8. Ease or difficulty in loading or unloading.
9. Stowability.
10. Excessive weight.
11. Excessive length.
12. Care or attention necessary in loading and transportation.
13. Trade conditions.
14. Value of service.
15. Competition with other commodities transported.[2]

As can be seen, the factors above take into account, in addition to some valid shipping characteristics such as weight and density, elements that are wholly unrelated to transportation, such as trade conditions, value of service, and competition with other commodities.

All of the above factors are quantified regardless of the subjective considerations and arbitrary judgments involved in attempting such measurements. The result is an arbitrary and fragmented system of 23 class groupings for hundreds of thousands of commodities, affecting approximately 200 million shipments per year.[3] Over the years, it has placed "welded steel" pipe or tubing in one class and "iron or steel" pipe or tubing in another;[4] it has placed cotton and nylon hosiery in different classes.[5] It has given rise to disputes concerning whether or not "split wire protectors" should be classified as pipe or as plastic

---

[1] See *Answer of the U.S. Department of Justice to the National Motor Freight Classification—Agreement Section 5a Application No. 61* in Ex Parte 297 (Sub-No. 4), filed before the Interstate Commerce Commission, November 8, 1978 [hereinafter NMFTA Answer].

[2] This list of factors was identified by the Interstate Commerce Commission as the commodity characteristics generally followed in fixing classification ratings. See Motor Carrier Rates in New England, 47 M.C.C. 657, 660–61 (1948); see also Opening Statement of Facts and Argument, National Motor Freight Classification Agreement Section 5a Application No. 61, Ex Parte No. 297 (Sub-No. 4) filed before the Interstate Commerce Commission, September 18, 1978 (Verified Statement of Frank T. Grice at 8–9).

[3] Opening Statement of Facts and Argument, NMFTA, Vol. I (Verified Statement of James C. Harkins at 17).

[4] National Classification Board, Docket No. 753 (April 1975).

[5] Hearings on Regulation of Carriers Subject to the Interstate Commerce Act before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation, 94th Cong., 2d Sess., Statement of John W. Snow, Administrator, Federal Highway Traffic Safety Administrationfi, Sept. 14, 1976, p. 48.

tubing,[6] or whether disposable paper examination gowns and drape sheets are "clothing" or "paper articles."[7]

As mentioned previously, this system of commodity groupings—if you could call it a system—is then used by the other rate bureaus as the basis upon which class rates are fixed: the higher the class, the higher the ultimate rate. Further, in addition to class rates, the classifications voted on by NMFTA members also play an important role in determining all other types of rates. Commodity column[8] and point-to-point commodity rates[9] all rely on the commodity descriptions set out in the National Classification system. This is why every action taken by NMFTA affects the rates shippers pay, regradless of the tariff used or the type of rate which applies to a shipper's particular shipment.[10]

In fact, as is made clear from the statement reproduced at pp. 6–7 infra, shippers today often attempt to obtain lower rates, not by asking the carrier for a direct dollar reduction in the rate, but rather by asking NMFTA for a reclassification of the commodity shipped.

In order to promote adherence to the National Classification system, the NMFTA has established various internal organizations to act on proposals for changes in the system. For example, the National Classification Board (NCB), a group of three to seven employees hired by and responsible to the 7,000 member carriers of NMFTA has the final say on the disposition of proposed changes to the classification system, and the National Classification Committee (NCC), a quasi-judicial group of 100 carriers within the NMFTA, collectively votes on proposals on appeal from the National Classification Board.

The following account of one shipper's experience before the National Classification Board is taken from testimony given before the Senate Subcommittee on Antitrust and Monopoly and is a vivid example of the role played by NMFTA in preventing changes in commodity classifications and, ultimately, rates:

In the latter part of 1970, we had our first experience with the National Classification Board. We learned of a proposal before the NCB which would have changed the method of tariff and rate setting on our products to a density basis, and in effect disrupt our marketing efforts in moving into national distribution. By combining a sales trip with the NCB meeting, we could justify my appearance before the NCB. With our inexperience in these matters, I thought the National Classification Board was some form of governmental or quasi-governmental agency. So it was with some surprise upon arriving at the address of the National Classification Board to find it was in the building of the American Trucking Association[s]. There I appeared before a rather imposing group of gentlemen and a battery of recorders. Again, here we were, one company facing the motor carrier industry, who acted as both judge and jury. This was just the first of a series of trips to the NCB in an endeavor to obtain a fair method of rating our products during the period of 1970 through 1974.

In 1971, we received a letter from the Southern Motor Carriers Rate Conference which alleged we were mis-describing our product and referencing a 1971 letter from the National Classification Board to back up their opinion. In simple terms, the SMCRC claimed our products were "apples" when they were without a question "oranges"! We were shocked and stood in disbelief at the Southern Motor Carriers Rate Conference's and National Classification Board's opinions * * *

* * * * * * *

Five years later, this witness was still in litigation.

---

[6] Roadway Express, Inc., Petition for Declaratory Order Classification Description, Interstate Commerce Commission, No. 36253, (decided April 29, 1977).

[7] *Paper Products, Inc.* v. *Garnett Freight Lines, Inc., et al.*, 351 ICC 309 (1975). Other examples of virtually identical commodities arbitrarily placed in different classifications are: (1) Wooden wheels for horse drawn passenger vehicles as opposed to wooden wheels for horse drawn freight vehicles; (2) finished hockey sticks as opposed to unfinished hockey sticks; and (3) reconditioned bowling pins as opposed to unreconditioned bowling pins. Source: 1977 National Motor Freight Classification, ICC Tariff 100–D. These differences obviously reflect value of service pricing, not real differences in the cost of transporting the commodities.

[8] A commodity column rate is usually lower than a class rate. It is based on classification and mileage but generally applies a lower rate on certain commodities, frequently in a limited geographic area.

[9] A point-to-point commodity rate is a low rate given on particular items between two named points. The description of the commodity is almost always the same description given to it by NMFTA.

[10] See, generally NMFTA Answer, supra.

* * * * * * *

In 1972, we asked for and obtained an informal meeting with the National Classification Board to demonstrate to them the incorrectness of their opinion which was being relied upon by the SMCRC. By this time, we had hired a freight consultant, and in spite of our efforts at the informal meeting, the NCB stood steadfast to their opinion on our product's classification.

From 1972 into 1976, a series of freight claims and lawsuits were directed at our Company. We estimated our potential liability at close to half a million dollars! It would probably be difficult for you to imagine the utter frustration we experienced at knowing our position was correct, but facing us at every turn were adverse opinions from the cumulated weight of the motor carrier industry, and the most fearful prospect was that should the claims and lawsuits prevail, our Company could be placed in financial jeopardy.

Oversight of Freight Rate Competition in the Motor Carrier Industry: Hearings on Competition in the Trucking Industry Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on Judiciary, 95th Cong., 1st and 2nd Sess., Statement of Richard G. Lewis, Oct. 28, 1977, Vol. I pp. 100–101.

With this description of the present classification system in mind, I will now address specifically your questions asking how this system is anticompetitive and needlessly complex.

(a) The system described above is anticompetitive in several respects. First, there is an underlying agreement of the carrier members to adhere to this particular classification system and not to deviate from it. This means that individual carrier/shipper negotiations concerning classifications, and, ultimately rates, are discouraged. To be sure, individual carriers can take independent actions and establish their own classifications for particular commodities, and some undoubtably do, but this does not occur on a widespread basis, any more than independent actions occur on a widespread basis for the rates themselves, because such unilateral activity would ultimately break down the cartel rate structure—and the carriers have a collective interest in not permitting this to happen. And as the testimony excerpted above shows, the internal NMFTA bureaucracy presents a formidable obstacle to any industrywide change in a classification.

Second, the present classification system feeds directly into the other rate bureaus that collectively fix class rates. Without an agreement on classifications of commodities, attempts to fix class rate levels would be difficult if not impossible, because the carriers would not have a common frame of reference. Thus, an agreement on a classification system is a mechanism which supports and enforces the collective establishment of the actual rates charged by the motor carriers.

Third, as mentioned previously, at least three of the criteria used to classify commodities have nothing at all to do with transportation characteristics but rather bear exclusively on competitive circumstances among carriers. These are "trade conditions," "value of service," and "competition with other commodities transported." Obviously, any system that allows horizontal competitors to place a commodity in a particular classification based on trade conditions, value of service pricing or the extent to which the classification promotes or discourages competition with other commodities, is a system that is inherently anticompetitive.

Finally, certain discrete transportation elements, such as liability for loss and damage and unloading or loading, are also included in the list of factors taken into account by NMFTA. Thus, the present system discourages carriers and shippers from freely negotiating the responsibility for and/or cost of these discrete shipping elements separately and apart from other elements of the total transportation service. Therefore, the present classification system has, for example, discouraged the emergence of "released rates"[11] thereby depriving shippers and carriers of an important price/quality option.

(b) Any system that weighs fifteen factors to determine within which of 23 separate class ratings any one of hundreds of thousands of commodities will be placed is terribly complex. The system is complicated further by the bureaucracy established by NMFTA to police and enforce the system. Thus, in addition to the

[11] Released rates are rates that impose limited or no liability on the carrier for lost or damaged freight. The shipper is responsible for insuring himself against such hazards, and pays a correspondingly lower rate to the carrier.

complexity connected with finding the "appropriate" class for any given commodity, NMFTA has erected elaborate administrative barriers to forestall and prevent changes and adjustments sought by either carriers or shippers.

This elaborate system is needlessly complex when the alternatives are considered. We believe that a simple classification system, based on weight and density together with the implementation of released rates, is a feasible alternative to the current system. Under such a system there would be no underlying agreement not to deviate from the system and carriers would be free to adopt the new system in whole or in part, or to modify it in any way. Also, a carrier could freely refuse to participate in any system and simply devise its own. This alternative is discussed further in the answer to question No. 4.

Question 3. On page 19 of your statement, you say that there is antitrust liability if shippers "act in concert and establish the prices they will pay for transportation services." But shippers do not establish the rates, do they? The carriers do.

Answer. It is true that motor carriers establish the rates they will charge to shippers for the services they provide. However, shippers decide what type of transportation services to utilize and how much they are willing to pay for those transportation services. For example, a shipper may have available to him for a particular shipment the following transportation options:

1. Rate bureau motor common carriers;
2. Non-rate bureau motor common carriers;
3. Air cargo carriers;
5. Railroad carriers;
5. Barge-line carriers;
6. Private carriage; and
7. Freight forwarders and other spcialized carriers such as UPS, Federal Express, Bus Package Express and others.

Moreover, a particular shipper may have available to him several carriers within each of these modes (except perhaps private carriage) capable of providing the desired service. Therefore, it is obvious that individual shippers have the capacity and the incentive to shop around to determine which carrier and transportation mode offers the best price/quality option. In this way, individual shippers compete with each other to reduce transportation costs and thereby charge lower prices to their customers.

If, however, a group of competing shippers agreed not to compete for cheaper transportation services against each other, if they agreed that all would pay the same charges for transportation, an important element of competition among shippers would have been eliminated. It is clear that such concerned shipper activity would be a per se violation of the Sherman Act. *See Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219 (1948). It was this type of concerted activity that Mr. Shenefield had in mind when he stated at page 19 of his statement that there is antitrust liability if shippers "act in concert and establish the prices they will pay for transportation services." As that testimony made clear, and as was further elaborated in the staff analysis which was attached to the statement, shippers who engage in this type of activity today are fully subject to prosecution under the antitrust laws. In my judgment, there is simply no respectable argument that can be made that this type of joint activity is somehow immune from the ordinary operation of the antitrust laws.

Question 4. Why shouldn't we allow the carriers to continue to run their classification bureaus? Why can't they themselves hire the "profesionals" that are needed? Why must we insist that classification be done wholly independently of the carriers?

Answer. It is possible that carriers could continue to establish classifications and not violate the antitrust laws; the establishment of classifications need not constitute a violation of the antitrust laws if it is devised and administered in a manner that does not unreasonably interfere with the unilateral pricing decisions of particular carriers. Such interference would occur if, for example, the carriers were to continue in effect the present classification system, with all fifteen criteria for establishing classifications, some of which are obviously designed and intended to interfere with competitive relationships among carriers. See discussion at p. 8, supra. In addition, such interference could occur if the carriers who participated in any classification effort agreed not to deviate from it. These and other anticompetitive effects of certain types of joint classification activities can be avoided by the active involvement of antitrust counsel. They can

also be avoided if outside experts do the work, and individual carriers utilize their formulae as they deem appropriate. Thus, in suggesting that outside professionals could do the classification work, we do not mean to suggest that under no circumstances could the carriers themselves do this work. Under appropriate circumstances, they could.

Finally, carriers can always establish their own classification system unilaterally with no fear of antitrust exposure of any kind. In the air cargo industry for example, each carrier establishes and publishes its own classification rate book based on weight and distance. Unlike the trucking industry, the weights ascribed to various shipping and demand-sensitive characteristics are determined individually by each air carrier and not through collective action.

Question 5. If Congress decides not to eliminate antitrust immunity completely, but merely curtails it somewhat, would shippers need any antitrust immunity of their own to continue to deal with them?

Answer. As discussed in the statement delivered at Reno, shippers do not need antitrust immunity to engage in legitimate lobbying activities before the rate bureaus.

The CHAIRMAN. Thank you very much.

Chairman O'Neal, having read the ICC testimony, I think I have a better idea why you didn't seek reappointment as Chairman of the Commission.

Why don't you just give the committee your own personal views as to how you believe the trucking industry would operate if the antitrust immunity were eliminated, what functions of the rate bureaus would be eliminated, continued, or modified, and by whom?

Mr. O'NEAL. If you're talking about a total elimination of the exemption, it seems to me that what would be affected are the joint rate arrangements between the various carriers. I believe that is the area for potential adverse impact on the transportation industry and on those who rely upon the transportation system.

The reason is that, if there is no capacity for small carriers to enter into joint rates, then they will have a difficult time obtaining much traffic in many instances.

Now, the Justice Department has said that the antitrust laws do not prohibit joint line arrangements between carriers dealing with each other bilaterally. The problem that you have in the trucking industry is that interline joint rate arrangements are extensive and they are very complex. If you eliminate the capacity for several small carriers to sit down and work out joint rates with one larger carrier, there is a possibility that some of those small carriers are going to end up without any capacity for picking up business, at least the through-route business. And I think the result could be a severe impact on some very small carriers, and a loss in the numbers of truckers, and possibly a diminution of competition.

The CHAIRMAN. The tone of your statement today seems to differ somewhat from the statement you gave before the committee last March.

Would you explain: Does the Commission have a different view at this time?

Mr. O'NEAL. Well, I think the change is one of tone rather than of direction. I think the majority of the Commission today is concerned about whether any of the questions have yet been answered. For example, do we really know enough about the impact of deregulation on small communities and on small carriers, so that we can give this committee the kinds of answers that it would like to have before going forward with legislation?

I think that the majority still feels that the Commission and the Congress should set as a goal a transportation system that serves the Nation, and look at the tools that are available to reach that goal, and determine what the best mix of those tools are. In some cases, it may mean regulatory tools, regulatory measures. In other cases, it may mean less regulation and greater reliance on the marketplace. I think we've been struggling to try to find the proper mix, and I think that is the approach the Commission today recommends that the committee try to work with.

The CHAIRMAN. Mr. Shenefield, if Congress did repeal the Reed-Bulwinkle Act, how would you suggest we make it as clear as possible as to what is considered a violation of the antitrust laws? Would the Justice Department issue regulations or would you recommend statutory language for the Congress to consider, or just what?

You see, there's quite a gray area there and Chairman O'Neal has pointed up the problem. If you've got a small shipper, how does he know he can talk to another shipper without being in violation?

Mr. SHENEFIELD. Senator Cannon, we, of course, have tried to do whatever would seem appropriate, from issuing guidelines to even suggesting language.

But I would suggest that the gray area, that there's less to that gray area than meets the eye and that competent antitrust counsel can tell with rather special precision what is legal and what is illegal, depending on what language you choose for the legislation.

Take the point that Chairman O'Neal makes about joint rate regulation and arrangements. It's said in a general sort of way that those are present difficult antitrust problems, but if we peel away each part of the problem like the skin of an onion, I think it's a lot simpler than it looks.

First, if you have two carriers that don't compete with one another at all, negotiation between them should be appropriate and legal. So that's one whole category you set to one side.

If you take a situation in which one company owns, has the right to the entire through rate, signing the rate all the way through from one segment A to B and B to C and the second party has the right to use the B to C route, even there it's not likely that there's an antitrust problem, because, as a matter of economic certainty, I think the firm that has the A to C route will control the price as a matter of economics.

So any kind of discussions are unlikely to be able to effect that result.

Then the third category is where both parties have entirely separate routes, signing the writs all the way through. There is the situation where there may be an antitrust problem. But if certain clear guidelines are observed, just as are observed in other industrial contexts, there shouldn't be a problem.

Let me give you an example. If instead of proceeding to negotiate for joint agreements initially, the carriers start off by setting their own single rates and then come to the discussion of the joint rates with their single rates already set, it's difficult to see, in most cases, why there should be an antitrust problem.

And then finally, and this is a point that overarches this entire discussion, if this kind of legislation is passed and route restrictions are

repealed and avoided, it's very unlikely that the need to interline to the same extent will exist, because much interlining depends upon the need to get some kind of certification or permit that they can't now obtain from the ICC.

The CHAIRMAN. Well now, I want to be absolutely clear on one point that you make. Am I correct in understanding you to say that the concept generally known as convenience interlining would be considered a violation of the antitrust laws unless Congress provides some immunity in the legislation?

Mr. SHENEFIELD. No; that is not what I'm saying.

What I'm trying to say is that in most situations of the kind that we've been talking about, in fact, there is unlikely to be an antitrust problem without any express immunity whatever.

The CHAIRMAN. So you don't feel that convenience interlining poses any problem?

Mr. SHENEFIELD. Well, the term convenience interlining, you may have to flesh it out a little bit.

The CHAIRMAN. That's where carriers that have the authority to compete choose to interline with each other.

Mr. SHENEFIELD. That's correct.

My point was that to the extent that they already have some kind of single rate in existence unilaterally decided upon, unilaterally announced, discussions between those two parties as to a joint rate would be unlikely to, may very well be unlikely to produce antitrust difficulty, so that no immunity should be required.

But what is required, of course, is a close attention by competent antitrust counsel to the way those discussions proceed, careful attention to the do's and don'ts, just like in any other industrial context.

The CHAIRMAN. In your prepared statement you contend that one of the main evils of collective ratemaking is that when combined with entry restrictions, monopolies can be encouraged. But doesn't this presume entry barriers that don't exist to a great extent today and could be liberalized in legislation?

In other words, isn't the potentially harmful effect of collective ratemaking significantly reduced by the greater entry freedom?

Mr. SHENEFIELD. If that were the case, you'd be correct, but I have two problems with that formulation.

One is that to the extent independent action is impossible or difficult for a variety of reasons, then there is a unified front, if you will, as the result of rate bureau determination.

And second, to the extent current regulation makes it difficult to enter, there are barriers to entry. They may not be of the conventional economic kind, but they are just as real, nevertheless.

The CHAIRMAN. Chairman O'Neal, would you like to comment on that question?

Mr. O'NEAL. Well, if the question is whether easier entry has an impact on the effect of collective ratemaking, then I would say that's true. In other words, the easier it is for a carrier to enter the business, and assuming the carrier has the right of independent action, then collective ratemaking has less impact on competition.

However, I would not go as far as to say that because of easier entry, we ought to retain the same kind of collective ratemaking we have

today. I think the Commission's review of this subject indicates that there ought to be some significant adjustments.

The CHAIRMAN. In Mr. Shenefield's statement he commented on the fact that in many instances the common carrier obligation was a myth.

Do you agree with that? Would you comment on it?

Mr. O'NEAL. Well, I have a problem with the argument that because the Commission has not revoked any certificates, the common carrier obligation is a myth. It is true the Commission has not revoked certificates for not fulfilling a common carrier obligation. The reason for that is this amounts to capital punishment, and obviously, the agency is very reluctant to take such an action. However, the Commission does respond to many complaints every year. We contact the motor carriers that are complained about, and insure that they respond to the complaints and provide the service.

Now, I think much more has to be done in order to make sure that the common carrier obligation is effectively enforced. While I think some strides have been taken and that we're more effective than we once were, nevertheless, I think it's true that the enforcement is not as pervasive and as effective as it ought to be.

Mr. SHENEFIELD. But Chairman O'Neal, can't we really say, as a matter of historical record, that the extent to which a carrier serves small towns is probably based on their own assessment of their own balance sheet and rather less so on the extent which the ICC is likely to appear on the scene?

Mr. O'NEAL. I think for the most part carriers serve small towns because they make money at it. However, when we get complaints that shippers are not receiving service, we definitely follow up on them and make sure that the carrier that has responsibility for providing the service is doing so.

Senator KENNEDY. Thank you very much.

I want to just, at the outset, commend Mr. O'Neal for the work that he has done in the areas of this whole subject matter, public policy point of view.

He assumed the chairmanship of the Commission at a difficult time and a time when the country was giving attention to development of the various policy alternatives. And I want to express appreciation for the leadership that was provided and also to express the same to Mr. Shenefield on this question.

I think it's been enormously helpful to have the refined thinking of Mr. Shenefield in the Department on many of the qeustions which we've heard them testify on this morning.

I just want to mention the—in the testimony, the formal testimony of Mr. O'Neal—the points that were raised on the antitrust immunity, which I think is extremely encouraging, where you point out that the Commission is also giving serious consideration that antitrust immunity may not be necessary at all, and then continues on the general rate increase as a poor mechanism for setting rates.

And then the point you mention on the cross-subsidy, which is a point that has been raised in defense of the continuation of the current rate system in which I think your testimony is helpful. I think we found similar situations in the airlines.

I just would like to get a response from Mr. Shenefield. In his opening comments and summary comments he mentioned three important factors. One is the burden that the current system places on the economy of the United States from an inflationary point of view; two, the burden that it places on our energy policy from wasteful and inefficient use of energy; and three, the whole mass of regulations which has been a burden to the private sector.

I thought that was an excellent summary. Just specifically, Mr. Shenefield, on the area of inflation, what can you tell us about your own conclusions and the conclusions, perhaps, within the administration as to the addititional cost to the American consumers with the burden of regulation? Because obviously, what we're talking about in this situation is the transportation of furniture, which is necessary in any home. We're talking about the transportation of various food products, which are consumed by the American consumer housewife and working family. We're talking about every aspect of products virtually that are essential to the American consumer, the prices of which increase with price fixing.

And I'm just interested in your own assessment as to what you think this means in terms of the battle against inflation.

Mr. SHENEFIELD. I think—though the effects are perhaps less visible in the household, in the pocketbook, in the wallet of each person than perhaps other effects of inflation—that in three very important ways, that there's a proper inflationary effect.

The first is to the extent that rates are held up higher than they would otherwise be. That clearly has had an immediate inflationary effect.

Two, to the extent that shipper-carriers can pass on costs without looking carefully, without trying through better management and innovative thinking to adjust to new costs, to that extent there is an almost automatic scaling up of inflation.

And three, and Chairman O'Neal knows these numbers better than I do, there are large amounts of money spent in implementing this whole system of regulation. Hundreds of people doing this, hundreds of people doing that. Altogether, a couple thousand at the ICC, something along those lines.

Now, the effects have been variously estimated, as you well know, from the tens of millions to the hundreds of millions of dollars a year in the inflationary spiral. It seems to me the kind of thing that could so easily be dealt with by one or two simple steps, that the public really cries out for direction, attention to this kind of problem.

Senator KENNEDY. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here with us. Your statements will be made a part of the record in full.

Mr. SHENEFIELD. Thank you.

The CHAIRMAN. Next we have a panel made up of Mr. Eugene Crew, Broad, Khourie & Schulz; Mr. Bryce Rea, counsel, Motor Common Carrier Associations; Mr. William Q. Keenan, law offices of Arsham & Keenan.

All right, gentlemen, let me remind you that the statements will be made a part of the record in full and in the interest of conserving time,

we'd ask that you try to summarize in about 5 minutes, so we'll have some time for questions.

Mr. Crew, you may lead off.

STATEMENTS OF EUGENE CREW, ATTORNEY, BROAD, KHOURIE & SCHULZ; BRYCE REA, JR., COUNSEL, MOTOR COMMON CARRIER ASSOCIATIONS; AND WILLIAM Q. KEENAN, ATTORNEY, ARSHAM & KEENAN

Mr. CREW. Thank you, Senator.

Mr. Chairman and members of this committee, my name is Eugene Crew and I am a practicing attorney and a member of the law firm of Broad, Khourie & Schulz in San Francisco. I am grateful for this opportunity to appear before you to express my views regarding these issues, particularly the issue of repeal of the Reed-Bulwinkle Act.

For the past 15 years my partners and I have prosecuted numerous Federal antitrust cases involving almost every aspect of transportation. All of those cases, all of them, involved abuses of the very regulatory system which is now being looked at by you. Without exception, all of those cases involved a claim of antitrust immunity by the defendant.

I won't take your time to enumerate those cases. They are in my prepared statement and they are several. All of those cases involve sham protests which defendants had prosecuted before the agencies to obstruct market entry. Some of those cases also involve rate fixing for the purpose of destroying competition and in which the defendants had invariably claimed protection under section 5A of the Interstate Commerce Act.

Now, based upon this litigation experience, Senators, I must conclude that repeal of the antitrust immunity for the motor carrier industry is essential for the public interest, and I submit to you that the best way to determine whether the Reed-Bulwinkle Act has functioned in accordance with the public interest is to take a look at what goes on behind the closed doors of those rate bureaus.

These past 15 years of antitrust litigation within the antitrust industry has provided me with that look.

Now, Senators, just recently I saw where the chairman of the board of the American Trucking Association has made a speech and it was reported in the current issue of Traffic World. And in that speech he accused proponents of deregulation of committing a fraud on the American public, because he maintains that rate competition flourishes behind rate bureau walls and he challenges proponents to put up or shut up. And I submit we should accept that challenge. I say that rate competition does not flourish behind those walls and there is a substantial record to prove that.

For years, and probably for decades, rate bureau members have operated under what I would describe as a rigorously enforced agreement to refrain from offering lower rates to each other's customers. I'd like to illustrate. Assume that there are three motor carriers, A, B, and C, and assume that each has its own customers that it serves. The agreement among these carriers, and this is my observation, is that each carrier will abstain from offering lower rates to the customers of the other two.

Now, one carrier described this to me as, and I'm quoting him, "an unwritten but well-understood law which has governed rate bureau proceedings for years." This path, I submit, is externally enforced by means of intimidation, censure, and threats of ICC litigation.

If carrier A, in my hypothetical, were to deviate by proposing a lower rate for the customer of carrier B, carrier B is expected by his rate bureau to produce freight bills at the next scheduled meeting to prove that he is hauling that traffic.

If the rate bureau members conclude that carrier A is guilty of trying to lower the rate for a customer of carrier B, even if that proposed rate is profitable, the rate bureau members automatically reject the proposed rate without considering its merit and reprimand the offending carrier.

Should carrier A in that instance be tempted to publish a lower rate anyway, he is promptly disabused of this notion by threats of rate bureau action. Mr. Shenefield, I submit, was absolutely correct that trying to lower rates is not a business decision, it is a decision to go to war.

Now, Senators, I would like very much to continue with a response to what this chairman of the ATA has recently said by citing more evidence, that this is what goes on behind these rate bureau walls where they all agree that they will not undercut each other's customers. And I submit that's very damaging to the public interest.

But I want to heed, Senator Cannon, your admonition at the outset of his hearing that we're not to refer to specific cases and, therefore, I'm going to pass.

And, of course, time does not permit too much delving into the details, but I do have substantial evidence of this. And I would also point out that Senator Kennedy's Judiciary Committee has already subpenaed the documents I'm talking about, and as a matter of course, I assume the Senate committee would have a chance to scrutinize those documents so you can decide for yourself what's going on behind the rate bureau walls.

I do believe the antitrust immunity should be repealed. I do believe these are detrimental to the public. They are, of course, highly inflationary, and I would ask you to imagine that if everybody in this room represented a motor carrier and we all agreed not to solicit each other's customers with lower rates, costs are bound to go up, and that's what's happening.

Now, perhaps reasonable people can differ as to whether section 5(a) exempts those abuses of regulatory tariff procedure which I have described here. I don't think it does, but I don't think it really matters for your purposes. Whether or not section 5(a) exempts a pact against rate competition, it cannot be denied that section 5(a) has fostered it. This is because many carriers, perhaps honestly, but, I submit, perhaps mistakenly, assume section 5(a) provided that anything goes so long as it is done on rate bureau premises. I say that a statute which fosters its own abuse should be repealed.

The benefits to shippers and to the public that will result from the repeal of the Reed-Bulwinkle Act should by now be obvious to all. And so rather than belabor that obvious factor, I would like to close with a couple benefits that will inure to carriers.

62-322 O - 80 - 13

First, the excuse given to me by many carriers for their negative policy against rate competition is that unless they concertedly abstain from competing for each other's customers with lower rates, destructive rate wars will follow. Now, that's the explanation that is historically given by all who have attempted unsuccessfully to justify rate fixing.

The courts have always rejected that argument. It has never been considered necessary for competitors to fix prices in order to prevent destructive price wars. This is because adequate protection already exists in the Sherman Act. It also forbids unreasonably low prices designed to destroy a competitor.

Hence, with repeal of section 5(a), the antitrust laws would be given full play to protect every carrier against the rate practices of other carriers.

Second, according to some carriers, the ICC has more effectively regulated against unreasonably low rates and other predatory behavior by carriers than could any Federal court. My experience with both tribunals is to the contrary.

To the carrier who is being harmed by the predatory acts of a competitor, I can say from our experience with both statutes that the Sherman Act will provide far greater protection to the motor carriers than has the Interstate Commerce Act. There is no greater deterrent against predatory behavior than the prospect of a treble damage award.

And in case there are those who would doubt that statement, I would refer them to the protracted Greyhound litigation which has been completed and which our office handled. When Mount Hood complained to the Interstate Commerce Commission about the defendant's predatory conduct, the ICC issued numerous cease and desist orders against Greyhound, all of which Greyhound ignored during the ensuing years, and it took no less than a treble damage judgment to bring Greyhound's course of behavior to a halt.

And Circuit Judge Goodwin, of the ninth circuit, in upholding that judgment, had no difficulty in concluding the Sherman Act provided a carrier far better protection against destructive behavior by another carrier than the Interstate Commerce Act. Judge Goodwin contended that for competitors injured by predatory behavior: "If Congress intended the Interstate Commerce Act to provide a remedy for competitors injured by predatory behavior on the part of regulated carriers, then the legislation is woefully inefficient."

Senators, I wish that there was some way to convince motor carriers that what is being suggested here, a regulatory framework that guarantees robust competition for the shippers' patronage, is not contrary to the carrier's interest. If motor carriers are doubtful about that viewpoint merely because we have prosecuted litigation against some of the larger carriers in this country, I must emphasize that we always, always have prosecuted that litigation on behalf of some other carrier who had been injured by a larger carrier's abuses.

So I believe that I speak for motor carriers, not against them, in suggesting that a change is needed.

I thank you and I ask to submit my prepared statement.

[The statement follows:]

STATEMENT OF EUGENE C. CREW, ATTORNEY, BROAD, KHOURIE & SCHULZ

Senators Kennedy and Cannon, I welcome this opportunity to appear before you to express my views regarding the related issues of (1) deregulation and (2) repeal of the Reed-Bullwinkle Act. Over the past several months, I have watched raptly the progress of your various Senate committees as you have collected testimony from a wide variety of observers concerning these issues. I must compliment you for what I regard as a conscientious effort to collect the diverse views of all who are concerned with this important matter. You have heard from shippers; you have heard from carriers; you have heard from government officials; and you have heard from consumer interests and members of the public. I am therefore particularly grateful that you would also wish to hear the views of one who, as a trial lawyer, has represented carrier interests in several private antitrust cases prosecuted within the present regulatory framework.

I am a practicing attorney in San Francisco, California and am a partner in the law firm of Broad, Khourie & Schulz. As trial attorneys like to do, let me describe for you the basis for my opinion regarding these deregulation matters before I venture that opinion. In this way, you can best assess the weight it should be given. For the past 15 years, my partners and I have prosecuted numerous federal antitrust cases involving almost every aspect of the transportation industry. All of those cases involved abuses of the very regulatory system which is now being scrutinized by you. Without exception, all involved a claim of antitrust immunity by the defendant. Thus:

a. In *Marnell* v. *United Parcel Service of America, Inc.*, 1971 CCH Trade Cases ¶ 73,761 (N.D. Cal. 1971), defendant was the largest over-the-road carrier in the world. That action was tried before retired Justice Tom Clark and resulted in a judgment against UPS for prosecuting sham protests before regulatory agencies for the purpose of destroying competition.

b. In *Mt. Hood Stages, Inc.* v. *Greyhound Corp.*, 555 F. 2d 687 (9th Cir. 1977), *vacated and remanded on other grounds*, 437 US. 322 (1978), defendant was the largest bus carrier in the nation and perhaps the world. Plaintiff there alleged and proved that Greyhound had made several deliberate misrepresentations to the Interstate Commerce Commission for the purpose of fraudulently procuring ICC approval of several Greyhound acquisitions which Greyhound subsequently deployed to injure plaintiff. That action resulted in a judgment for plaintiff and was affirmed by the Ninth Circuit on appeal.

c. *California Motor Transport* v. *Trucking Unlimited* 404 US 508 (1956), was against 15 of the largest motor carriers in California. That action, sustained on appeal by the Supreme Court, alleged that defendants had concertedly engaged in baseless protests before the ICC and the California PUC for the purpose of barring market entry by plaintiffs and other small motor carriers.

d. *BBD Transportation Co.* v. *Southern Pacific Railway, et al.*, [not reported] now pending in the Court of Appeals for the Ninth Circuit, was brought under the Sherman Act by a small trucking company against six of the largest railroads in the nation and claims that defendants subverted the Reed-Bullwinkle Act by conspiring to fix rates at noncompensatory levels for the purpose of destroying truck competition.

e. *Air California* v. *PSA* [not reported] was prosecuted against the largest air carrier in California, PSA, alleging that PSA abused the regulatory process by filing sham protests before the California PUC for the purpose of thwarting competition from a fledging carrier.

f. *Clipper Express* v. *Rocky Mountain Motor Tariff Bureau* [not reported] was brought against one of the largest rate bureaus and several of the largest motor carriers in the nation. Clipper, a freight forwarder, alleges that defendants have combined to monopolize and restrain the transcontinental motor freight market and that, to that end, have engaged in a myriad of acts designed to destroy the forwarder industry. Clipper alleges the evidence shows that defendants have subverted the Reed-Bullwinkle Act by conspiring to allocate customers and fix rates at confiscatory levels and to deploy their rate bureau's heavy protest weaponry to obstruct those who (such as Clipper) would seek to offer competitive rates to the shipping public.

Based upon this litigation experience, I must conclude that repeal of antitrust immunity for the motor carrier industry is essential to the public interest. That litigation experience provides a sound basis for this opinion. The best way

to determine whether the Reed-Bullwinkle Act has functioned in accordance with the public interest and should therefore be continued or has functioned contrary to the public interest and should therefore be repealed is to take a good hard look at what goes on behind the closed doors of those rate bureaus. These past 15 years of antitrust litigation within the transportation industry has provided me with a "cook's tour" of typical rate bureau practices. I must report to you that I do not like what I saw. I have read the testimony of several witnesses who have appeared before various committees to proclaim that rate competition flourishes behind rate bureau walls. I will throw down the gauntlet by saying here and now that such a claim is belied by all of the evidence I have seen, evidence which is a matter of public record.

It is my hope that rate bureaus and their members would invite you and the general public to see what I have seen, but I doubt they will. Therefore, in deference to those rate bureaus and their members who wish to preserve the secrecy of their deliberations, I prefer not to state particular sources or to identify particular witnesses or particular carriers or particular rate bureaus. Suffice it to say the facts are there as a mattter of public record.

Over 15 years of antitrust litigation within the transportation industry has taught me certain "facts of trucking life" which I think important that you know: For years and probably for decades, rate bureau members have operated under what I regard as a rigorously enforced agreement to refrain from offering lower rates to each other's customers. Let me illustrate: assume three motor carriers,—A, B and C—and assume that each has its own customers for whom it hauls freight between New York and San Francisco. The agreement among these carriers is that A will not offer lower rates to the customers of B and C, B will not offer lower rates to the customers of A and C and C will not offer lower rates to the customers of A and B. One carrier described this as an "unwritten but well understood law" which has governed rate bureau proceedings for countless years. The rationale for this agreement is simple: to solicit each other's customers with lower rates (even if those lower rates were compensatory) has been designated by the rate bureaus and their members as "piracy" which "benefits nobody but the shipper". To my knowledge, neither the ICC nor the shipping public has ever been informed of this concerted practice.

These agreements are sternly enforced by means of intimidation, censure, reprimands and threats of ICC litigation. If carrier A were to deviate by proposing a lower rate for the customer of carrier B, carrier B is expected by his rate bureau to produce documentary evidence (freight bills and the like) at the next scheduled rate bureau meeting to show that he is hauling that traffic. If the rate bureau members are satisfied that carrier A is seeking to lower the rate for a customer of carrier B, even if the proposed rate is profitable, the rate bureau members automatically reject the proposed rate without considering its merits and reprimand the offending carrier. Should carrier A be emboldened to publish a lower rate anyway, he is quickly disabused of this competitive notion by threats from the rate bureau members to protest any such independent rate action which he might take. Ex Parte 297[1] now forbids rate bureau protests against member carrier rate proposals. However, Ex Parte 297 does not forbid rate bureau protests against rates proposed by non-members. Nor does Ex Parte 297 require discontinuance of the customer allocation and rate-fixing conspiracy I have described above. Thus even today, any independent rate action by carrier A for a customer of B would in all likelihood become hopelessly lost in protracted and costly ICC proceedings instigated by one or more rate bureaus and its members. That is essentially what the *Clipper* action is about. Mr. John H. Shenefield was absolutely right when he said:

"Trying to lower rates in the trucking industry is not merely a business decision; it is a decision to go to war—to litigate—for those who would lower rates would inevitably face vigorous protests from rate bureau members. Of course, the protestants will frequently share litigation expense, while the applicant, trying to lower fares and compete, must bear alone the enormous burden of the litigation. The process guarantees great delay, cost and uncertainty as to outcome, and serves to depress—indeed, to strangle the entrepreneurial

---

[1] Ex Parte 297, Rate Bureau Investigation, 351 ICC 811, 817 (1975), aff'd, *Motor Carriers Traffic Association, Inc.* v. *United States*, 559 F.2d 1251 (4th Cir. 1977), cert. denied, 435 U.S. 1006 (1978).

initiative which has been the great strength of American business."—Testimony of John H. Shenefield, Assistant Attorney General, Antitrust Division, before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate Concerning Economic Regulation Of The Motor Carrier Industry [October 27, 1977].

If the agreement I have just described were carried out by some trade association of competitors in practically any other sector of our economy—from automobile manufacturers to pharmacists to bakers or even lawyers—it would be condemned by our courts as a per se violation of the Sherman Act. It has been at the core of Sherman Act jurisprudence for almost a hundred years now: agreements among rival sellers not to compete for each other's customers with lower prices is conclusively presumed to be so harmful to the public welfare as to preclude any further inquiry. *National Society of Professional Engineers* v. *United States*, 435 U.S. 679 (1978). I therefore pose this question: by what magic does a restraint upon trade deemed so pernicious in other industries somehow become a social blessing merely because the restraint is upon transportation?

Yes, I do believe the antitrust immunity should be repealed. I believe these pacts against rate competition that are formulated and enforced behind rate bureau walls are detrimental to the public interest. I disagree with those motor carriers who have said, in the course of their rate bureau deliberations, that rate competition "benefits nobody but the shipper". All would benefit—shipper, carrier and the public. But I will go further to state the converse is true: the present restraints upon rate competition benefit nobody but the carrier. This pact against rate competition, or "negative policy" as one transcontinental motor carrier euphemistically described it, must surely be one of the major contributors to the past three decades of inflation this nation has suffered ever since the Reed-Bullwinkle Act was enacted over President Truman's veto.

I am not here to deny that such agreements are exempt under section 5a. I am making that argument in another forum. Perhaps reasonable persons can differ as to whether section 5a exempts those abuses of regulatory tariff procedure which I have described here. I am personally convinced it does not. For your purposes, however, I do not think it matters. Whether or not section 5a exempts a pact against rate competition formulated by motor carriers and policed by their rate bureaus, it cannot be denied by anybody that section 5a has fostered this reciprocal abdication of the basic right to compete. This is because many carriers, perhaps honestly but no doubt mistakenly, assume section 5a provides that "anything goes" so long as it is done on rate bureau premises. A statute which fosters its own abuse should be repealed. I believe the Reed-Bullwinkle Act does just that.

The benefits to shippers and ultimately to consumers that will result from repeal of the Reed-Bullwinkle Act has been thoroughly demonstrated by your respective committees and should by now be obvious to all. Rather than belabor the obvious benefit to the public welfare that will result from your legislative action, therefore, let me stress some of the benefits that will inure to carriers.

First: The excuse given to me by some carriers for their "negative policy" against rate competition is that, unless they concertedly abstain from competing for each other's customers with lower rates, destructive "rate wars" will ensue which "only benefit the shipper". That is the explanation I have been given. It is also the explanation historically given by all who have attempted unsuccessfully to justify pricefixing in the unregulated sectors of our economy. The courts have consistently rejected it, and for good rason. It has never been considered necessary for competitors to fixe prices in order to prevent destructive price wars. This is because adequate legal protection already exists. The Sherman Act not only forbids conspiracies to restrain trade. It also forbids predatory conduct, including unreasonably low prices designed to destroy competition. Hence with repeal of § 5a, the antitrust laws would be given full play to protect every carrier against the predatory rate practices to every other carrier. What more is needed?

Second: According to some carriers, the ICC has more effectively regulated against unreasonably low rates and other predatory behavior than could any federal court. My experience with both tribunals, however, indicates otherwise. The ICC does not regulate carrier rates prospectively anymore than federal courts regulate the antitrust litigant's conduct prospectively. While both tribunals are empowered to grant injunctive relief against a threat of unlawful conduct the

ICC cannot claim that it has exercised that power any more often or more effectively than have the federal courts. While a federal court does not review particular conduct unless the aggrieved party complains, that is also true with the ICC. Over 99 percent of all rates are never seen by the ICC. Unless a carrier or shipper protests, a proponent's rates become effective within 30 days by operation of law. Hence there is simply no basis to suggest that the ICC's administration of the Interstate Commerce Act is anymore pervasive than is the federal judiciary's enforcement of the antitrust laws.

Third: It is human nature to fear the unknown, and motor carriers are no different. Almost all of our nation's interstate carriers probably came into existence and grew up under the protective aegis of their "mothership", the ICC. They are therefor understandably reluctant to change now. They should fear not. To the carrier who is being harmed by the predatory acts of a competitor, I can say from our experience with both statutes that the Sherman Act will provide far greater protection than has the Interstate Commerce Act. There is no greater deterrent against predatory behavior than the prospect of a treble damage award. Bluntly stated, it takes the profit out of vice.

For those who doubt me, I cite the protracted *Greyhound* litigation which we tried in 1973.[2] Years before, the ICC has been inducted by Greyhound's deliberate misrepresentations to approve several route acquisitions which allowed Greyhound to encircle Mt. Hood for the purpose of destroying it. When Mt. Hood later complained to the ICC about Greyhound, the ICC issued numerous cease and desist orders—all of which Greyhound ignored during the next several years. It took no less than a treble damage judgment under the Sherman Act to bring Greyhound's predatory course of behavior to a halt. Circuit Judge Alfred Goodwin of the Ninth Circuit, upholding the antitrust damage award, had no difficulty in concluding the Sherman Act provided a carrier far better protection against destructive behavior than could the Interstate Commerce Act:

"The litigation before the Commission has proceeded for approximately a decade with no apparent impact upon Greyhound's conduct. If Congress intended the Interstate Commerce Act to provide a remedy for comeptitors injured by predatory behavior on the part of regulated carriers, then the legislation is woefuly inefficient." [3]

Finally, I wish there was some way to convince motor carriers that what is being suggested here—a regulatory framework that guarantees robust competition for the shipper's patronage—is not contrary to the carriers' best interests. Lest motor carriers are dubious about my viewpoint merely because my firm and I have prosecuted litigation against some of the largest carriers in the nation, I must emphasize that we always—without exception—prosecuted that litigation on behalf of some other carrier who had been injured by the larger carrier's regulatory abuses. So I speak for motor carriers, not against them, in suggesting that a change is in order.

Thank you for allowing me this opportunity.

[The following information was subsequently received for the record:]

DECEMBER 10, 1979.

Mr. EUGENE C. CREW, Esq.,
BROAD KOURIE, AND SCHULZ,
San Francisco, Calif.

DEAR MR. CREW: For the purposes of completing the record of the hearing in Reno, Nevada, before the Senate Commerce Committee, I am requesting a written response to questions which, because of time limitations, I was not able to ask.

Questions:

1. You have alluded to some new evidence about what the carriers do behind closed doors. Without identifying any particular individuals or companies, can

---

[2] *Mt. Hood Stages, Inc.*, Petition for Modification—Greyhound Mergers (Western Mergers), 104 MCC 449 (1968), *Greyhound Lines, Inc.* v. *U.S.*, 308 F.Supp. 1033 (N.D. Ill. 1970), 363 F.Supp. 525 (N.D. Ill. 1973), 370 F.Supp. 881 (N.D. Ill. 1974), affirmed, 508 F.2d 529 (7th Cir. 1974). *Mt. Hood Stages, Inc.* v. *The Greyhound Corp.*, 1973–2 CCH Trade Cases ¶74,824 (D.Ore. 1973), affirmed, 555 F.2d 687 (9th Cir. 1977), vacated and remanded, 437 U.S. 322 (1978), remanded, 583 F.2d 469 (9th Cir. 1978), on remand, 1979–1 CCH Trade Cases ¶62,446.

[3] *Mt. Hood Stages, Inc.* v. *Greyhound Corp.*, 1973–2 CCH Trade Cases ¶ 74,824 (D.Ore. 1973).

you give this Committee a sense of what these activities consist of? What kinds of abuses do you see?

2. As I understand your testimony, you are not taking a position on the issue of whether or not some of the activities which go on in the rate bureaus are illegal. You are merely describing those activities. Correct?

3. And those activities include the practice of carriers refusing to undercut another carrier if that carrier can lay freight bills on the table which show it is hauling the freight?

4. And is it also your testimony that this arrangement of refusing to undercut each other is made possible by collective ratemaking?

5. Antitrust immunity gives carriers the ability to set rates collectively in private. Is it the existence of that mechanism itself which tends to encourage these kinds of activities? Do the bureaus make it possible to enforce the parallel behavior you describe?

6. Is there any way collective ratemaking could be reformed or limited to prevent the abuses you have described?

I would appreciate a response at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

EDWARD M. KENNEDY.

BROAD, KHOURIE & SCHULZ,
ATTORNEYS AT LAW,
San Francisco, Calif., January 30, 1980.

HON. EDWARD M. KENNEDY,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR KENNEDY: This is to acknowledge receipt of your letter of December 10. Here are my answers to your questions:

Question 1. You have alluded to some new evidence about what the carriers do behind closed doors. Without identifying any particular individuals or companies, can you give this Committee a sense of what these activities consist of? What kinds of abuses do you see?

Answer. I would be pleased to describe those practices for you. In that connection, Bryce Rea has read to you from depositions taken in pending litigation in support of his claim that motor carriers do not engage in the practices I have described. Since he has quoted from testimony in that litigation, I believe it necessary to respond by citing additional documentary and testimonial evidence produced in the same litigation. I understand your Senate Committee has already subpoenaed this evidence from the defendants in that litigation and is in the process of reviewing it. Your review of that evidence will reveal that several motor carriers have for years operated pursuant to a firm understanding which prohibits any carrier from publishing lower rates for the purpose of soliciting traffic from the customers of any other carrier. This agreement has been rigidly enforced through intimidation, reprimands and threats of costly ICC litigation. At least two carriers have openly acknowledged their customer allocation and rate fixing pact constituted a "well understood" but "unwritten law" and a "common understanding". Here are other examples:

1. One carrier refused to decrease rates for a shipper because "It is a matter of corporate policy to us as well as most of our competing common motor carriers to refrain fom proposing rate reductions meely to divert traffic from one of our lines to the other".

2. Another carrier refused to reduce its rates for a shipper because it "would only lead to diversion of traffic from one carrier to another and in the end an ultimate unnecessary reduction in our rate structure".

3. Another carrier refused the shipper's request for a lower rate because "'an offer to reduce rates on traffic that is already moving by another motor carrier is nothing but piracy".

4. Another carrier refused to lower rates for a customer of another carrier because "anything we do in that regard would smack of solicitation through price competition".

5. Carrier X was angered by carrier Y's lower rate offer to get traffic from a customer of carrier X, declaring: "This is a clear cut case of rate cutting in order to secure a movement from a competitive carrier. I am sure you will want to

handle the matter with [carrier Y] to see if they condone this type of rate cutting activity to secure business".

6. Upon learning that carrier X had solicited one of carrier Y's customers with a lower rate, in violation of their pact, a carrier Y official declared "I recommend you work [carrier X] over so that no way do they get this proposal adopted".

7. Another carrier instructed "You will have to take your traffic managers of [carrier X] and [carrier Y] who sit at the table with you at these [rate bureau] meetings apart [for soliciting traffic with lower rates]".

8. One carrier official explained why it is futile to publish a lower rate for the customer of another carrier: "When we docket a rate reduction on traffic handled by a competitor, the competitor will normally have freight bills or other documentation available during the rate committee meeting to prove that they are participating in the business and that our rate reduction is nothing but an attempt to secure all of the business. As soon as a statement like this is made, the committee votes and the docket is denied".

9. One carrier official testified as follows:

Question 1. Do you believe that it is a generally accepted industry practice or custom . . . not to deliberately publish rates below each other for the purpose of diverting traffic away from each other?

Answer. Yes. As I said before, this pact against competition was rigidly enforced by the carriers. If one carrier proposed a lower rate for the customer of another carrier, freight bills were furnished to the rate bureau by the affected carrier as proof that their restraint was being violated. The rate bureau would thereupon disapprove the proposed lower rate automatically, without even considering its merits, and the offending carrier would be reprimanded. All of this coercion was carried out under the auspices of the rate bureau. In my opinion, these abuses enabled the carriers to maintain a confiscatory rate structure. This is substantiated by the avowed purpose behind their pact. Several carriers have declared (and I am quoting them directly) that solicitation of traffic by means of lower rates "is nothing but piracy" in which "no one wins but the shipper".

Question 2. As I understand your testimony, you are not taking a position on the issue of whether or not some of the activities which go on in the rate bureaus are illegal. You are merely *describing* those activities. Correct?

Answer. The abuses I have described are the subject of federal antitrust litigation which we are handling. My position there is that practices of the kind which I have just described are a violation of the Sherman Act and are not protected by the Reed-Bulwinkle Act. There are many reasons why I do not believe the Reed-Bulwinkle Act protects these abuses. First: this collateral arrangement between the carriers and their rate bureaus not to solicit each other's traffic through rate cuts has never been reviewed by the ICC and therefore could not have been approved by the ICC. Second: even if it had been submitted to the ICC for approval, the ICC could not have approved it. The evidence we have collected demonstrates beyond doubt that all carriers have mutually abdicated their statutory right of "independent action". Having done so, the Reed-Bulwinkle Act does not immunize them. Third: their agreement is not just a "rate fix" but is also a customer allocation or "traffic division". This is expressly disapproved by the Interstate Commerce Act. Fourth: the mistaken notion prevails that "anything goes" so long as it takes place behind rate bureau walls. Yet there is substantial authority which holds that any rate fixing scheme (even though effected in accordance with § 5a procedures) will not be exempt if that scheme is designed to destroy competition.

Hence there are many reasons why I do not believe these abuses are exempt. But that does not mean I believe § 5a of the Interstate Commerce Act need not be repealed. Although § 5a does not exempt this conduct, it unfortunately fosters it because it provides these carriers with the climate in which such practices can flourish.

Question 3. And those activities include the practice of carries refusing to undercut another carrier if that carrier can lay freight bills on the table which show it is hauling the freight?

Answer. Most definitely. All of the evidence we have seen demonstrates this is exactly how it is done. If a carrier proposes a rate on traffic being handled by another carrier, the affected carrier is expected to produce freight bills at the next rate bureau meeting to demonstrate to the rate bureau's satisfaction that another carrier is undercutting his rates in violation of their agreement. Once

that is proven, the rate bureau automatically disapproves the rate without considering its merits and the offending carrier is not only reprimanded but also threatened with ICC litigation if he chooses to publish the rate independently.

Question 4. And is it also your testimony that this arrangement of refusing to undecut each other is made possible by collective ratemaking?

Answer. Yes, in fact, that is exactly what I meant when I said previously that § 5a may not exempt this conduct but it fosters it by providing the carriers a perfect opportunity to collude against the public interest.

Question 5. Antitrust immunity gives carriers the ability to set rates collectively, in private. Is it the existence of that mechanism itself which tends to encourage these kinds of activities? Do the bureaus make it possible to enforce the parallel behavior you describe?

Answer. Yes. But it is not just the existence of rate bureaus which provides these carriers the opportunity to meet and discuss rates and therefore ultimately to collude. I believe a certain mythodology has developed regarding the Reed-Bulwinkle Act which has misled carriers to conclude that whatever they do behind rate bureau walls is lawful merely because that is where they do it. That is not the law but, unfortunately, too many carriers have mistakenly believed it was the law.

Question 6. Is there any way collective ratemaking could be reformed or limited to prevent the abuses you have described?

Answer. Yes. I believe that § 5a should be repealed. If § 5a is repealed, rate bureaus will be governed by the general antitrust law applicable to trade associations. This has not proven difficult for trade associations in the past and would not prove difficult for rate bureaus in the future. If the Reed-Bulwinkle Act is repealed, the rate bureaus could still engage in many practices on a collective basis without running afoul of the Sherman Act. In that connection, I would urge any rate bureau's antitrust counsel to consider the Supreme Court's recent decision in *Broadcast Music, Inc.* v. *Columbia Broadcasting Sytem, Inc.*, 60L.Ed2d 1. The Supreme Court there held that certain horizontal agreements by trade association members affecting prices did not constitute a per se violation of the antitrust laws. I believe that decision reflects a difinite trend in antitrust law that would allow rate bureaus and other trade associations to jointly publish uniform rates so long as they did not jointly fix those rates. Finally, I realize that one of the main concerns of opponents to deregulation is that repeal of the Reed-Bulwinkle Act will inevitably result in destructive rate wars. I cannot agree. All we need do is look to the experience of the many unregulated sectors of our economy. If any predator cuts prices to an unprofitable level for the purpose of destroying competition, the Sherman Act will hold him accountable. That should provide all carriers with ample protection against the predatory "rate wars" which they fear.

I hope that I have fully answered your questions. Please let me know if I can be of any further assistance to you in your efforts to enact legislation designed to eliminate these and other abuses.

Sincerely,

EUGENE C. CREW.

The CHAIRMAN. Thank you.

Mr. Rea.

Mr. REA. Thank you, Mr. Chairman.

My name is Bryce Rea, Jr. I appear as counsel for 11 motor carrier organizations, all of whom are engaged in collective ratemaking under agreements approved by the Interstate Commerce Commission under the Reed-Bulwinkle Act.

The names of those 11 organizations are set out in my prepared statement, which has been made part of the record. I'll not take the time to list them here.

Before coming to the summary of my prepared statement, I feel constrained to address myself to Mr. Crew's opening remarks respecting the nature of actions among carriers engaged in collective ratemaking under agreements approved by the Interstate Commerce Act. I am fully familiar with the documents to which he referred, which are the

documents that were subpenaed by the Senate Judiciary Committee. They are part of the record in a case in which Mr. Crew represented the plaintiff, a case in which the defendants, who were charged with violation of the antitrust laws, were granted summary judgment. That summary judgment is now on appeal.

I would just like to categorically state that in my considered opinion, apparently also the considered opinion of the district court, there was no proof of any agreement not to undercut the rates of fellow bureau members. Indeed there was not only no agreement, there was no such policy on the part of individual carriers.

Let me quote one of the carriers who responded to questions from Mr. Crew:

> We have no policy. It's my practice not to cut a competitor's rate for the purpose of attempting to get the business, because in my experience, you don't hold it very long, if at all.

Well, I think all of us recognize that view as common business sense. When do the carriers cut rates? Under what circumstances? What factors do they consider in determining whether to cut rates?

Let me quote again:

> Well, there are many factors to be considered. The origin of the commodity, the destination, the direction of the flow, the type of equipment required, the type of equipment we have available, the susceptibility to damage, the packaging, the value, not to mention what effect the establishment of the rate could have adversely on another shipper or another consignee with the same or different origin or the same or different destination or a similar traffic lane.

So I submit to the committee that the charge that there is an agreement among motor carriers not to seek the traffic of one another is simply unfounded.

Let me say one other thing in that connection, and this is included in my prepared statement. The general traffic manager of Consolidated Freightways, the second largest motor carrier in the United States, said this in a verified statement to the ICC. During the year 1977 there were 13,572 independent actions in 9 of the 10 general commodity tariff bureaus to which that carrier is party. Let me point out that one of those bureaus was the Middle Atlantic Conference.

In that same year it published 2,707 independent actions, of which 1,365 were published to meet the competition of other members of the rate bureau, which again demonstrates that the notion that there is not price competition in the rate bureaus is simply not so. You find price competition, you do not find naked price cutting for the sake of price cutting, because, as I said, every businessman knows that isn't productive.

What you find is effective competition, an effective mixture of price and service, which is what the shipping public wants.

Now, let me, if I may, come back to my prepared statement. We briefly review the history of collective ratemaking, and in that vein I'd simply like to point out that it's been practiced by all kinds of carriers, particularly rail carriers and motor carriers since before the Interstate Commerce Act was enacted and has continued all those years since, notwithstanding attempts from time to time y the Department of Justice and others to stop it.

Now, that says something for its practical necessity in the life of our Nation. As this history points out, and it doesn't purport, of course,

to be a full history, every knowledgeable person in transportation has supported and continues to support collective ratemaking.

You will find in our prepared statement quotations from Joseph Eastman, quotations from Commissioner Aitchison, quotations from knowledgeable shippers, and as this committee is aware, the major organizations of shippers in the United States, and by "shippers," I include receivers—namely, the National Industrial Traffic League, the National Small Shipments Traffic Conference, the Eastern Industrial Traffic League, the Drug & Toilet Preparation Traffic Conference, who together represent thousands upon thousands of shippers and receivers. All without exception support elective ratemaking basically as it is practiced today, including, and this constitutes a reversal of position on the part of the National Industrial Traffic League, including the collective making of single-line rates, which they recognize to be an indispensable part of the process.

Let me just address myself briefly to that. I gathered from the testimony of Mr. Shenefield and Chairman O'Neal that they agree that joint-line ratemaking is important and should be continued. What they fail to recognize is that joint-line ratmaking could not be continued if single-line collective ratemaking were eliminated. It could not be continued for several reasons. Basically, it could not be continued because there are not, in the carriers' tariffs, two sets of rates, a set of single-line rates over here and a set of joint-line rates over there. The single-line rates and the joint-line rates are the same.

For example, take movements of television sets from producing points in New York and Chicago and Philadelphia and Atlanta to Reno. Now, that service from those producing plants to Reno can be rendered by six or eight carriers in single-line service and by dozens of carriers in combinations of joint-line service. Every one of the shippers in every one of those producing points, has available to it whatever service it chooses, single line or joint line, depending on the needs of its own marketing pattern, its own marketing program. The rates are the same. You could not maintain joint-line rates higher than the single-line rates because competitors could not be treated differently.

And if they could be treated differently, you would have flourishing the basic evil it was the basic purpose of the Interstate Commerce Act to end.

The producer of television sets in New York, with single-line service available, would have a competitive edge in the market against the producer in Atlanta, who might have only joint-line service available. This kind of discrimination from territory to territory and producing point to producing point is the thing the maintenance of a single structure of rates, joint and single line, eliminates. It is a matter of vital importance and cannot be accomplished without recognizing that there is one rate structure made up of single-line and joint-line rates. There are transportation rates; there are not two separate structures, and there couldn't be two separate structures.

I might mention in passing that to walk the kind of fine line that Mr. Shenefield lays out to determine whether or not you would be liable to prosecution under the antitrust laws would be not something I think any competent antitrust lawyer would recommend to his clients, considering the competence and willingness to engage in litiga-

tion of such plaintiffs' lawyers as Mr. Crew. And I don't mean that in any derogatory sense.

We would be in continual litigation trying to defend actions of carriers who compete in part and at the same time engage in joint service together. And this is commonplace. All carriers engage in joint-line service with their competitors, because their tariffs are wide open and they're wide open because the Interstate Commerce Commission requires them to be wide open. It requires carrier A to maintain joint rates with carrier B to points that carrier A can serve directly.

Finally, I think I might point out, illustrating the symbiosis, to use the ICC's term, of the joint-line rate and single-line rate, and the indispensability of being able to collectively deal with both, which the Commission affirmed in its decision in ex parte 297. One of the largest carriers in the United States has stated very emphatically and publicly that if the collective ratemaking of single-line rates is eliminated, that carrier will cease to participate in joint-line rates in bureau tariffs. That carrier will publish its own tariffs and it will interline with those carriers it chooses to interline with. And it will interline at the combination of local rates which, as we all know, are considerably higher than the joint-line rates available through the bureau's tariff.

So you're going to find an increase in the cost of transportation to those shippers and those receivers who must depend on joint-line service.

I could go into other matters, but I won't take any more time and I thank you for your courtesy.

[The statement follows:]

STATEMENT OF BRYCE REA, JR., COUNSEL, MOTOR COMMON CARRIER ASSOCIATIONS

Mr. Chairman and Members of the Committee. My name is Bryce Rea, Jr. I am a member of the law firm of Rea, Cross & Auchincloss with offices at 918 16th Street, N.W., Washington, D.C., 20006. I appear on behalf of the eleven organizations listed in the margin.[1] These are the principal organizations through which motor common carriers of general commodities collectively discharge their duty under Sections 10702 and 10701 of the Interstate Commerce Act, 49 U.S.C. §§ 10702, 10701, to establish and maintain just, reasonable and otherwise lawful rates and charges for their transportation services, as well as their duty under Section 10762 to publish and file their tariffs in accord with the regulations of the Interstate Commerce Commission. All of these organizations function under procedures set out in agreements among the carriers approved by the Commission under Section 10706 of the Act.

THE HISTORY OF COLLECTIVE RATEMAKING

At the time the Act to Regulate Commerce was enacted in 1887 the railroads of the nation were actively engaged in collective ratemaking through some eleven rate bureaus. In the early years of regulation the Interstate Commerce Commission strongly supported the practice, stating on page 16 of its 1901 Annual Report that, "* * * [I]t is difficult to see how interstate railways could be operated, with due regard to the interest of the shipper and the railway, without concerted action of the kind afforded through these associations." The 1887 Act, however, although designed primarily to put an end to discrimination and rate instability and to achieve reasonably uniform rate structures, did not expressly authorize

[1] Central and Southern Motor Freight Tariff Association, Inc., Central States Motor Freight Bureau, The Eastern Central Motor Carriers Association, Inc., Middle Atlantic Conference, Middlewest Motor Freight Bureau, National Motor Freight Traffic Association, Inc., The New England Motor Rate Bureau, Inc., Niagara Frontier Tariff Bureau, Pacific Inland Tariff Bureau, Rocky Mountain Motor Tariff Bureau, Inc., and Southern Motor Carriers Rate Conference.

collective ratemaking. Nevertheless, and despite cases which held some activities of rate bureaus to be violative of the Sherman Act, (*e.g.*, *U.S.* v. *Trans-Missouri Freight Association*, 166 U.S. 290 (1897), collective ratemaking through rate bureaus continued with the support of the ICC.

The imperative of a stable and non-discriminatory structure of rates was also the centerpiece of the motor carrier regulatory scheme embodied in the Motor Carrier Act of 1935. And the National Transportation Policy, enacted in 1940, reaffirmed the Congressional intent to achieve a "coordinated transportation system" capable of providing adequate, economical and efficient service without unjust discriminations or unfair or destructive competitive practices. The achievement of these goals made a forum for collective carrier action necessary and motor carrier rate bureaus quickly developed.

The failure of the Congress to expressly sanction collective ratemaking, however, led to new antitrust efforts against rate bureaus in the 1940s. In 1945 the Supreme Court, in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, held that "it had original jurisdiction to entertain a complaint by a state alleging a conspiracy by railroads to discriminate against it by way of fixing rates. This holding injected enough uncertainty into the legality of collective ratemaking to prompt enactment of the Reed-Bulwinkle Act in 1948, then Section 5a of the Act, now Section 10706.

The need for some form of collective carrier activity to attain the goals of the National Transportation Policy was spelled out during the hearings on Reed-Bulwinkle by the 958 organizations, composed of governmental units, carriers, shippers and civic organizations supporting the bill. The late Commissioner Eastman's remarks during those hearings, quoted in the House and Senate reports, are enlightening on the point:

"It must be clear to any reasonable man that a carrier cannot respond to all the duties imposed by law if the individual carrier acts in a vacuum. It is a situation which, under all the conditions, plainly calls for consultation, conference and organization and for many acts of a joint or cooperative nature * * *.

"I am wholly convinced that if the carriers of the country are to respond to the duties and obligations imposed upon them by the Interstate Commerce Act, and if the rate structure is to be reasonable, free from unjust discrimination or undue preference and prejudice, as simple and as consistent as may be reasonably stable, and sufficient for the financial needs of private ownership and operation, the carriers must be in a position to consult, confer and deal collectively with many phases of the matter, and that while the ultimate right of individual action should be scrupulously preserved, it is not desirable that such action should be taken without prior notice to fellow carriers and shippers and an opportunity for them to express their views." (H. Rep., p. 6; S. Rep. No. 44 (80th Cong., 1st Sess. 8).)

Likewise, both reports cite the following remarks of the late Commissioner Aitchison:

"From the standpoint of the administration, the problem of the Commission is greatly simplified if the carriers whom it regulates are permitted to organize so they may be dealt with as units, rather than as wholly separate and individual entities. We have been informed by many of the State railroad and utilities commissions that this is also their experience. The process of negotiation between carriers and shippers for rates or for service is greatly simplified if shippers may deal with the carriers collectively. Proper functioning of this process materially aids in the development of fair and equal rate adjustments, and thus lessens the task of the regulating bodies.

"In recent years the legislative and economic trends have been toward a greater uniformity in the rate structure of the country, and for a more stable basis for competition between the various carriers themselves, after conference with their patrons. Collective conference, consideration, and agreement, subject to Commission approval, will facilitate these processes.

"The carriers should be permitted to do collectively and fearlessly that which the law as expressed in the Interstate Commerce Act requies of them, in the large way contemplated by the spirit of the whole and in conformity with the national transportation policy." (H. Rep., p. 7: S. Rep., p. 9).

The House and Senate reports also drew upon the views of shippers supporting the concept of collective ratemaking. The Senate Report noted that the following remarks of oen shipper witness "well summarized" the virtually unanimous view of all shippers:

"If legislation such as proposed by this bill is not passed, and thereafter the present ratemaking procedures of the railroads and other carriers should be caused to be condemned under the antitrust laws, I can think of nothing that would have a more destructive effect upon the interests of the shippers of the country, or be a greater disservice to them or a greater interference with the carrying out of the transportation policies of the Congress and compliance by the carriers with the requirements of the Interstate Commerce Act." (S. Rep., p. 12, quoting testimony of Charles R. Seal, Baltimore Chamber of Commerce).

COLLECTIVE RATEMAKING FURTHERS THE NATIONAL TRANSPORTATION POLICY

The foregoing brief history of the Reed-Bulwinkle Act can leave no doubt as to the value placed on collective ratemaking in 1948. The question before this Committee, of course, is whether collective ratemaking continues to serve the public interest. This question can best be answered by addressing the benefits of collective ratemaking in the context of the National Transportation Policy. Three of the goals of that Policy, now codified as 49 U.S.C. § 10101, are:

"To promote safe, adequate, economic, and efficient transportation;

"To encourage sound economic conditions in transportation, including sound economic conditions among carriers;

"To encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices."

Collective ratemaking fosters adequate, economic and efficient transportation

The adequacy of existing transportation can best be measured by the scope of existing motor carrier network. The fact is that every city, town and hamlet in the United States has motor carrier service to and from every other city, town and hamlet. Between most major points there is single-line service, that is one or more carriers each perform the entire movement from origin to destination. Between all points there is joint-line service, that is two or more carriers perform the entire movement, each performing part of it. Most of the traffic of the general commodities carriers for whom I speak consists of small shipments of every conceivable type of finished consumer goods moving from factories to warehouses or retail stores. Almost all of the remainder consist of semi-finished or finished articles, automobile parts, and electrical components for example, moving from factories to other factories and assembly plants for further processing and incorporation into finished consumer goods.

How are rates established and published on these hundreds of thousands of different articles moving to and from thousands of different points in the single-line and joint-line service of more than 10,000 carriers? The first problem is that it is obviously impossible to establish and publish specific rates for each of the hundreds of thousands of different articles moving in commerce. The carriers have solved this problem by creating the National Motor Freight Classification. Acting collectively through the National Classification Committee under an agreement approved by the Interstate Commerce Commission, they have established twenty-three calsses, into one of which every article moving in commerce is placed. The classes and the grouping of articles within them are published as a tariff which is applicable throughout the United States. The process of classification is continuous. New articles must be classified as they come on the market. Old articles must be re-classified to reflect changes in their characteristics, as for example the substitution of plastic for glass in bottles and the substitution of aluminum for steel in window screens.

The second problem is that it is obviously impossible to establish and publish rates to and from each of the thousands of different points. The carriers have solved this problem by organizing themselves into ten major rate bureaus. Acting collectively under agreement approved by the ICC the carriers in each bureau establish and publish rates in a particular part of the country. Each bureau establishes and publishes a scale of rates per hundred pounds per mile for each of the twenty-three classes into which all articles moving in commerce are grouped. The rates so established are applied uniformly throughout the bureau's territory by all carriers who are members of the bureau in both single-line and joint-line service.

Consider the case of the Middle Atlantic Conference, an ICC-approved rate bureau which publishes tariffs, inter alia, in the Middle Atlantic Territory, composed of New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia,

West Virginia and the District of Columbia. In 1978, over 900 Middle Atlantic carriers handled 18 million shipments averaging less than 2,000 pounds each from and to 19,000 communities. These 18 million shipments were composed of 682 million separate pieces or packages. The average size interstate shipment weighs 1,792 pounds, and contains, on the average, 48 separate packages weighing 37.2 pounds each. Manifestly, establishing rates for a multitude of carriers on each of these shipments would be an impossible task without some orderly system. The classification and class rate structures which are the product of collective ratemaking provide that system.

There is yet another aspect to the manner in which collective ratemaking fosters adequate service. By virtue of collective ratemaking the carriers have been able to develop a complete scheme of interline arrangements, so that all points and places are served. It is argued that collective ratemaking is not needed to enable end-to-end connecting carriers to negotiate joint-line rates on a case-by-case basis. Apart from the impracticalities of hundreds of carriers entering into such arrangements without the benefit of common class rates and classification ratings, it is to be borne in mind that carriers maintaining joint rates with one another are often in single-line or joint-line service or both.

Collective ratemaking also fosters efficiency and economy in service. Rate levels established collectively reflect the weighted average costs of the carriers as a group. This gives the carriers with higher costs the greatest incentive to become more efficient. As Jesse J. Friedman put it in "Collective Ratemaking in Trucking: the Public-Interest Rationale":

"* * * Carriers which cannot cover their operating and capital costs at the rate levels which are adequate for bureau members as a whole will fall by the wayside. There is, therefore, the strongest incentive for marginal carriers to reduce costs through improved efficiency. In fact, the ordinary forces of profit maximization insure that all carrier managements will strive to optimize their returns by serving shippers as efficiently and at as low a cost as possible—the less efficient carriers, in order either to remain in business or to approach the results of the more successful operators, and the more efficient carriers, in order to maintain or improve their advantage." (p. 26).

Collective ratemaking encourages sound economic conditions in transportation

Fostering sound economic conditions among carriers is a key element of the collective ratemaking process. The role of rate bureaus in this regard is best viewed from the standpoint of the small carrier. The bureaus provide, at a minimum of cost to carriers, a wide variety of necessary services ranging from cost expertise to data compilation to market information to computerization of tariff information. The small carrier simply could not afford those services on its own. Indeed, without the aid of the bureau, it would be virtually impossible for a small carrier to allocate costs to the various services it performs.

The collective ratemaking process fosters sound economic conditions in transportation by producing a reasonable degree of rate stability. Stability is the rule because carriers acting together are less likely than carriers acting individually to change rates on a day-to-day basis or to alter rate levels wildly, as occurred in the years preceding motor carrier regulation. To carriers this means that destructive rate wars are a thing of the past. To shippers it means that long-term management planning is possible because transportation costs can be predicted with some accuracy. As Chairman O'Neal testified before the Senate Antitrust and Monopoly Subcommittee:

"* * * Shipper support for a measure of stability in levels of rates and services does exist; Commissioner Clapp and I both heard such views expressed during the field hearings which we conducted on the Staff Task Force recommendations. It seems to be based on a desire by the users of the motor carrier system to be able to make plans for using it with a degree of certainty that it will not exhibit substantial price and service changes within a short period of time * * *."[2]

Collective ratemaking encourages reasonable rates without unreasonable discrimination or unfair or destructive competitive practices

I have demonstrated that collective ratemaking fosters the establishment and maintenance of reasonable rates. But the process also enables the carriers to discharge their equally important duty to avoid discrimination against "a person, place, port or type of traffic." (See Section 10741 of the Act).

[2] Statement submitted April 26, 1978, p. 12.

Discrimination can be avoided only if rates are justly and reasonably related to one another. See, e.g., *State of New York* v. *United States*, 331 U.S. 284 (1947) (ICC power to prescribe just and reasonable rates embraces power to remove discrimination by compelling adjustments in territorial rate structures) ; *Albany Port District Comm'n.* v. *Ahnapee and W. Ry.*, 219 I.C.C. 151 (1936) (no single carrier need be source of discrimination ; discrimination may be caused by entire rate structure) ; *State Corp. Comm. of N. Mex.* v. *Southwestern Motor Frt.*, 329 I.C.C. 803 (1967) (class rate level of carriers serving New Mexico unjustly discriminatory in relation to class rate levels in adjacent territories).

Reasonable relationships between rates could not be maintained if carriers established their rates independently of one another. The rates per mile on canned goods maintained by the carriers serving processors at Camden, New Jersey would be more or less than the rates per mile maintained by the carriers serving competing processors at Roanoke, Virginia and Pittsburgh. Rates to and from the Port of San Francisco would be disproportionately higher or lower than rates to and from the Ports of Los Angeles, Portland and Seattle. The result would be unjust discrimination. Yet, the Supreme Court has pointed out that the elimination of discrimination was the basic reason for the passage of the Act to Regulate Commerce in 1887, and made the following sound observations about the value of a class rate structure :

" 'Discriminatory rates are but one form of trade barriers.' Their effect is not only to impede established industries but to prevent the establishment of new ones, to arrest the development of a state or region, to make it difficult for an agricultural economy to evolve into an industrial one. Non-discriminatory class rates remove that barrier by offering that equality which the law was designed to afford. They insure prospective shippers not only that the rates are just and reasonable per se but that they are properly related to those of their competitors .... (Shippers) have a basis for planning ahead by relying on a coherent rate structure reflecting competitive factors." (*State of New York* v. *United States*, 331 U.S. 284, 308 (1947).

Enlightening in this respect is the testimony of Daniel J. Sweeney before the Senate Subcommittee on Surface Transportation on September 10, 1975 on behalf of the National Small Shipments Traffic Conference. He said :

"Representing shippers I have come to be rather surprised by the fact that the shippers support the concept of the rate bureaus. Over 90 percent of the people that I talked with said 'We want the rate bureaus kept and we want them healthy and we don't want anybody coming in to ruin the rate bureau system.'

"Well, I would ask, 'Why is that? They get together and discuss prices and maybe prices would drop if you didn't have that collaboration through the rate bureaus.'

"They would say, 'Look, my problem in life is not whether they raise the rate, or whether the rate is $1 or $1.10. My problem is that I am shipping coal in competition with somebody over there, or I am shipping Alka-seltzer over here and my profit is affected by subtracting out the freight cost. As long as my freight cost is comparable to the next shipper's I can go to management and say, We are not losing money on freight.'

"But as soon as the rate structure gets jumbled up, and 'A' comes in and shoots in a rate at $0.85 but I am paying $1 because my shipper doesn't care, this is where I hurt as a traffic manager trying to keep my transportation costs in line."

"What happens with the rate bureaus is that somebody comes into the rate bureau and someone may say 'I want the rate down to $0.90.' Well, they put it out as a proposal and anybody else in the bureau or a shipper can come in and say "Put me in on that adjustment at $0.90." That avoids the shippers' problems that I spoke of with the difference in rates.

"It promotes stability and equality and fairness as to the shippers. That is exactly the reason why they support the rate bureau system. There is no mystery to it at all. They want to know what the rates are and they want a fair shot at keeping up with their competitors in that respect.

"This system provides the vehicle they need."

RATE BUREAUS AND COMPETITION

The existing system governing the establishment and maintenance of motor common carrier rates is neither a free-market system nor a system devoid of all competitive pressures. Rather, it is a blend of collective and individual action

designed to promote the uniformity and stability needed for a coordinated transportation network and at the same time to permit healthy competition and needed rate flexibility. That real competition exists is clear. Motor common carriers are in direct competition with railroads, freight forwarders, contract carriers, private carriers, air carriers and package carriers, as well as with each other. For example, there are 15 members of Middle Atlantic Conference performing single-line service between Boston, Massachusetts and Richmond, Virginia. There are 18 members of Rocky Mountain Motor Tariff Bureau performing single-line service between Chicago and either Los Angeles or San Francisco. These carriers compete not only with each other but with other modes of transportation and other motor carriers. Rocky Mountain monitors 2,390 competitive motor carrier tariffs including the tariffs of the following rate bureaus: Western Motor Tariff Bureau, Intermountain Tariff Bureau, Motor Carriers Traffic Association, National Association of Specialized Carriers, Machinery Haulers Assoication, Willamette Tariff Bureau, and Heavy and Specialized Carriers Tariff Bureau.

The right of independent action is, of course, a most important means of competition. A good explanation of the value of that right to a particular carrier is set forth in the verified statement of Edward V. Taylor of Consolidated Freightways submitted to the ICC in support of the continuance of collective ratemaking.

"In 1977, CF filed 622 proposals in the tariff bureaus in which it participates. Of those, 76 percent called for reductions. 15 percent called for increases, and the balance, 9 percent, proposed no changes at all. Of the total proposals filed, 550 were approved and 26 resulted in publication by independent action.

"During the same period, there were 13,572 independent actions in nine of the ten major general commodity tariff bureaus.[3] It is clear that the right of independent action is not inhibited and the right is frequently used by carriers in precisely the manner intended by Congress. In reviewing many of the provisions that have been established by independent action, we note that more than a few were established by carriers who have since gone bankrupt but even so, those carriers were afforded the right to control their own rate destiny, even if it contributed to their demise. We know of no process that could be substituted by the Congress that would assure more freedom in pricing than now exists, and still maintain other salutary features of the system. Any carrier can elect to substitute his own rate-making judgment for those of his peers by publishing rates independently regardless of the economic impact or competitive effect that might result from such action. There is no broader freedom than that. Each of the rate conferences in which CF participates rigorously complies to the letter and spirit of a Section 5a Agreement, and that is as it should be."

THE NEED FOR THE COLLECTIVE MAKING OF SINGLE-LINE RATES

It it sometimes asserted that there is no need for the collective making of single-line rates. The situation put is that in which Carrier A decides to establish a specific rate on a specific commodity between specific points. Why, it is asked, should that rate be collectively determined when only Carrier A handles the traffic to which that rate will apply? The difficulty with this theory is that the situation hypothesized doesn't exist. There are very few points served by only one motor carrier. And very little of the traffic of motor common carriers of general commodities moves at specific rates fixed for the transportation of specific commodities between specific points.

The vast bulk of the traffic moves at rates that reflect uniform relationships throughout the territory in which they apply. To the extent that there are departures from those rates, they usually take the form of rates on broad descriptions of traffic from all producing points. Such rates are applied by all carriers serving the producing points, whether in single-line services or joint-line service or both.

Between all major points there is competitive motor carrier service, both single-line and joint-line. Moreover, for a variety of reasons shippers often use joint-line service when service is available. Therefore, a carrier with single-line service between two points also participates in joint-line service between the same points. Thus, if Carrier A, in the exercise of his right of independent action, directs the Rocky Mountain Bureau to publish a reduced rate on alcoholic liquor

[3] One of the nine bureaus to which Mr. Taylor referred was Middle Atlantic Conference. In 1977 it published 2,707 independent actions. Of these 1,365 were to meet bureau motor carrier competition and 148 to meet other motor carrier competition.

from Baltimore to Reno the same rate will almost invariably be established for all carriers competing with Carrier A, whether in single-line service or joint-line service or both. Moreover, to avoid discrimination the rates from competing producing points, e.g., New York, Louisville, Chicago, will be adjusted so as to maintain just and reasonable rate relationships.

As the ICC put in its decision in Ex Parte No. 297, *Rate Bureau Investigation*, 349 I.C.C. 811 (1975) there is:

"* * * a symbiotic relationship between single-line and joint-line rates which must be considered in order to mainain competitive equality for carriers as well as shippers, remove distortions in port relationships, effect compliance with statutory restraints against disriminations and preference, and simply observe the realities of diverse rates in a coordinated transportation network. If rate bureau members were denied antitrust immunity to consider single-line rates in these situations, they could not function. Such a result would make virtually impossible joint-line service essential to a national transportation system."

The CHAIRMAN. Thank you, Mr. Rea.

Mr. Keenan?

Mr. KEENAN. Mr. Chairman, I am honored and grateful for the opportunity to talk to you this morning about Reed-Bulwinkle repeal. I favor it and I've come out here from New York at my own expense to say so, even though many of my clients disagree with me on the matter.

I'm a transportation lawyer with a law firm in New York, Arsham & Keenan. I've specialized in ICC work for some 25 years, 15 of them for carriers, 10 of them for shippers. I think I know both sides of the fence.

Now, the American trucking associations have been trying to construct in your hearing rooms some sort of an antitrust chamber of horrors and it has four dark corners. And I'd like to try, in the brief time available to me, to shed a little light on them, or at least to try to light a candle in each of those corners.

The first is the tariff corner. How will Reed-Bulwinkle allow continuation of bureau regional tariffs?

Mr. Chairman, do the antitrust laws forbid the regional bluebook of automobile used prices? Do they forbid the survey of the Consumers' Union perhaps 4 or 5 years ago about the premium rates charged by the 200 principal life insurance companies in the country? How could they possibly forbid the compiling of truck prices and how could they possibly forbid the compiling of truck prices by the very people who make those prices, namely, the carriers?

This is nothing more, in my view, than free speech and very necessary speech in a free market. It seems to me that there is the clearest kind of difference between a conspiracy to make prices and a collaboration to compile prices in published tariffs. I think we need to get that out of the way.

Now, as to what I see as the second of these corners, the preservation of a classification system. Do the antitrust laws forbid the carriers to join in assigning commodities to rate categories? I think it depends on what you do with those rate categories.

Now, today, the class rates govern almost all of the LTL transportation in the country and in the 11 to 16 major rate bureaus in the country you have an absolutely monolithic system of class rates, not commodity rates governing this traffic.

Mr. Rea talked about some 13,000 independent actions recently, in the last year or so, in the Mid-Atlantic Conference. I'd like to know

what percentage of those were addressed to the LTL commodity rates and what percentage were addressed to truckload rates for which there's competition with the railroads and with the private carriers.

Now, my suggestion is that the classification, after Reed-Bulwinkle repeal, would amount to nothing more than standard setting. It would be standard setting for one style of carrier prices and class rates and it would no longer be anticompetitive when the anticompetitive forces would be dissipated. Once there are competitive commodity rates, it becomes nothing whatsoever except a convenience.

As I see it, the third corner of this chamber of horrors is the place where the joint rates hide that Mr. Rea just finished talking to you about.

Now, to begin with, I should like to suggest that if Reed-Bulwinkle were repealed, we would take the motor carrier rate structure as we find it today. Concededly, it has been made under Reed-Bulwinkle umbrella, but those were under antitrust immunity at the time they occurred. There is no remote prospect of dismantling the rate structure as it is. The problem is what combinations can there be thereafter to change it? What sort of combinations can there be to change it after rate increases?

I think the best way to get at this is to ask whether the antitrust laws forbid Mr. Crew and his partners in his law firm from making joint prices for their clients when they give them legal service. Do they forbid Mr. Rea and his partners from making joint prices in joint effort for their clients?

If 2 or 20 or 200 lawyers can engage in the making of joint prices for common service for their clients, why can't 2 or 20 or 200 carriers do the same thing?

You know, if I had come out here for a vacation instead of to this hearing, I expect that United Airlines and the MGM Hotel and Avis would have given me a joint package that would have included the airline transportation, a sports car, and the 20 gallons, and maybe 20 tokens for the slot machines—and that would have been a joint price for a joint package. And they don't have any Reed-Bulwinkle protection.

Now, the fourth corner hides the worst horror of all, the specter of carrier treble damage suits and threat of Justice criminal prosecution of shipper trade associations if there were Reed-Bulwinkle repeal.

Now, I've read Professor Popper's pamphlet which the ATA has sent to all of my clients and apparently to thousands of people in the country with the suggestion that it be read with great care. Basically, Professor Popper says that trade associations have been able to discuss rates with carriers for the last 50 or 60 years—indeed, as Mr. Rea says, it's 90 years, since prior to the Interstate Commerce Act—solely because Reed-Bulwinkle, which was passed in 1948, permits it. I certainly agree that it wouldn't make any sense for the National Motor Freight Traffic Association to be able to hire Mr. Rea as the spokesman for its members, to speak with a single voice in support of rate increases, if the shipper side of the story—if shipper trade associations couldn't hire me or my colleagues on the shipper side of the bar to speak for them with a single voice in opposition to rate increases.

If there weren't any other reason for reaching this conclusion except Reed-Bulwinkle, I would agree that Reed-Bulwinkle is a perfectly good reason for reaching the conclusion, but there is a much more important reason why Mr. Rea's clients and mine have a right to hire us.

They have a right to be heard, they have a right to be heard in the halls of Congress. They have a right to be heard in the hearing rooms of the Interstate Commerce Commission, and they have a right to join their forces when they want to be heard and they have a right to hire an attorney who will speak for them with a single voice.

Mr. Popper ignores this completely in his pamphlet. It's a fact of life that, of course, all of us are intimately familiar with. Actually, what Mr. Popper proposes would be a lawyer's dream. He is proposing that each of the hundreds of thousands of manufacturing companies in the country would have to hire a separate lawyer to deal with this sort of thing, and that each of the 15,000 or so regulated carriers would have to hire a separate lawyer. This would be the greatest bonanza for the legal profession since the Magna Carta. It wouldn't be very good for their clients, but it would be wonderful for the lawyers.

Mr. Chairman, trade associations are not price-fixing groups. They are cooperatives formed to reduce the cost of legal representation. Their right to speak depends not on Reed-Bulwinkle but on the first amendment and on the right to petition the sovereign.

So as long as the ICC has the power to regulate prices, to regulate truck prices, shippers have the right to petition for such regulatory action. And they can do it jointly. They can confer about this ahead of time among themselves so that they can do it succinctly and effectively. And they can even confer ahead of time about this with the carriers and they can do this in or outside the walls and the halls of carrier rate bureaus.

Why? Because if you have a right to bring litigation, you have a right to settle it. And if you have a right to settle it, you have a right to engage in the negotiations that are necessary to settle it. And you have a right to reach the kind of agreement that's necessary in order to avoid it.

There's firm, clear, authoritative law concerning this: 1965, United Mine Workers against Pennington; 1967, Eastern Railroad President's Conference against Noerr Motor Freight; 1972, California Motor Transportation Co. against Trucking Unlimited.

Mr. Chairman, there's nothing abstruse or complicated about this. The law is nine-tenths horse sense and this is part of the horse sense of the law. Shippers have a right to combine to try ICC cases about rate regulation so long as the ICC has the power to regulate rates.

Now, what is the worst possible thing that you could do to jeopardize the shippers' interest? It would be precisely what I understand the American Trucking Association to be advocating. You would repeal the Interstate Commerce Commission's power over maximum rates and thereby remove any occasion or remove any protection for shippers' discussions to address themselves to carrier proposals for rate increases.

On the other hand, you would preserve complete carrier antitrust immunity under Reed-Bulwinkle so that the carriers could fully com-

bine to logroll, could fully combine to establish a monolithic rate structure, could fully combine to propose 10- or 20-percent increases in this.

And most important of all, suppose after you have done this, how would shippers deal with something like United Parcel Service? It's not a bureau carrier, it makes rates in every State, every city in the country. It makes rates for hundreds of thousands of shippers in the country.

And is the proposal really that, because Reed-Bulwinkle has no application there, if one UPS shipper calls another one up on the telephone to discuss the fact that UPS is proposing a 15-percent rate increase, suddenly he's in trouble with a damage suit and suddenly he's in jeopardy of Department of Justice.

If you preserve Reed-Bulwinkle and if you dismantle the ICC's power to govern maximum rates, basically what you do is give the Government a charter to tell the shippers when they can and when they can't confer. Basically, what you're saying to the carriers is: "You put it in your agreement when the shippers can talk to each other and then talk to you, and then they're going to have antitrust immunity.

"If you don't choose to put it in the agreement, you can preclude their talking to each other at all." It would, in my view, be the worst result.

Now, I have filed a very strong statement. I can't tell you with what difficulty, last night, I attempted to cut it down to this overlong statement, and I thank you for this opportunity.

The CHAIRMAN. Your statement will be made a part of the record.

[The statement follows:]

STATEMENT OF WILLIAM Q. KEENAN, ATTORNEY, ARSHAM & KEENAN

My name is William Q. Kennan. I am a member of the law firm of Arsham & Keenan, 277 Park Avenue, New York, New York 10017. My firm specializes in transportation law and practice before the Interstate Commerce Commission and for some 25 years I have personally practiced in these specialities. I have practiced on both sides of the commerce law fence, having spent some 15 years as a commerce attorney for the New Haven Railroad and for the Railway Express Agency, and the remaining 10 years in private practice representing manufacturing companies and trade assocations of shippers making use of the national transportation network.

I am grateful for the opportunity the Committee has been so good as to afford me to express views concerning the implications of repealing the Reed-Bulwinkle immunity from the antitrust laws now granted regulated carriers by the Interstate Commerce Act. I should like to make it clear that the opinions expressed in this testimony are my own. I am neither authorized to nor do I represent any of my firm's clients in the tendering of this testimony and I know that some of my clients disagree with the position I should like to suggest to the Committee. I have taken the time and trouble to come here from New York at my own expense to deliver this testimony because in the quarter century of my experience in this field I have come to believe that carrier antitrust immunity is an anomaly in our jurispudence which damagingly distorts our transportation economy and results both the wasteful deployment of scarce resources on transportation effort and in inflationary tendencies that we can ill afford at any time and that are disastrous today. Although my voice brings with it no echo from any corridor of power, it is disinterested one and such views as I have are the product of quite a long time spent thinking and working for clients in the context of shipper-carrier negotiations, disputes, conflicts of interest, and either their accommodation or their resolution by a governing tribunal.

At the outset I should like to give you my view of where we are today in terms of transportation regulation and how we came to get there. Basically there are

three elements of transportation regulation at the pragmatic level, control of carrier prices, of carrier market entry and of carrier sevice standards. Each of these stems from historical circumstances, some of which go back to the Civil War, and none of which exists today.

The sources of transportation regulation relate essentially to wars and depressions; they were the Civil War, World War I and the Depression of the 1930's. The transportation needs of the Civil War created our national railroad system and the Federal policy of granting land to railroad developers from which grew a transcontinental rail capital plant reaching maturity almost overnight in the concluding three decades of the last century. This gave the railroads enormous market power which they exercised by levying discriminatory prices favoring their friends and hurting their enemies. The burden of these policies fell especially heavily on farmers and gave rise to the Granger Movement which organized political pressure to obtain the Interstate Commerce Act in 1887. Initially the Act focussed on discriminatory rail pricing, but in 1906 the Hepburn Act gave the I.C.C. power to prescribe maximum rates. Transportation regulation began with little more than regulation of carrier prices.

In World War I we made tremendous demands on the rail transportation plant so that it eventually had to be transferred to federal ownership and operation and that experience gave rise to two more reforms. The Esch Car Service Act of 1917 gave the I.C.C. power to relieve equipment shortages and the Transportation Act of 1920 added power to govern service standards, rail market entry and rail market exit, so that the deployment of cars, the construction of new tracks and the abandoment of old tracks would not again cause us to suffer the shortage of rail service which hurt us during the First World War.

In the Depression of the 1930's, our problem was not inflation as it is today, but persistent deflation. Prices were too low and the wheels both of industry and of the railroads stopped turning. To encourage increased prices and more efficient use of capital plant, the New Deal fostered cartels, service pools and price maintenance agreement under legislation such as the National Industrital Recovery Act and the Agricultural Adjustment Act. In this process, the I.C.C. was called on not to keep prices down by regulating maximum rates, but instead to keep them up by regulating minimum rates, and the truckers and water carriers were thought to be under the same necessity as the railroads, so they were brought under regulation on the same terms as the railroads by the Motor Carrier Act of 1935 and the Water Carrier Act of 1940. Railroads, stretched over huge territories and with rigid route structures, needed and used rate bureaus to publish their prices. The trucks and water carriers in order to compete claimed the same right to use rate bureaus to maintain high price levels over broad regions and eventually with the Reed Bulwinkle Act of 1948 all of the carriers, rail, truck and water, were given immunity from the antitrust laws when they combined to fix their prices under bureau agreements approved by the I.C.C.

It is important to remember that this development of the law of transportation regulation took form from three forces, none of which operate in today's economy:

1. The Commission's original price control in 1887 developed out of rail monopoly power when there were no trucks and when water carriers meant relatively little in our domestic transportation picture; today there is pervasive competition between railroads and trucks, among railroads and among truckers.

2. Commission control over car service, market entry, market exit and service standards stemmed from tremendous wartime pressures on the transportation system which no longer exist. In fact, in the last ten years,, our problem with the rail plant has been, not undercapitalization, but overcapitalization and hundreds of miles of rail line have been abandoned and the tracks have been torn up.

3. The regulation of the truckers and the grant of antitrust immunity to the railroads and the truckers stemmed from economically lethal forces of deflation and depression in the 1930's; today our problem is inflation.

If we had a clean slate today it is most unlikely that we would think the solution to our problem is to create the system of transportation regulations under which we operate today. Test this against our reaction to a terrible problem that faces us today, namely the scarcity of petroleum. Instead of controlling prices, we are talking about finding ways to let them rise so that we will stop using petroleum at our current rate. Instead of guarding petroleum companies against excessive competition and granting them immunity from the antitrust laws, we are talking about imposing on them windfall taxes and we are even seriously

considering nationalization of the entire petroleum industry. In short, there is very little about our current economic system that explains or makes any sense out of the system of transportation regulation we have today.

The issue to which my testimony is addressed is the consequence of Reed-Bulwinkle repeal. I want to attempt answers to three questions. What effect will its repeal have on: (1) carrier price levels? (2) carrier pricing processes? and (3) shipper freedom to negotiate with carriers?

First, as to price levels, let us be clear about the nature of the market. Rate bureaus affect prices quite differently depending on the sector involved.

We can divide it horizontally by carrier type and vertically by shipment type. To look at the horizontal distinction first, it is between carriers with rigid and those with flexible route structures. Motor carriers use a right of way financed by the public sector—the highway system. Changing or expanding a route involves them in no right of way capital cost. Therefore they are flexible, they follow their traffic, and the single line haul tends to predominate for distances of 400 miles or less. The only inhibition is regulatory barriers involved in certification. Railroads on the other hand can't change their route without involving heavy capital expense and the shipper must use them today pretty much as they were physically configured half a century ago. Therefore more than 70 percent of rail traffic is interline and shipper capacity to obtain access to the entire rail network by means of interline hauls and through rates is very important.

Because of this overriding importance of joint line pricing for vehicle load traffic in the rail system, the Interstate Commerce Act endows the Commission with the power to compel through railroad routes and joint railroad rates. Because of the relative route flexibility of the truckers, the Act has never granted that power to the Commission over motor carriers, although of course the Commission has exercise an aspect of that power, in my opinion quite adroitly, by ruling in Ex Parte MC–7 [1] that no provision can be published in motor carrier tariffs which results in restricting service to less than the carrier's full operating authority. Consequently the Commission has the practice of suspending selected motor carrier closings of previously established through routes on the ground that, even though the Commission had no power to compel institution of the through routes in the first place, when a carrier selectively discontinues them he is restricting his service to less than the scope of his full operating authority. The Commission had recent occasion to affirm its power to reject tariffs in violation of this rule in Central States Motor Freight Bureau, Inc., Petition for Review of Action of Tariff Section, Clarification and Other Relief, Docket 36533, in a decision published November 21, 1979, where the carriers argued that the voluntary nature of interlining in the trucking industry foreclosed such exercise of Commission power. In a concurring opinion, Commission Trantum noted:

"This decision reflects the voluntary nature of interlining in the trucking industry. Ex Parte 77 clearly provides only that a carrier may not, through the publication of certain tariff requirements, restrict its operating authority; it does not require carriers to interline. The parties here accurately quote the Commission: 'We have no clear statutory authority to require the initial establishment [by] motor carriers of property of through routes and joint rates.' (111 M.C.C. at 174). Given these facts, it is difficult to reconcile petitioners' [the carriers'] position with the statements of the trucking industry generally regarding interlining—that without continued rate regulation and antitrust immunity joint rates and through rates would disappear. Indeed, it would appear that carriers interline because shippers demand it, not because carriers are allowed to set rates collectively."

If interline rates are compelled by a market demand, it is difficult to understand how any discussions or agreements necessary to their implementation could constitute a restraint of the trade which compels them. Of course Assistant Attorney General Shenefield, whose voice is not without authority respecting matters of antitrust enforcement, has advised this Committee and the Committee on the Judiciary several times that "immunity is not required for the making of joint rates by connecting carriers or for the publishing of tariffs." [2]

[1] Restrictions on Service by Motor Common Carriers 111 M.C.C. 151 (Ex Parte MC–77, 1970); Restrictions on Service by Motor Common Carriers (Compliance Reports and Interpretations) 119 M.C.C. 691 (Ex Parte MC–77, Sub 1, 1974).

[2] Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, 95th Congress, First and Second Sessions, on competition in the trucking industry, Vol. 1, p. 17.

As to size of shipment, there are four ranges which make differing demands on a carrier plant and need differing types of carrier investment. The smallest shipment is the parcel traffic which can range from 1 pound to perhaps 250 pounds. Its distinctive characteristics are conveyerability and fungibility. One parcel is like another for most transportation purposes, and the cheapest way to move this traffic is to bring it to sorting terminals where it can be consolidated for intercity vehicle load movement. Because of its conveyerability, it is possible to unload and re-sort it at intermediate terminals.

Almost all motor carriers price this traffic on a uniform basis per shipment regardless of weight or commodity type, and to a degree regardless of distance. They call it "minimum charge traffic" because a so-called minimum charge is collected for it. The rate bureaus have escalated the minimum charge so steeply that in Rocky Mountain Territory, for example, the same charge is assessed for a 350 lb. shipment as for a 1 lb. shipment. This rate level is not required by costs and the proof of this is the express carriers who are not rate bureau members and who carry this sort of shipment for less than half the bureau carrier price. UPS is the outstanding example of such a nonbureau carrier.

The next category is the so-called LTL shipment, ranging from 500 to perhaps 10,000 lbs. This traffic tends to consist of packages or pieces averaging 50 lbs. each. but coming to a large aggregate per shipment. A 4,000 lb. shipment can easily involve 80 pieces. This traffic also needs platforming and sorting terminals for consolidating into intercity vehicle loads, but is usually not conveyerable in the terminal because of the need to keep the multiple shipment pieces together and to avoid what is called in the trade "split shipments." But clerical and accounting costs of handling this traffic are much less per pound than is true of the parcel category.

The imporant aspect of parcel and LTL traffic is the need for capital investment in the platforming and sorting facilities required to consolidate it before and to deconsolidate it after intercity linehaul. These terminals are also convenient points of traffic interchange between interlining carriers. Often a major carrier will make no attempt to serve a given market within its territory because it does not want to commit the sales effort or because it does not feel it has sufficient volume to warrant a local platforming facility. Instead it will interchange with a local carrier who, because he is able to work out such interchange agreements with multiple major carriers with traffic for that market, can develop the economies of scale needed to serve the market. Such a local carrier then becomes the gateway or the retailer of national motor carrier service for that market, permitting it access to the national transportation system. In Mr. Michaelson's territory, the Middlewest, 37 percent of the tonnage of the intercity freight carriers consists of LTL traffic. The biggest general freight carrier in his territory, Admiral Merchants, had a 48 percent LTL tonnage ratio in 1978.

The railroads carry none of the parcel and LTL traffic as prime carriers. Doubtless they handle some of it in the form of boxcar loads for forwarders and trailers on flatcars for the motor carrier. So interlining of LTL and parcel traffic is not caused by route rigidity ; it is basically a function of carrier management decision. If the motor carrier wants to pay the cost of buying a certificate or of penetrating the administrative agency market entry barrier to extend his certificate to serve a new market, he can do it. UPS leaves no doubt that this is possible. Over the span of some 20 years, UPS has expanded from a local department store carrier on the East and West Coasts to a national system serving all of the 48 contiguous states. But it took 20 years, much patience, and millions of dollars of legal fees to achieve this.

Railroads are important in the next two traffic categories. The first is vehicle load traffic—truckload and carload—which ranges from something in excess of 10,000 to 200,000 lbs. per shipment, needs no sorting terminal, and moves directly from shipper dock or siding to received dock or siding. Because railroads and trucks compete for this traffic, it has a price structure completely different from LTL and this tendency is reinforced by another form of competition which both meet for this traffic, namely so-called private carriage, i.e. the proprietary engagement by a manufacturer in the transportation of his own products.

Some idea of the significance of this private carrier competition in controlling the truck and rail vehicle load rate structure can be formed from the following comparisons : [3]

[3] The sources for the data are the 1970 United States Census Report on Transportation, Transportation Facts and Trends, published by the TAA October, 1974, and Mitre Technical Report 7081, published by the I.C.C. in January 1976.

	Regulated motor carriers	Private highway carriers not subject to economic regulation
Number of carriers subject to DOT safety regulation	12,526	115,000
Intercity tractors operated	230,000	650,000
Drivers, helpers, and mechanics	500,000	1,000,000
Comparative share of estimated national freight bill (billions)	$24.2	$31.3
Comparative share of GNP (percent)	1.45	2.0

The last category is multiple vehicle load traffic over 200,000 lbs. It is almost exclusively rail. The railroads must compete with barges and pipelines for it. Often it requires heavy terminal investment, e.g. in unit train loading and unloading facilities. It too is priced peculiarly.

An analysis of its members' 1978 traffic supplied the I.C.C. by the Southern Motor Carrier Rate Conference on November 16, 1979 in support of a general rate increase (Table 1 of V.S. 5) is helpful to discern the focus of truck rate bureau effect on the truck pricing structure. It shows that, although the Southern Motor Carriers carry 57.7 percent of their tonnage and devote 55.2 percent of their hundredweight miles to truckload traffic, they earn only 32.3 percent of their revenues from this traffic (averaging 628 miles). Only 6.9 percent of their tonnage and 7.4 percent of their cwt. miles consist of parcel traffic weighing less than 500 lbs., but from this they derive 18.9 percent of their revenues (averaging 704 miles). The bulk of their revenues come from LTL traffic above the parcel weight range, 43.9 percent, although this category involves only 31.8 percent of their cwt. miles and 30.7 percent of their tonnage, and averages from 678 to 775 miles.

Their parcel rates are extremely high, they have surrendered much of this traffic to UPS, and UPS, with a present maximum shipment weight of 100 lbs., is the controlling competitive factor limiting their pricing freedom. UPS is seeking (and the general commodity motor carrier industry has desperately opposed) an expansion of its authority to carry shipments up to 500 pounds. When this happens, the UPS price structure will establish the effective truck general commodity price ceiling for this traffic, and the general commodity carriers will have only one of two choices, either to comply with the price ceiling established by UPS, or to exit this market. UPS of course is a single enterprise. There are at least 1100 general commodity LTL freight carriers with a capacity to compete for this traffic. It is extraordinary that in today's market we are accurate when we speak of these 1100 carriers as though they were a single company for pricing purposes. The bureau general commodity minimum charge price structure is pragmatically monolithic. There are perhaps 16 major truck rate bureaus in the country. There are approximately 16 minimum shipment charge highway rate structures in the country. Each of them operates as though it were designed in a single board room, just as are the prices of UPS.

The behavior of LTL prices above the minimum charge level (traffic ranging roughly from 500 lbs. to 10,000 lbs. per shipment) is characterized by a similar price structure, but somewhat different levels. LTL highway prices are also made on a regional basis with virtually no deviation for independent action by the highway carrier. So-called class rates move most of this traffic. These are made by cooperative action between the regional truck rate bureaus (which establish the class rates per cwt.) and a board of motor carrier employees (the National Classification Board in Washington, D.C.) which acts for the entire national motor carrier industry to assign so-called class ratings to commodity categories. The class rate in a given territory for commodities rated as Class 65 will be approximately 65 percent of the class rate for commodities assigned a Class 100 rating. The Class 200 class rate will be approximately twice the Class 100 class rate. In some instances, certain LTL traffic categories will be assigned somewhat lower "exceptional ratings" in a given bureau territory, constituting a local departure from the national class rating system. The point is that, whatever the rate level is for an LTL shipment, it will be the product of a uniform mileage scale obtaining throughout the bureau territory publishing the rate. Bureau carrier independent action to establish a commodity rate for LTL traffic is infrequent. This is the traffic that generates more than 60 percent of the general commodity bureau carrier gross revenue. It seems to me that economic planners in the Kremlin could view such vast and tight control over pricing from no more than 16

management centers in a country of close to 300 million people only with surprise and envy. Our LTL highway transportation network constitutes almost a totally planned economy, even though the planning is largely an operation of the private and not of the public sector.

I said that the levels of LTL prices differ from those of minimum shipment prices. Again let me refer to Table 1 of Verified Statement 5 of the November 16, 1979 SMCRC General Increase Justification Statement to illustrate the point. According to SMCRC's cost expert, Mr. John C. McWilliams, Jr., SMCRC carrier revenues received from the transportation of 1978 minimum charge traffic constituted only 1 percent more than expenses incurred. The similar such ratio for LTL traffic is 10 percent. Apparently therefore the minimum charge rate level is intimately affected by the controlling factor of the competitive, nonbureau UPS price structure. Above the 100 lb. shipment ceiling the bureau carriers encounter no competition from UPS, no competition from the railroads and almost no competition from private carriage. This last fact is true because an LTL transportation system requires the establishment of platform and soating facilities to consolidate and deconsolidate intercity truckloads, a type of enterprise and investment beyond the capacity or inclination of most manufacturing companies engaged in proprietary carriage. The result is bureau carrier freedom to escalate LTL revenue levels well above cost levels.

The contrast of the LTL with the price levels of the third traffic category, vehicle load traffic, is profound in SMCRC. Although it constitutes 58 percent of the tonnage it yields only 32 percent of the revenues, and according to Mr. McWilliams' computations for SMCRC carriers the revenues from handling this traffic come to only 4 percent more than the expenses. For much of this traffic, the general commodity bureau carriers encounter the competition not only of the railroads and of the private carriers, but also of so-called "specialist" carriers in their own ranks who rely on truckload traffic for almost all of their gross and who therefore use prices to compete for it vigorously. The significance of these specialists can be estimated from a survey of 1978 annual reports filed with the I.C.C. by regulated carriers and published in Trinc's 1979 Blue Book. Trince aggregates totals for general freight carriers separately from the specailists.

DISTRIBUTION OF REGULATED CARRIER EFFORT—TRINC 1979 BLUEBOOK

Carrier type	Carrier number	Gross revenue (millions)	Index of col. (c)
(a)	(b)	(c)	(d)
General freight	950	$18,964	62
Specialists	1,738	11,064	36
Total United States	2,816	30,368	100

It is obvious that the specialists, earning 36 percent of regulated carrier gross revenues, are very significant in the industry. Equally significant is their concentration on truckload traffic.

CARRIER CONCENTRATION ON LTL

Carrier type	LTL tons carrier (thousands)	Percent LTL of total tons
(a)	(b)	(c)
General freight	82,668	28
Specialists	7,709	1
Total United States	90,389	10

The specialists are negligible factors in the movement of LTL and their impact on the pricing structure is limited to vehicle load traffic.

Therefore as a practical matter the so-called commodity rate structure and not the class rate structure governs the movement of much truckload traffic. Commodity rates are made on a point to point basis and often do not make use

of mileage scales. When they are expressed by means of mileage scales the scale rate levels are only fractions of the truckload rates called for by the class rate structure.

Inasmuch as the trucks carry relatively little in the form of multiple vehicle load shipments, and inasmuch as this hearing is addressed primarily to the impact of Reed-Bullwinkle antitrust immunity on highway regulated carriage, it is inappropriate to say more about the pricing of multiple vehicle load traffic except that, because this often requires specialized and extensive terminal capital investment by the railroads, it is often priced under so-called agreed rates requiring a tender of a minimum volume of tonnage over a stipulated calendar period and will doubtless eventually move under so-called contract rates between the railroads and the large shippers. By their very nature such rates tend to be tailored to the specific circumstances of a given shipper and are unlikely to be affected anticompetitively by rate bureau operations.

I should like to suggest that the foregoing review warrants the following conclusions:

1. Joint rates and through routes are much more important in the rail than in the highway structure because of the rigidity of rail routes.

2. Through the accident of non-bureau UPS competition for parcel traffic, even though highway rate bureaus price parcel traffic monolithically, the resulting price levels are heavily affected by UPS pricing policies. Of course this endows UPS with an extraordinarily extensive degree of control over the level of national highway parcel prices. As a result the Commission has felt itself forced to place a ceiling limit on each of the last 4 UPS general increase tariffs.

3. Highway rate bureaus are able to escalate truckload prices significantly above cost levels only on traffic for which the railroads, the private carries or the specialist highway carrier don't care to compete.

4. The principal anticompetitive effect of highway rate bureaus is to escalate prices on LTL traffic from which the bureau's members derive some 60 percent of their gross revenues. In the Southern Motor Carriers Rate Bureau this comes to some 39 percent of the members' ton miles. This is the principal effect of Reed-Bulwinkle on the existing regulated pricing system.

The second subject to which I wanted to address testimony was the effect of Reed-Bulwinkle repeal on carrier pricing processes. Such repeal would bring to bear on those processes the Sherman Act and the Clayton Act. As presently written, the Robinson Patman Act does not apply to the pricing of services. There are three elements of carrier collaboration necessary to the adequate delivery of transportation service to the public on which these antitrust laws might bear. The first is the need to make a market. The second is the need to establish standards (so that a shipper can have some assurance of what to except from a common carrier bailment and so that shipments can move easily from one carrier to another in the transportation network) and the third is the arrangements necessary for joint rates and through routes.

To make a market there must be price communication not only between sellers and buyers, but also among sellers. Otherwise competition can't take place. If my competitor is undercutting my prices, I need some means of finding out in order to adjust to retain my market share. Both the publication and the compilation of pricing schedules or tariffs are vital to the making of a transportation market. If the carriers didn't use something of the nature of their rate bureaus to compile their rates, then some other agency in the private sector would speedily take over the same function, perhaps as a consulting service for shippers.

The Blue Book of Used Car Prices is an example of the way private enterprise would fill the vacuum if carrier rate bureaus were to exit the business of publishing tariffs tomorrow. There is a difference, however, between compiling and publishing rates and conferring to make rates.

Furthermore, I see no reason why it would be a restraint of trade for carrier rate bureaus to establish standards for the style of carrier pricing which they would undertake to publish. As a practical matter, they do this today in the distinction they draw between their class rate and their commodity rate tariffs. The class rate tariff, usually establishing the maximum rate level, has at least a theoretical application to the full range of commodities they carry and publishes their prices according to an absolutely uniform set of mileage scales and weight breaks applicable throughout the bureau's region. Then in their commodity tariffs (and to some extent in their exceptions tariffs) they compile for the accounts of their individual members the point to point rates published by those members (largely for truckload traffic) to attract traffic in competitive situations.

If there should be Reed-Bulwinkle repeal, it seems to me nothing would prevent them from either continuing or elaborating this system to include still a third set of nonstandard carrier rates, for example rates per truck mile or even rates per truck hour or day or week.

Concededly, elaboration of such rate structures would present shippers with a very extensive and therefore perhaps a confusing set of options when attempting to decide the most advantageous route and the most economical carrier to use. Shippers who considered investment in personnel to engage in the researching of carrier rates unnecessary could confine themselves to the ease and convenience of the class rate tariffs and they would of course thereby incur the higher transportation cost. Shippers willing to invest in the degree of traffic management currently characterizing most industrial companies could expand their use of the carrier pricing systems to include the commodity rate tariffs, much as they are published today. Shippers willing to go to the trouble of researching the lowest available carrier price and the best available carrier deal could collect and analyze the bureau "nonstandard" tariffs or tariffs published independently by the individual carriers and take the resulting advantage of decreased transportation prices.

Closely allied to the mechanics of price publication in tariff schedules is the matter of standards themselves. For example today for the purpose of class rates the National Classification Board establishes the standards according to which commodity categories are assigned to class ratings and then makes that assignment. The Uniform Freight Classification Committee in Chicago performs the same function for the railroads. Today what the Uniform Freight Classification Committee does makes little difference in terms of the carload transportation price which the shipper pays, because the railroads carry very little traffic at class rates and almost all their movements are at commodity rates constructed without regard to classification categories for the most part. It is difficult to see how the functions of the National Classification Board in establishing such class rating standards for motor carriers could involve any restraint of trade, once the anticompetitive pressures had been eliminated which now cause almost all LTL traffic to move at class ratings or at exceptions ratings which take account of class rating assignments. Actions by these national boards to assign commodities to class ratings after Reed-Bulwinkle repeal would amount merely to a convenience so that class rate tariffs could continue to be published for the use of patrons who had no desire or need to do the research necessary to claim and use the lower levels of competitive carrier prices available in commodity or nonstandard tariffs. By the same token it would not be objectionable for the bureaus to insist that, for a carrier price to qualify for publication in a commodity rate tariff, it satisfy minimum standards, for example its expression in the form of dollars per cwt. carried. Such bureau activity would constitute no restraint of trade so long as no anticompetitive force whatsoever motivated carriers to restrict their pricing schedule solely to class rate and commodity rate tariffs.

To this I suppose the reply might be made that nothing inhibits the individual carrier today from publishing any form of price he desires in his own individual tariff (so long as he can obtain permission from the I.C.C. to depart from the Commission's own tariff publishing regulations). This misses the point. If nonstandard prices are to be published and to become competitively effective a market must be made for them by compiled regional tariffs just as a market needs to be made for standard prices. The transportation companies need to be aware of their competitors' prices which they must meet or beat in order to keep or enlarge market share, and the convenience of compiled tariffs needs to be preserved for the transportation patron. In short the problem is to use the established channels of rate bureau pricing communications for the broadest possible range of carrier prices and service offerings and the broadest possible range of shipper options. Thus I should think that Reed-Bulwinkle repeal would not restrict the scope of tariffs which a rate bureau could publish, but instead would impose a duty on rate bureaus to avoid restraining trade by being willing to publish any and all pricing systems which any of their members might adopt in an appropriate series of bureau schedules.

Nor should there be objection to the establishment of standards, analogous to class rates, concerning charges and rules for vehicle detention, shipment storage, shipment, loading, shipment unloading, protection from heat and cold, and shipment expedition, so long as no anticompetitive force or motive inhibits in the

slightest departure by carriers from such standards and the publication of such departure in nonstandard tariffs.

This brings the discussion to the third requirement for preservation of a national highway system, namely freedom to collaborate in the establishment of joint rates. The touchstone of this problem is of course the per se prohibition under the antitrust laws against price fixing. To understand this better, it will be useful to consider the scope of freedom to fix bureau prices that exists today. It has several elements. The first is freedom to use bureau management and bureau staff to initiate general increases and to propose general agreement on the maintenance of selective price levels. The second is to sit in a committee of carrier traffic representatives and to reach a collective decision on a group change in price levels. The third is freedom to engage in dialogue with competitors outside the group and outside the channels of rate bureau communication to agree on a common position concerning price levels. The first and last of these are of particular importance.

The first creates an almost institutional barrier against competitive price decreases. Those carriers whose voices are most influential in the establishment of bureau management policies in the final analysis trend to become responsible for the selection of personnel in bureau management. Members of bureau management thus selected inevitably become the spokesmen for the carrier representatives influential in their choice.

The third has the pernicious possibilities illustrated by Mr. Crew's testimony. Let us suppose Carrier A derives his principal revenue from Market X and Carrier B derives his from Market Y. Each has the capacity to become the advocate of a price increase or decrease in the other's market under current bureau rules, policies and immunities. They can reach a log-rolling agreement to support price increases in each other's markets reciprocally. This has an effect not only on intrabureau pricing decisions, but also on interbureau decisions. If Carrier A derives 75 percent of his revenue from movements under Middlewest Motor Freight Bureau tariffs and 25 percent under Eastern Central Bureau tariffs, his competitive inclination might be to support an increase in prices in the Middlewest Motor Freight Bureau where his market share is large and to seek competitive advantage through price decreases in Eastern Central where his market is small in order to enlarge his Eastern Central market. However, if Carrier B has reciprocal traffic characteristics (75 percent of his revenue from Eastern Central and 25 percent of his revenue from Middlewest) today it is possible for them to logroll by supporting each other's increase proposals in each bureau.

I should think Reed-Bulwinkle repeal would subject bureau carriers to severe jeopardy of antitrust sanctions for such logrolling. As is true of all combinations and conspiracies in violation of the antitrust laws, their engagement in such activities would be a matter of proof, doubtless would be difficult to investigate, and eventually would be governed by practical rules of circumstantial evidence creating rebuttable presumptions as to whether such logrolling had occurred. Regardless of the difficulties of enforcing the antitrust laws or the diligence at any given time of enforcement efforts by the Department of Justice, they always retain their coercive and deterrent effect because of the spectre of the treble damage civil action available to the aggrieved private sector complainant.

If Reed-Bulwinkle were repealed tomorrow I assume the existing highway rate structure would continue to govern the movements of traffic throughout the United States. Whatever may have been the nature of the carrier combinations and agreements that brought it into existence, they were immune from the antitrust laws at the time of their implementation and the only impact of the antitrust laws after Reed-Bulwinkle repeal would be to prohibit combinations or agreements to maintain the existing structure without change (and, a fortiori, combinations and agreements to change that structure in concerted fashion). Let us suppose that a local carrier serving St. Josepf, Mo. in Mr. Michaelson's Middlewest Motor Freight Bureau Territory wanted to enlarge his competitive share of the LTL market by a 10 percent reduction of all his LTL rates between St. Joe on the one hand and points in Illinois and Indiana on the other. He could communicate with his connections either bilaterally through extra-bureau channels, or he could use the bureau's own communication system to invite all carriers with whom he connected in these traffic lanes to join with him in such a reduction. There would be nothing anticompetitive about either style of communication. For his account and for those of his connections agreeing with him

the bureau would then publish in an appropriate tariff series a reduced table of rates applying to the rate basing points which include St. Joe, MO and the other points in Illinois and Indiana involved. If he has a local competitor serving St. Joe, that competitor through bureau channels or otherwise could issue a corresponding invitation to the same connections for the same rate reduction. The same process without any anticompetitive implications could characterize his proposal to increase this LTL rate structure 10 percent between St. Joe and Illinois and Indiana.

The other possible aspect of competition to which he would have to give account are the single-line carriers serving between St. Joe on the one hand and Illinois or Indiana on the other. He would have to contemplate the possibility of their copying his price increase or decrease proposal for implementation in their single line rates and no techniques are lacking to permit the bureau from including such single line adjustments in appropriate tariffs.

After Reed-Bulwinkle repeal, however, there would be two inhibitions. The first would prohibit any discussion between the St. Joe proponent of the rate change on the one hand and either his competitor who is a local carrier like him, or his single-line competitors whose concurrence he does not need in order to implement the joint-line rate change. This last would be true except to the extent that his single-line competitor had the capacity to interchange traffic with him, for example at East St. Louis. To the extent that his single-line competitor should care to enter into a joint rate arrangement with a local carrier even though the single-line competitor possessed capacity to reach the local carrier's market without interchange, then of course discussion between the local carrier and the single-line carrier for interchange at East St. Louis and establishment of the appropriate resulting joint rate level to points in Illinois and Indiana would be apropriate. The antitrust laws of course would inhibit any discussion among the single-line carriers with capacity to reach St. Joe from Indiana and Illinois concerning their individual decisions whether to compete by copying the 10 percent rate reduction or whether to take advantage of the decreased competitive pressure by copying the hypothetical 10 percent rate increase.

A second inhibition of the antitrust laws would be more subtle. Suppose the proponent carrier served both St. Joseph, MO and Kansas City, KS. Suppose in reply to his proposal for a 10 percent rate increase from St. Joe to Illinois, his Illinois connection replied, "I will agree if you will go along with my proposal for 10 percent increase from Springfield, IL to Kansas City, KS." At one level both of these agreements would constitute nothing more than agreements to engage in changes in joint rates to which all of the agreeing carriers were parties. At another level such an agreement would constitute the sort of log-rolling now possible under Reed-Bulwinkle and illustrated by Mr. Crew's testimony. I certainly concede that this type of situation would require the establishment of policy under the antitrust laws. Mr. Shenefield's Division at the Department of Justice would have to give mature thought to the balancing of the need to preserve competition against the transportation market's need for adequate freedom and efficiency in the formation of joint rates. However, this is the type of problem to which courts, the Federal Trade Commission and the Antitrust Division have addressed themselves under the antitrust laws for decades and I fail to see any reason why it cannot be sensibly solved in the context of transportation as it has in all the rest of our national economy which has grown prodigiously under antitrust law restraint. The point is that today no attention whatsoever is being given to this sort of problem or any like it; what we have is almost a complete carte blanche for cartels, pools and combinations to preserve the LTL price structure well above levels required for efficient transportation.

I suppose there is a question where the responsibility might lie for misuse of bureau intercarrier communication channels in the event of Reed Bulwinkle repeal. One can foresee complaints by bureau staff and bureau executives that they cannot possibly manage any burden themselves of monitoring their members to make sure that the communications interchanged among their members through bureau channels are proper under the antitrust laws. I see no reason why bureau staff and executives should have any more responsibility in this area than to avoid collaboration in anticompetitive price communication activities which are obviously prohibited under the above criteria. Otherwise the responsibility for compliance with the antitrust laws lies with the managements of the carriers in whom ultimately is reposed the discretion for the establishment of

carrier prices. There isn't any question that carrier management would have to equip itself with appropriate advice from antitrust counsel should there be Reed-Bulwinkle repeal. However, this is nothing more than is true of management in American industry generally. Many of our laws are complex and to comply with many of them the layman needs the assistance of expert consultation. This has never been thought adequate reason to repeal such laws when they are necessary to preserve a competitive or orderly economy.

The third question to which Reed-Bulwinkle gives rise is, would its repeal inhibit shippers from their present practice of combining in trade associations when dealing with carriers in the negotiation of carrier rates?

During the last ten years we have represented more than a dozen of such shipper trade associations and I feel I have a fair familiarity with their mode of operation. In the transportation area a principal reason for their existence is the cost of litigation. The proper processing of a regional or national I.C.C. rate case can involve substantial six-figure expenses in the form of lawyer's fees, consultant fees and allied disbursements. Such litigation is always chancy, and the freight expenses monitored by an industrial traffic manager for his company can be significantly affected by as many as a dozen such pending litigations at any one time. In such circumstances there is powerful motivation for manufacturers engaged in the same line of business, whose transportation rates are likely therefore to be governed by the same rate scales and to be influenced by the decisions of the same sectors of carrier management, to combine their efforts in the retention of specialized counsel, necessary consultants, and in the handling of regulatory rate litigation. In essence, such associations therefore exist in major degree as a means of sharing litigation expense and decreasing its impact on the budget of the individual company member.

In spite of the motivation for this common effort, shipper trade associations remain associations of companies in vigorous competition with each other. It goes without saying that at their meetings they engage in no discussion whatsoever among each other concerning their own prices or selling policies. Even more to the point, however, are the limitations they impose on themselves concerning discussions of their own negotiations with carriers. They compete not only in terms of manufacturing and selling for their own markets, but also in terms of obtaining advantageous relationships with their own suppliers. Carriers are a principal supplier of service they need. Consequently it is unlikely that an industrial traffic manager member of a shipper trade association would tell his colleagues about an advantageous business relationship he has been able to work out with a given trucking company or railroad. We have received assignments to monitor carrier tariff changes in behalf of a given shipper association. In the course of such monitoring we have encountered notice not only of proposed rate increases, but also of proposed rate decreases, the latter usually on a point to point basis, and normally made as the result of a negotiation between a particular shipper and a particulr carrier. When we have made inquiry to the management of the association whether it desired reports from us on both the decreases and the increases, the instructions we have received have been to limit our reports solely to the increases; the trade association membership did not desire our firm to be any channel of communication by which the advantageous negotiation worked out by a single member would come to the notice of his competitors because, of course, the individual member considers the achievement of such a negotiation a competitive advantage.

Similarly, when it has been necessary to accumulate facts concerning the traffic volume of the members of a shipper trade association for litigational purposes we constantly encounter instructions from our clients to avoid disclosing such statistics which we gather in any form which would permit the individual traffic volume of a single member of the association to become known by the other members. We are normally required to aggregate such statistics and present them in litigation on a group basis because of the competitive precautions which our clients feel it necessary to take in their own interest. In short, shipper trade associations are no attempts to pool marketing leverage in order to coerce carrier price decreases or to inhibit carrier price increases. Instead they are enterprises which seek to share and to control the cost of litigation or of negotiations looking toward litigation in which the membership has a common interest.

There is no question that buyers can clearly violate antitrust strictures when combining to coerce sellers, as, for example, when buyers, who are themselves producers of services or goods, combine to coerce their own suppliers under threat

of boycott to reduce prices. *United States* v. *Hilton Hotels Corporation* 457 F.2d 1001, 1003–1004 (9 Cir., 1972), cert. den. sub nom. *Western International Hotels Co.* v. *United States* 409 U.S. 1125 (1973).

Basic criteria in this respect are supplied by *United States* v. *Container Corp. of America* 393 U.S. 333 (1969) and *Eastern States Retail Lumber Dealers' Association* v. *United States* 234 U.S. 600 (1914). In *Lumber Dealers'* the ruling was that any concerted action by buyers is unlawful which has the purpose of preventing market entry by sellers or restricting its scope. In *Container* a reciprocal agreement to exchange information was held to constitute concerted activity which, if it had a purpose or result unlawful under the antitrust laws, was proscribed.

While there have been contests concerning antitrust liability between competing carriers, for example *California Motor Transportation Co.* v. *Trucking Unlimited* 404 U.S. 508 (1972), the books disclose no record of any criminal prosecution or any civil suit brought either by a shipper or by a carrier against a group of shippers, grounded on the proposition that the shippers combined unlawfully to negotiate rates with carriers. This lacuna in the books is not because history is lacking of the existence of such shipper combinations to negotiate with carriers. Perhaps the most venerable shipper association formed for this purpose is the National Industrial Traffic League (the "NIT League"). The Reed-Bulwinkle Act which became § 5a of the Interstate Commerce Act is reported in its legislative history as having been intended to insulate from antitrust liability the preexisting system of rate bureaus which were "long standing practices in the transportation industry that were developed in cooperation with the shippers and have proved their worth."[4] Among the proponents of § 5a were "numerous shippers' traffic and transportation organizations, including the National Industrial Traffic League and the National Association of Shippers' Advisory Boards * * *." (ibid., p. 1845). The legislative record includes a summary by the House Committee of the testimony of the President of the NIT League in support of the bill. (ibid., p. 1853). Among the reasons for NIT League support of the bill was the fact that in 1920 The NIT League had negotiated with the rail carriers an agreement establishing a procedure for handling all rate proposals through rail rate bureaus. *Western Traffic Association-Agreement* 276 I.C.C. 183, 190–191 (§ 5a Application No. 2, 1949).

In 1950 the I.C.C. had under consideration a § 5a agreement entered into by all of the railroad members of the AAR concerning the establishment of demurrage (car detention) and storage (lading detention) charges to be assessed shippers. The Department of Justice was a formal party to the proceeding and filed with the Commission several objections to what it contended was anticompetitive behavior of the railroads which the agreement as filed would permit and which Justice wanted the Commission to restrict or prohibit. In its report on this application in *Association of American Railroads—Agreement* 277 I.C.C. 413, 418 (§ 5a Application No. 7, Div. 2, 1950) the Commission said:

"For many years it had been the practice of the car demurrage and storage committee of the League [the NIT League] and representatives of AAR, at the instance of carriers, shippers, or the league's committee, to hold joint conferences for discussion and improvement in the general method of handling demurrage and storage matters. These conferences have been beneficial to both carriers and shippers and, through informal discussions with members of our staff, have resulted in amicable settlements of numerous controversial matters without resort to formal litigation."

The I.C.C. not only did not object to such shipper practices and combinations when negotiating with carriers, but also made the explicit finding that the agreement proposed by the railroads "as amended, is within the scope of Section 5a of the Act." (277 I.C.C. at 425). One of the amendments to the agreement which the Commission required was expressed in these words:

"The said General Committee shall consider proposals for change in demurrage or storage rates and charges or rules or regulations pertaining thereto, submitted by duly designated committees of interested shipper organizations, including the National Industrial League, and such proposals shall be handled in accordance with the procedures provided for in this agreement.

"Additionally, the said General Committee shall designate a special standing committee authorized to consult with representatives of interested shipper or-

[4] H.R. Rep. No. 1100, 80th Congress, 2d Session (1947), 1948 U.S. Code Congressional Service 1844, 1947.

ganizations, including the National Industrial Traffic League, and to receive suggestions from individual shippers, and make recommendations to the General Committee with respect to changes in demurrage or storage rates and charges, or rules and regulations pertaining thereto." (277 I.C.C. at 425).

Thus at the agency level the holding has been made explicit that discussions between shipper trade association and carrier rate bureaus concerning adjustment of carrier prices are within the scope of § 5a of the Interstate Commerce Act and may be exempted from the antitrust laws with Commission approval. The Department of Justice as a party to the case registered no objection to this Commission finding. When this agreement came up for another review in *Ahnappe & W. Ry. Co.* v. *Akron and B.B.R. Co.* 300 I.C.C. 73 (No. 31774, Div. 2, 1957), Justice again participated, the Commission reaffirmed its approval with a modification not here relevant, and the only concern that Justice expressed was to be sure that the carrier members of the bureau retained the right of independent action, i.e. were not irretrievably bound by bureau decision. This sort of contemporaneous interpretation of a statute by a regulatory agency charged with enforcement of the statute is very persuasive as to the statute's meaning. *Brotherhood of Maintenance of Way Employees* v. *United States* 336 U.S. 169, 179 (1961); and *Munitions Carriers Conference, Inc.* v. *American Farm Lines* 415 F.2d 747, 749 (10 Cir., 1969).

This § 5a agreement later became the subject of an antitrust controversy among the railroads party to it in *Baltimore & O. R. Co.* v. *N.Y., N.H. & H. R. Co.* 196 F. Supp 724 (S.D., N.Y., 1961). In 196 F Supp. at 732 the court quoted some of the above language from the Commission's prior decisions. One excerpt thus quoted included the requirements imposed by the Commission that the railroad General Committee consider proposals made by shipper organizations including the NIT League. The court never had any occasion to rule on the lawfulness of the shipper combinations when dealing with the railroads, because no question was raised in the case concerning any such issue.

The Commission has consistently encouraged participation of "all affected parties to any rate change proposal" in proceedings before carrier rate bureaus. In *Rate Bureau Investigation* 349 I.C.C. 811, 833 (Ex Parte 297, 1975) the Commission's own Bureau of Enforcement told the Commission in the Bureau's initial statement filed in the case of several instances in which shipper asosciations, including the NIT League, participated in rate bureau proceedings in opposition to carrier proposals of rate adjustments. An example is the verified statement of Elbert Brown, Jr., September 19, 1973, p. 55, in Ex Parte 297. Neither the Commission's Bureau of Enforcement nor the Antitrust Division of the Department of Justice, participating as parties in the Ex Parte 297 investigation of rate bureaus, gave the slightest indication that he practice of shipper combinations in negotiating with carrier tariff bureau groups violated any aspect of the antitrust laws. While it is of course true that none of these proceedings in any way raised the issue of the lawfulness of such shipper combinations under the antitrust laws, the Federal District Court in *Baltimore & O. R. Co.* v. *N.Y., N.H. & H.R. Co.*, supra, and the Commission in Ex Parte 297, supra, were both focussing very closely on the requirements of the antitrust laws, and all of these cases accepted as one of their explicit factual premises the organization of shippers in trade associations for the purpose of dealing with carriers in the establishment of carrier rates.

In short, whatever may be the state of the antitrust law on the matter, for half a century it has been the consistent practice of shipper trade associations to negotiate carrier rate changes with carrier rate bureaus, the practice has been widely recognized, has been acknowledged in proceedings to which Department of Justice by its Antitrust Division was a party, and has never been the subject of the slightest question. Furthermore this practice has long antedated the Reed Bulwinkle Act and no one until quite recently has ever suggested that the lawfulness of this practice has depended on the Reed Bulwinkle Act.

There are at least two lines of theory which justify this lengthy history of shipper freedom from accusation of antitrust violation in the course of concerted dealings with carriers. The first begins with the so-called *Noerr-Pennington* doctrine[5] that the right to petition the legislature for redress of grievances permits persons to combine in ways that would otherwise result in a restraint

[5] *Eastern Railroad Presidents' Conference* v. *Noerr Motor Freight, Inc.* 365 U.S. 127 (1967); *United Mine Workers* v. *Pennington* 381 U.S. 657 (1965).

of trade, so long as their bona fide object is legislative action. It does not matter that the result of that legislative action will be a disadvanage to competitors amounting to a restraint of trade. This immunity from antitrust constraints persists even though "joint efforts to influence public officials" were explicitly "intended to eliminate competition. Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act." *United Mine Workers* v. *Pennington* 381 U.S. 657, 670, supra. In *California Motor Transportation Co.* v. *Trucking Unlimited* 404 U.S. 508 (1972) the Supreme Court unsurprisingly ruled that the *Noerr-Pennington* doctrine extends to the making of representations to administrative agencies to whom legislative power has been delegated, and also to judicial tribunals. *Trucking Unlimited* also enforced the single exception requiring that the resort to jurisdiction of an administrative agency or of a court must be bona fide in the sense that its true purpose must be to obtain the relief sought from the agency or from the judicial tribunal; if the effort to obtain such relief is only a "sham," if the sole purpose is to delay competitors in obtaining necessary licenses or certificates from the administrative agency, for example, and therefore if the ultimate purpose is to foreclose access by potential competitors to the regulatory process, then *Trucking Unlimited* ruled that the injured competitors do have an antitrust remedy. In short, the policies of the antitrust laws and the policy of freedom to petition the government conflict in situations where law or regulation affect the competitive balance in the market. In situations of such conflict, the policy of protecting freedom to petition the sovereign overrides the Sherman Act's protection of the free market.

This leads to two subsidiary considerations:

1. Economy of judicial and of regulatory agency administrative effort calls for maximum consolidation of common points of view when they are presented to a tribunal for decision. Section 17(3) of the Interstate Commerce Act allows the Commission to "conduct its proceedings under any provision of law in such manner as well best conduce to the proper dispatch of business and to the ends of justice." Therefore the Commission has authority under 49 U.S.C. § 10321(a), to establish general orders or rules governing proceedings before it. Rule 25 of the Commission's General Rules of Practice, 49 C.F.R. § 110.25 provides in subsection (b) that "two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and concern substantially the same alleged violation of the Act and a like state facts." If a proceeding is marked for hearing on papers under so-called modified procedure, Practice Rule No. 46, 49 C.F.R. § 1100.46, actualy makes it mandatory that "parties having joint interests * * * arrange for joint preparation of pleadings" filed under modified procedure. Specific and ad hoc orders which the Commission publishes from time to time in important cases explicitly encourage and sometimes mandate consolidation of joint statements of view from multiple litigants who all seek the same type of relief from the Commission in the proceeding. A principal topic of regulatory dispute which the Commission must resolve frequently in investigations conducted under 49 U.S.C. § 10707 is the lawfulness of a carrier-proposed increase in rate level, and the Commission is again and again requested by shipper complaints under 49 U.S.C. §§ 11701 and 11705 to compel carriers to reduce their rate levels on the ground that existing rate levels are too high. In general rail rate increase proceedings, the Commission receives several hundred separate representations from the shipping public in opposition to the increase under adjudication, and approximately half of these protests and sets of evidentiary statements come from trade associations of shippers. If the shipper members of these associations had not been permitted to combine their representations, the Commission would have had to consider not several hundred but several thousand such pleadings in each case. As a practical matter today it would be almost impossible for the I.C.C. to transact the price regulation business which it ha before it if the shipper side of the case could not be consolidated and placed under the aegis of trade association representations.

2. At this point another policy of the law takes on importance which finds its most naive and direct embodiment in paragraphs 12 and 13 of the I.C.C.'s Canons of Ethics, requiring practitioners "to avoid or to end the litigation" when a controversy can be fairly adjusted. In short, what you can do to petition the legislature or to litigate your cause before an administrative agency, you can also do in order to avoid such petition or avoid such litigation. As a practical matter, it isn't possible to combine for litigation purposes before the I.C.C. wthout first combin-

ing to prepare the litigation. Obviously in the course of such preparation the possibility of accommodation must be explored and, if it is to be fruitful, must result in negotiation between the shippers and carriers who are litigating. Furthermore, a dispute which can become the subject of litigation must be amendable to settlement short of the litigational process; it is not necessary to file formal pleadings before a tribunal in order to obtain the right to make the accommodation and enter into the settlement which would be appropriate after such pleadings had been filed. The justice and reasonableness of carrier price levels are always the subject of potential dispute between carriers and shippers and extensive sections of the Interstate Commerce Act as well as extensive sectors of the Interstate Commerce Commission's agenda are devoted to the handling of such disputes.

The foregoing considerations and conclusions take no account of the antitrust immunities which the carriers themselves enjoy, and which supply the second line of theory justifying the history of shipper immunity from antitrust accusation when dealing with carriers. It is important to emphasize this because there is a shipper superstition to be found in the transportation trade that shippers can combine to discuss transportation rates with carriers only when the carriers have combined to make the rates in the first place. In the past this sort of superstition has been relatively harmless because almost all significant interstate common carrier rates in the United States have been made under the umbrella of a § 5a Reed-Bulwinkle antitrust immunity. However, § 5b of the Interstate Commerce Act, 49 U.S.C. § 10706(a), enacted by the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act), excludes from the scope of railroad antitrust immunity the establishment of "single-line rates," participation by a carrier in the establishment of a rate for an interline movement "unless that rail carrier can practicably participate in that movement," or any concerted action to obstruct or prevent "independent action" by a carrier to establish a rate. This means that many carrier rates heretofore established by rate bureau action must now be developed, published and defended by individual carrier action. When one considers the geographical scope and the volume of tonnage handled by such rail systems as Conrail, the Southern Railway, the Chessie System, the Norfolk & Western, the Family Lines, the Sante Fe, the Southern Pacific, and the Burlington Northern, it is obvious that such individual transportation systems possess enormous market power controllable only by the regulatory action of the Interstate Commerce Commission. Each of these is a system of what was at one time as many as a dozen separate railroads. Even without any antitrust umbrella as such, the sheer physical fact of their consolidation into single systems (a type of consolidation which today requires explicit I.C.C. permission under 49 U.S.C. § 11345) renders each of these rail systems the equivalent of a tariff bureau publishing transportation prices via many paralel routes and over vast segments of territory. The same thing is true of the large motor carrier systems, the most remarkable of which is UPS, reaching all points in the country.

Thus it would place the shipping public at a grievous disadvantage should the thousands of shippers served by any one of these systems be under an inhibition to combine when seeking rate relief from the Interstate Commerce Commission.

For these reasons, it is useful to emphasize that the *Noerr-Pennington* antitrust immunity does not depend on the presence of any Reed-Bulwinkle antitrust umbrella; it depends only on the critical fact that the Interstate Commerce Commission has the power to regulate the prices of each of these rail systems individually as well as in the aggregate.

It is, however, true that the availability to the carriers of Reed-Bulwinkle antitrust immunity supplies an important and secondary theory justifying shipper combination when participating in the carrier ratemaking process. To begin with, the unfairness verges on the absurd of suggesting that the carriers are at liberty to combine their resources and their counsel in an adversary situation in order to maintain a price level which shippers consider to be excessive, and that shippers are denied the same sort of freedom in order to bring their own weight to bear in the context of regulatory jurisdiction to resist disadvantageous carrier price changes. Actually a semantic detail of the Reed-Bulwinkle Act under which domestic surface carriers thus combine suggests that shippers are endowed with antitrust immunity by the same statute that grants such immunity to the carriers. Section 5a(9) provided: [6]

---

[6] 49 U.S.C. §§ 10706(a)(2)(B) and 10706(b) continue today to include equivalent language.

"Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6), hereby relieved from the operation of the antitrust laws with respect to the * * * carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission."

The legislative history contains no explicit indication that the phrase "other persons" includes shippers who combine in trade associations for the purpose of negotiating with the carriers in their rate bureaus.

When the Reed-Bulwinkle Act was pending in Congress, Attorney General Clark wrote a letter expressing concern that "immunity under such approved agreements would apply not only to the carriers, parties to the agreements, but also to undefined 'other persons,' " quoted at 91 Congressional Record 11575 (79th Congress, 1st session, 1945). Doubtless the phrase "other persons" was meant to include sources of financing and persons controlling carrier management indirectly. H.R. Rep. No. 1100, 80th Cong., 2nd Sess. (1947), 1948 U.S. Code Cong. Serv. 1844, 1946; 91 Cong. Rec. 11756–11757; *United States* v. *Association of American Railroads*, 4 F.R.D. 510, 515 (D., Neb., 1945). Nonetheless the semantic scope of the phrase is characterized by no such restriction.

United States v. *Borden Co.*, 308 U.S. 188, 204–205 (1939) ruled that persons specifically exempt from the operation of the antitrust laws by acts of Congress lose that protection if they combine with nonexempt "other persons." It is arguable that by inclusion of the phrase "other persons" in § 5a Congress meant to make plain that the carriers and their rate bureaus would retain antitrust exemption even when they discussed prices with shippers and other noncarriers. If this was the intention, the exemption actually granted by the language is broader than *Borden* alone would require, because the exemption by its language extends not only to the carrier dealing with "other persons," but also to the "other persons" themselves.

The misapprehension would be grievous, however, that shipper immunity from the antitrust laws depends on and is confined to the scope of carrier immunity under Reed-Bulwinkle. This would mean that throughout the entire Northeast shippers could not combine to resist surcharge impositions by the Conrail system, for example. It would also give rise to the mistaken conclusion, which I have heard widely uttered, that shipper trade association negotiations with a carrier bureau must be conducted pursuant to the rules and regulations of the bureau as set out in the bureau's agreement approved by the regulatory agency. This is often supplemented by the further misapprehension that the carrier rate conference or bureau serves in some way the regulatory goal of the Interstate Commerce Act and substitutes, initially at least, for proceedings before the Interstate Commerce Commission. In other words, a rate bureau agreement is sometimes thought of as creating an administrative quasi-governmental process for rate regulation.

I am sure that such intimations err. A carrier rate conference is not an objective tribunal; it is an agency of the carriers and has the mission to protect carrier, not shipper interests. There is no language in the Reed-Bulwinkle Act or in any I.C.C. order approving a Reed-Bulwinkle agreement which implies that a carrier rate bureau has any sort of regulatory tribunal status. The form and conduct of shipper negotiations with bureau carriers need not accord with and are not subject to the mercy of rules for such negotiations prescribed by the carriers. A carrier bureau or rate conference, while it often adopts the trappings and style of a regulatory agency, has no status whatsoever as an adjudicating or regulatory tribunal, and has no public authority or jurisdiction to endow any carrier rate or price approved by or published by the bureau with the imprimateur of lawfulness. A carrier rate published by a bureau or conference is not different from a carrier rate published by an individual carrier insofar as its amenability to or immunity from audit by a regulatory agency or an order from a regulatory agency with jurisdiction requiring cancellation or amendment of the carrier price.

So far as rate bureau rules and regulations are concerned, although they make provision for opportunities for carrier patrons to state views to carrier conferences concerning the merits of a proposed transportation price change, they undertake in no way to restrict shippers to the times and places prescribed in these conference rules for the purpose of making such representations. Many of these conference agreements, as a matter of fact, include provision for so-called

"emergency" conference action with respect to rates, according to which conference decisions are arrived at as a result of a "telephone" vote. In those circumstances there is no formal provision made for input from shippers at all. The practical fact is that shippers in such circumstances telephone the traffic officers of the individual carriers serving them and register with the carrier a request that the "telephone" conference vote be handled as the shipper desires. Often carrier price change proposals desired by shippers are never docketed on bureau dockets as having been proposed by a shipper at all. Instead the shipper discusses the price change with the carrier bureau member with whom the shipper does most of his business, and that carrier bureau member becomes the proponent of the price change on the bureau docket. In other words the constant practice is for carriers and shippers to conduct a continuing dialogue concerning changes in transportation rate structure desired either by the carriers or the shippers, and this dialogue is conducted more outside the walls of bureau "hearing rooms" and more outside the file folders of formal memoranda of carrier conferences with shippers than it goes on within such parameters.

Carrier conference rules normally make no distinction between representations from individual shippers and representations from groups of shippers or shippers acting under the aegis of a trade association. No special occasions are calendared and no special provisions are articulated concerning the form, the timing, or the substance of shipper negotiating representations tendered by shipper trade associations as distinguished from such representations from individual shippers. Therefore if reliance were placed upon explicit recognition in carrier conference rules of the right of shipper trade associations to conduct negotiations or to make representations to carrier rate conferences as a means of justifying such trade association action under the antitrust laws, only very rarely would there be found any provision in rate bureau rules which would permit such trade association action. The carrier agreements which are the basis for trade association conduct do not normally refer to shipper trade associations or acknowledge the practice of shippers of combining in trade associations when dealing with carriers under the terms of the agreement. It is of course true that in the legislative history of the Reed-Bulwinkle Act there is repetitive recognition of the practice of shipper trade associations to interact with carrier rate conferences. However, neither the language of the statute nor any language in the Committee reports concerning Reed-Bulwinkle explicitly refers to carrier representations from or discussions with groups of shippers organized in the form of trade associations as having been immunized from the antitrust laws as such.

This is not to say that carrier rate bureaus don't create a need for shipper trade associations. As a practical matter, any carrier effort to create a rate structure throughout any extensive region—whether that effort is by a group of carriers operating through a bureau or by a single carrier such as Conrail, Consolidated Freightways or United Parcel Service—cannot proceed intelligently without accurate and relevant information concerning the traffic to be moved. Transportation rates tend to be made to satisfy a demand expressed by an industry and not by individual shippers, and it is the pattern of traffic flow within that industry which will establish the service standards which the carriers must meet in order to satisfy the industry's needs, which will indicate the price threshold or ceiling that the rates must not exceed if they are not to sacrifice necessary traffic volume, and which eventually establishes the carrier cost profile dictating the minimum revenues that the enterprise must yield to make it economically viable. If shipper trade associations didn't exist to compile and gather this sort of information for the carrier ratemakers, someone would have to invent a substitute. In many circumstances the ratemaking process simply can't proceed without this assistance. A particularly vivid illustration of this truth is the classification process. When commodities are assigned to class rating categories for the motor carriers by the National Classification Board or for the railroads by the Uniform Freight Classification Committee. neither of these bodies is willing to (nor should it) consider a shipper request for reclassification unless the request comes from a responsible group representing the great preponderance of the shippers whose interests will be affected. In other words in the light of these practical marketing needs it would actually be anticompetitive and not procompetitive to deny carriers the informational resources of shipper trade associations.

For these reasons the words "other persons" in the Reed-Bulwinkle Act certainly can be interpreted as immunizing combinations of shippers from antitrust strictures to the extent those combinations act to implement carrier ratemaking permitted under rate bureau agreements under the Interstate Commerce Act. However, an argument can be made that the phrase, "other persons," is meant to deal with the problems or carrier corporate affiliates, carrier sources of financing, and carrier stockholders and directors when carrier corporations engage in price fixing combinations protected under Reed-Bulwinkle. In other words, if the sole basis for shipper combinations to engage in discussions with carriers in a rate bureau concerning changes in transportation prices were Reed-Bulwinkle, one would be diffident and doubtful concerning the circumstances and scope within which such discussions would be lawful for shipper trade associations, and would be inclined to recommend a consultation with the Antitrust Division at the Department of Justice before establishing guidelines.

The law which establishes the firm basis on which to justify combinations of shippers in entering into transportation pricing discussions with carriers is the fact of I.C.C. jurisdiction (and FMC jurisdiction) to regulate carrier rates, and the *Noerr-Pennington* charter to shippers of freedom to combine when seeking exercise of such regulatory jurisdiction. Freedom to combine in petitioning an exercise of agency jurisdiction implies necessarily freedom to combine to plan and prepare such a joint petition, and also freedom to combine in making representations to carriers in order to avoid the litigation and the dispute which such a petition would occasion—in other words freedom to combine to settle the dispute before it arises. The settlement must necessarily take the form of voluntary carrier action in changing transportation prices. The carriers, of course, are not authorized to combine in implementing or achieving such price changes except in compliance with the Reed-Bulwinkle requirements.

All of the foregoing observations assume that customary strictures on trade association activity are observed, namely that there be no agreement whatsoever among members to engage in any kind of a boycott or threat of boycott, that the association is not used by its members to fix their own prices to their own customers, that there is no discrimination among members of the association as to benefits to be obtained from the association's efforts, that there is no effort or policy of arbitrary exclusion of competitors from membership in the association, and that the association is in no way used as a cover for a monopoly, for an attempt at monopolization, or for any combination between shippers as buyers and carriers as sellers to restrain trade. *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co.* 364 U.S. 656 (1961) ; *Associated Press* v. *United States* 326 U.S. 1 (1945) ; *Fashion Originators' Guild* v. *F.T.C.* 312 U.S. 457 (1941) ; *Eastern States Retail Lumber Dealers Association* v. *United States* 234 U.S. 600 (1914) ; *Household Goods Carriers Bureau* v. *Terrell* 452 F. 2d 152, 156 (5 Cir., en banc 1971) ; *Simpson* v. *Union Oil Co.* 377 U.S. 13 (1964).

Thus no combination of shippers is free to refuse to deal with a carrier group member who refuses to comply with negotiated rate levels. Shipper trade association participation in such negotiations is limited solely to representations concerning appropriate carrier price levels and the reasons why such levels are appropriate, and may involve, express, or imply no threat whatsoever of any concerted shipper action which would divert traffic from the carrier group or its members in the event of failure of negotiations. It goes without saying that the fact, the circumstances, or the legalities which authorize a carrier rate bureau in no way render lawful any concerted shipper action to implement a boycott or a diversion of traffic from carrier members of a rate bureau. The only leverage which members of a shipper trade association possess and may lawfully exert in negotiations with a carrier rate bureau concerning bureau transportation rates is exercise of the shipper right to petition regulatory relief from the relevant administrative agency to compel the pricing change which has been the topic of shipper trade association—carrier rate bureau negotiations.

Not infrequently carrier rate bureau members flag out of a rate increase or a rate decrease. Of course the law implies no obligation burdening an individual member of a shipper trade association to continue to tender traffic to carriers who, by virtue of one of more flagouts, publish higher competitive price levels than their colleagues. Shipper reaction to such price differentials among or between carriers on competitive routes has traditionally been immediate and drastic, carriers and the Interstate Commerce Commission have recognized this explicitly, and in the Ex Parte 310 and Ex Parte 318 national general rail

increases, the Interstate Commerce Commission worried out loud in its orders about the refusal of some of the railroads in the country to join in these increases,[7] because of the inevitable shipper action which would follow of diverting traffic from the carriers who published the increase to carriers who had refused to publish it. None of this implies concerted shipper action. It is a fact of life in the transportation trade which everybody recognizes. An industrial traffic manager who fails to take advantage of the lowest available carrier rate level in such a situation would probably be fired. Shipper reaction to such differential carrier price changes is usually immediate and unanimous, but constitutes concerted action only to the extent that concerted action can be attributed to lemmings when they crawl over the edge of the cliff and fall into the ocean.

Although shipper antitrust immunity when combining as buyers to negotiate the purchase of transportation from one or more carriers does not depend on the existence of Reed-Bulwinkle carrier antitrust immunity, it is quite intimately connected with the power of the Interstate Commerce Commission to regulate carrier rates. As I understand the position of the regulated carriers concerning legislative proposals pending before this Committee, the carriers argue with equal force against repeal of carrier Reed-Bulwinkle immunity and for repeal of I.C.C. control over carrier prices. An important carrier argument for preservation of carrier Reed-Bulwinkle immunity is that shipper freedom to combine in trade associations for the purpose of affecting carrier pricing depends completely on the correlative carrier freedom to combine to file prices in the first place. This argument has recently taken its most literate form in Shipper Antitrust Liability in a Rate-Deregulated Market; Fundamental Inquiries and Analysis, by Andrew F. Popper, published by American University, Washington, D.C., September 4, 1979. Professor Popper dismisses the *Noerr-Pennington* privilege on the ground that it

"is limited by at least two factors. The first is related to 'sham' activity, i.e., First Amendment activity designed to injure competitors rather than advocate a point of view effective legislation. The second is a 'purpose' limitation relating to the absolute necessity that the otherwise impermissible collective activity not be directed to matters such as price establishment, territorial allocation, or similar prohibited acts. Shipper associations may have difficulty with these tests." (op. cit., pp. 3–4).

This conclusion of Professor Popper seems quite squarely to conflict with the language of the Supreme Court in *United Mine Workers* v. *Pennington* 381 U.S. 657, 670, quoted at p. 35, supra, holding that the *Noerr-Pennington* privilege persists even thought "joint efforts to influence public officials" were explicitly "intended to eliminate competition. Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act." It is only in this manner that the carrier argument can avoid the conclusion that Commission power over maximum carrier rates and the shipper privilege to invoke that power are the real key to the antitrust immunity of shipper trade associations.

Instead Professor Popper relies on the Reed-Bulwinkle carrier privilege to combine to fix prices as granting shipper trade associations what he calls a "non-explicit immunity." (He candidly observes that "the Supreme Court has suggested that there is no 'implicit immunity' in the antitrust area as those laws are applied to various regulated industries." (op. cit., p. 3).) In aid of this "nonexplicit immunity" he discerns what he calls a "penumbra" of Reed-Bulwinkle, which he says exists if the doctrine of *Parker* v. *Brown* 317 U.S. 341 (1943) "in the state action exemption area forms a valid parallel." It is very difficult to see how *Parker* v. *Brown* can have anything to do with the problem. It ruled that a marketing stabilization program for raisins divised and instituted by the State of California did not violate the Sherman Act because the Sherman Act does not reach state action; what the State of California compelled raisin growers to do by state law could not be prohibited by federal antitrust law. Shippers are under no legal compulsion whatsoever to combine in trade associations, it goes without saying. Consequently the *Parker* v. *Brown* exemption from the antitrust laws (or any qualifications of it) can hardly have anything to do with the shipper privilege under discussion here.

Perhaps in implicit recognition of this he appears to place reliance on the "other persons" phrase in Reed-Bulwinkle cited above in my testimony and from

[7] Increased Freight Rates and Charges, 1975 349 I.C.C. 555, 581; Increased Freight Rates & Charges, 1976 ——— I.C.C. ———, 7 P.S.R. (CLS) 857, 866.

this language concludes that it "was quite clear to the Congress when the Reed-Bulwinkle Act was passed" that "shippers' collective activity enjoys this immunity." (op. cit., p. 8). In elaboration of the thought, he says:

"It should be noted that this form of derivitive immunity is generally problematic in the antitrust world. Its existence is predicated on a legislative enactment directed to carriers, for carrier activity. Yet to disclaim its force is to ignore Congressional intent in the initial balancing of public interests that led to the passage of the act and to ignore 30 years of non-prosecution of shippers for collective activity by various shipper associations." (op. cit., p. 7).

I and my associates have reviewed Reed-Bulwinkle's legislative history and find no explanation whatsoever of the phrase "other persons" beyond that cited in my prior testimony. I can find in the legislative history no statement anywhere of "Congressional intent in the initial balancing of public interest" involving shipper trade association antitrust immunity. Antitrust counsel would have to be hesitant indeed in advising a client trade association that its antitrust immunity depended on any Congressional premise in 1948 that "shippers' collective activity enjoys this immunity." It seems to me the overwhelming likelihood that no one gave the matter the slightest thought because in 1948 everyone took completely for granted the existence of trade associations such as the National Industrial Traffic League which now has, I believe, celebrated either its 50th or its 60th birthday. Certainly there is not a bit of language from any 1948 legislative source which a 1979 court would deem significant (except the words "other persons" in the statute itself) expressing either a Congressional purpose or a Congressional assumption that shipper trade associations either had or ever would have antitrust immunity.

By thus eschewing reliance on the *Noerr-Pennington* shipper privilege and by placing complete reliance on the "nonexplicit immunity" of the Reed-Bulwinkle "penumbra," Professor Popper suggests that Reed-Bulwinkle repeal would thrust shipper trade associations into a chamber of Sherman Act horrors, whereas repeal of Commission power to regulate carrier rates would eliminate nothing but a *Noerr-Pennington* privilege which "shipper associations may have difficulty" in claiming. I must say I disagree squarely. From the shipper point of view, the absolute worst of all possible worlds would be erasure of Commission power to control any carrier pricing and the preservation of the privilege of the motor carrier industry to form cartels which would completely substitute for the repealed Commission controlling function. The result would be: (1) the most vigorous encouragement of widespread carrier pricing policies in restraint of trade, (2) the delegation to United Parcel Service of the sole power to put a cap to the LTL highway price structure, and (3) subjection of shipper organizations to constant jeopardy of carrier triple damage antitrust suits against them on the ground either that the "other persons" language in Reed-Bulwinkle does not include them or that they are restricted solely to such collaboration as might be permitted them by the rules of procedure of the carrier Reed-Bulwinkle agreements.[8]

If on the contrary Reed-Bulwinkle were to be repealed I suggest there is no reason to doubt that the National Industrial Traffic League and the National Small Shipments Traffic Conference (to name two trade associations not my clients) will be under no inhibition to oppose a nationwide UPS rate increase, a transcontinental increase by Pacific Intermountain Express or Yellow Freight System, an Eastern District increase by Conrail or an increase by all of them combined in whatever form of tariff bureau they might devise, so long as there exists a tribunal with jurisdiction to moderate or modify in any degree such price changes. And what the NIT League and NASSTRAC can do by way of litigational opposition they can also do by way of negotiation to avoid such litigation.

Of course if regulatory control over carrier pricing were to be abolished completely (which assumes not only collapse of the Interstate Commerce Commission, but also subtraction of anticompetitive carrier pricing activity from the jurisdiction of the Federal Trade Commission and of the courts under antitrust laws) then of course we would have a completely free transportation market where shipper votes would be cast not in the form of ballots in trade association meeting rooms, but instead in the form of dollars paid for freight service and in the form of shipping orders selecting among competitive routes and carriers. Here the fundamental decision to be made, how to deal with the 1,100 or 1,200 principal

[8] Today the offshore water carriers, operating under the FMC in antitrust-immune rate conferences have so frightened shipper patrons with such a threat that offshore shippers have sought legislative relief.

highway freight carriers today, is very analogous to the decision made several years ago concerning how to deal with the dozen or so principal air carriers of passengers in the country. If the unrestrained forces of competition have been able so dramatically to decrease the cost of passenger air tranportation in a national market served by no more than a score of significant carriers, it is difficult to doubt that the same result would follow for highway freight rates in a market served by several thousand highway trucking companies.

[The following information was subsequently received for the record:]

DECEMBER 10, 1979.

Mr. WILLIAM Q. KEENAN, Esq.
Arsham and Keenan,
New York, N.Y.

DEAR MR. KEENAN: For the purposes of completing the record of the hearing in Reno, Nevada, before the Senate Commerce Committee, I am requesting a written response to questions which, because of time limitations, I was not able to ask:

Questions:

1. Do you think antitrust immunity is needed for joint classifications?
2. Do you think we need to specifically legislate antitrust immunity for shippers?
3. (a) Is it your belief that there is no antitrust liability for shippers because they don't actually agree with the carriers in the bureaus, and that the antitrust laws require that there be some evidence of an agreement?

(b) Are you also saying that concerted actions by shippers to influence rate decisions is protected under the Constitution, that shippers have a right to try to influence the regulatory commission?

4. You say that shippers don't currently have antitrust immunity. Then why do some of the major shipper traffic groups, such as the National Industrial Traffic League, say that they have immunity and need to keep it?
5. If Congress retained some antitrust immunity for carriers, would we need to afford shippers any immunity so that they could continue to negotiate with those carriers?
6. Why do you think many of your clients are in disagreement with the position that you have suggested to the Committee concerning Reed-Bulwinkle repeal? repeal?

I would appreciate a response at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

EDWARD M. KENNEDY.

ARSHAM & KEENAN,
New York, N.Y., December 19, 1979.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This replies to the questions in your letter of December 10, 1979 requesting supplementation of the December 3, 1979 legislative hearing in Reno, Nevada concerning repeal of the Reed-Bulwinkle Act. Your questions and my answers follow.

Question. Do you think antitrust immunity is need for joint classifications?

Answer. The carrier classification function consists of the development of standards according to which to assign commodities to categories for ratemaking purposes, and then the actual exercise of making these assignments according to the standards previously developed. This function is performed nationally for the railroad industry by the Uniform Freight Classification Committee in Chicago and for the highway industry by the National Classification Board in Washington.[1] After commodities have been assigned a class rating the actual pricing of

[1] For accidental and historical reasons, a separate classification is maintained for the highway industry in New England by the New England Motor Rate Bureau.

the transportation service is achieved by the establishment of class rate mileage scales of rates per cwt. applicable to each classification category. In this manner class rates can be made for the hundreds of thousands of types of commodities moving in interstate commerce in the convenient form of less than two dozen mileage rate scales in each regional area.

If class rates were the only system of pricing to govern interstate transportation, then this national exercise in standard setting according to which commodities are assigned to class rating might have anticompetitive implications. The fact is that carriers operating in regional rate bureaus have the option to publish lower rate levels than the class rates in the form of exceptions to the class rates and in the further form of point-to-point commodity rates. So long as no anticompetitive arrangements interfere with the competitive market forces which can motivate the establishment of the lower commodity and exceptions rate levels, the class rates serve as nothing other than a rate ceiling and carrier collaboration in the establishment of class ratings cannot be said to be effective in the establishment of the competitive carrier price that is actually charged the shipper. Today there is much competitive market pressure (from railroads, from private carriers and from nonbureau specialist highway carriers) compelling the establishment of truckload commodity rates well below the class rate ceiling. However, highway rate bureau conventions, customs and agreements severely inhibit the establishment of commodity rates for less truckload traffic, and as to this traffic the class rates are not only the maximum rates, but also the actual rates which the shippers pay. If highway rate bureau antitrust immunity were repealed, then this monolithic characteristic of the LTL highway rate structure would dissipate and the establishment of class ratings would become nothing more than the setting of collateral standards for highway LTL rates as it is today for highway truckload rates.

In short I suggest that antitrust immunity is needed for joint classifications only so long as and only to the extent that regional rate bureaus are able to establish regional rates per cwt. immune from the antitrust laws. Repeal of the latter immunity removes any need for grant of the former immunity.

I was unhappy to read implications in Assistant Attorney General Shenefield's testimony for the Department of Justice that Reed-Bulwinkle repeal might require abandonment of the present Classification process. He suggests the substitution for the National Classification Board of "a group or several groups of independent professionals * * * responsible only to their shipper and carrier customers, under the overall supervision of the Commission. * * * Those who disagreed with the [classification] decision of any particular [such classification] service could also seek out another classification service or file their own classification tariff with the Commission." Such a "group" would inevitably become some sort of arbitrator of the conflicting interests of shippers and carriers. Such arbitration "under the overall supervision of the Commission" would as a practical matter mean that the Commission would establish classification ratings in the United States. Under the present theory of the law the establishment of these ratings is a carrier management function in the first instance and the Commission acts only to supervise it. One of the means the Commission has chosen to exercise this supervisory jurisdiction today is the issuance of orders requiring both the rail carriers and the motor carriers to establish classification with national application. The Commission has done this because a classification best serves its inherent purpose only if it has the most widespread possible application. Mr. Shenefield's proposal on the one hand would assign the Commission much more extensive and intimate responsibility for maintenance of the classification, and on the other hand would apparently dissipate the fundamental advantage a classification has for the public interest, namely its national application, by permitting individual carriers or groups of carriers to "file their own classification tariff with the Commission." I think either the legislative history ought clearly to contradict this interpretation of the antitrust laws suggested by Mr. Shenefield's testimony, or the law ought to grant explicit immunity to the carriers for the establishment of classifications. There isn't any question that national classifications are necessary and desirable in the public interest. In my opinion, there would be no need to grant immunity concerning their establishment if the legislative history were to acknowledge that the classification function amounts to nothing than standard-setting and cannot in itself involve any violation of the antitrust laws so long as the antitrust laws fully apply to the establishment of the rates per cwt. applying to commodities in the various classification categories.

Parenthetically it may be relevant at this point to say that I disagree with the suggestion in Mr. Shenefield's testimony that what Senator Cannon called "convenience interlining" is unlawful between two carriers, each of whom is authorized and competent to serve the entire market in which traffic is interlined at an interchange point. I don't see any reason why the antitrust laws should prohibit convenience interlining or why such interlining implies any anticompetitive tendency any more than there is an antitrust law prohibition against Ford buying automobile parts from General Motors or General Motors from Ford. Each of them is capable on the basiss of vertical integration to produce all the parts which each needs for a complete automobile. However, it is often more convenient for one of them to rely on the other for such inputs and such interreliance often produces a better product and a lower price for the customer. I don't see why convenience interlining between carriers authorized to serve the same route on a single line basis amounts to anything more than this.

Question. Do you think we need to specifically legislate antitrust immunity for shippers?

Answer. Generally speaking, I don't have any objection to adding a belt to the suspenders of the Noerr-Pennington privilege which now makes shipper collaboration in trade associations safe. On the other hand there are two dangerous tendencies when you write antitrust imunities into law. In the first place, as originally expressed they may not be adequate or broad enough to take care of the situation and the very fact that you write them into law implies that the antitrust laws apply to the situation subject to immunization, absent the immunity. Secondly, anti-trust exceptions, once written into law, tend to take on a life of their own. Even though they may not be adequate at the outset, they are certainly bound to expand through interpretation as time goes on and as the expertise of legal specialists is deployed in finding loopholes. Therefore institutionally I think that there are dangers in writing exceptions into the antitrust laws. My hesitations would disappear if the Department of Justice were to give appropriate thought to the issuance of guidelines which do not jeopardize the classification function, other normal carrier standard-setting function, and which don't jeopardize the possibility of carrier convenience interlining.

Question. Is it your belief that there is no antitrust liability for shippers because they don't actually agree with the carriers in the bureaus, and that the antitrust laws require that there be some evidence of an agreement?

Answer. When carriers and shippers meet to negotiate rate levels they certainly don't agree. The carrier enters into no undertaking, binding or otherwise, to maintain the agreed-upon rate level for any stipulated period of time, and the shipper enters into no undertaking, binding or otherwise, to tender the carrier an ounce of freight at the agreed-upon rate level.[2] Therefore it seems to me to go without saying that rate negotiations give rise to no "agreement" between carriers and shippers (acting either individually or in trade associations) for the establishment of amended rate levels. I fail to see how such negotiations differ in the slightest from the thousands of negotiations which occur daily in the United States between sellers and buyers and which eventually result in the establishment of a sale price.

There is more to say in answer to this question, but it is best supplied in answer to your next question.

Question. Are you also saying that concerted actions by shippers to influence rate decisions is protected under the Constitution, and that shippers have a right to try to influence the regulatory Commission?

Answer. This is precisely what I am saying. In the transportation area, negotiations concerning prices not only occur between sellers and buyers of transportation service, but also between groups of sellers and groups of buyers. The question arises, how could the members of these groups continue to act in concert on such a sensitive matter as price fixing in the absence of Reed-Bulwinkle immunity? The answer has to turn on the degree to which and the tribunals before which the price fixing function is subject to public regulation. The only basis, absent Reed-Bulwinkle immunity, on which the members of such a carrier group

[2] So-called "agreed rates" seem superficially to be an exception to this rule. The appearance deceives. An agreed rate is applicable only on the condition that the shipper tenders the carrier a stipulated minimum amount of tonnage during a stipulated calendar period. Should the shipper fail to tender the required tonnage, there is no "breach" of any agreement; instead the shipper simply ceases to qualify for the agreed rate level and a higher rate level becomes applicable which is not conditioned on any minimum amount of tonnage.

can engage in concerted activity or the members of such a shipper group can engage in concerted activity is their need, right and privilege to present their position and petition for relief to the appropriate regulatory tribunal, their right to pool their common interests when organizing themselves to present such positions and petitions, and their right to engage in negotiations with a potential adversary for a voluntary settlement to avoid the litigation which might otherwise arise from the presentation of such petitions. This is the *Noerr-Pennington* privilege referred to in my prior testimony and it stems essentially from the endowment of a tribunal with regulatory jurisdiction and from the Constitutional right to petition such a tribunal, once such regulatory jurisdiction is reposed in it.

When the privilege is viewed from this aspect the curious conclusion becomes justified that an antitrust law can actually foster concerted action in the area of prices. For example, it would occur to no one that the antitrust laws prohibit a class action by buyers to force a seller or sellers to alter a price level that was originally established in violation of the antitrust laws. Nor would the antitrust laws prohibit such a class of potential plaintiff buyers from collaborating either to prepare their case or to negotiate a settlement of their antitrust claim with their potential seller adversaries. Even though prices are intimately involved in such collaboration, negotiation or litigation, nothing precludes concerted action to affect the price level in such a context. The critical fact is that the antitrust laws endow the courts and the Federal Trade Commission with jurisdiction to regulate the price level. The same conclusions follow from the endowment of the Interstate Commerce Commission with such jurisdiction respecting transportation prices. *Eastern Railroad Presidents' Conference* v. *Noerr Motor Freight, Inc.* 365 U.S. 127 (1967) and *United Mine Workers* v. *Pennington* 381 U.S. 657 (1965) indicate that these conclusions are firmly rooted in Constitutional jurisprudence and the right to petition the sovereign.

Question. You say that shippers don't currently have antitrust immunity. Then why do some of the major shipper traffic groups, such as the National Industrial Traffic League, say that they have immunity and need to keep it?

Answer. This question is very closely related to your sixth question and my answer to each is the same. Your sixth question was

Question. Why do you think many of your clients are in disagreement with the position that you have suggested to the Committee concerning Reed-Bulwinkle repeal?

Answer. At the December 3 hearing in Reno, Mr. Bryce Rea, Jr., speaking for the National Motor Freight Traffic Association and the ten major regional highway rate bureaus, supplied in his testimony one of the premises for my answer. He quotes a representative of a shipper trade association in testimony to a Congressional Committee tendered in 1975:

"Representing shippers I have come to be rather surprised by the fact that the shippers support the concept of the rate bureaus. Over 90 percent of the people that I talked with said 'We want the rate bureaus kept and we want them healthy and we don't want anybody coming in to ruin the rate bureau system.'

"Well, I would ask, 'Why is that? They get together and discuss prices and maybe prices would drop if you didn't have that collaboration through the rate bureaus.'

"They would say, 'Look, my problem in life is not whether they raise the rate, or whether the rate is $1 or $1.10. My problem is that I am shipping coal in competition with somebody over there, or I am shipping Alka-Seltzer over here and my profit is affected by subtracting out the freight cost. As long as my freight cost is comparable to the next shipper's I can go to management and say, "We are not losing money on freight.' "

"But as soon as the rate structure gets jumbled up, and 'A' comes in and shoots in a rate at $.85, but I am paying $1 because my shipper doesn't care, this is where I hurt as a traffic manager trying to keep my transportation costs in line.

"What happens with the rate bureaus is that somebody comes into the rate bureau and someone may say 'I want the rate down to $.90.' Well, they put it out as a proposal and anybody else in the bureau or a shipper can come in and say 'Put me in on that adjustment at $.90.' That avoids the shippers' problems that I spoke of with the difference in rates.

"It promotes stability and equality and fairness as to the shippers. That is exactly the reason why they support the rate bureau system. There is no mystery to it at all. They want to know what the rates are and they want a fair shot at keeping up with their competitors in that respect."

Manufacturing companies sufficiently sophisticated to organize themselves in shipper associations for the purpose of dealing with carriers tend to be operating in heavily competitive markets and an additional cost advantage which one of them enjoys can make life quite difficult for his competitive brethren. Institutionally speaking, all of them will favor the lowest feasible level for cost inputs. Personally speaking, however, it is vital both for entrepreneurial success and also for the individual executive's personal prestige and reputation that no competitor of his company enjoy a preferentially lower transportation rate level. Thus in this respect carrier rate bureaus tend to serve as a sort of economic comfort blanket for shipper executives. By controlling, the transportation market and by narrowing and simplifying transportation pricing options carrier rate bureaus make the job of purchasing transportation service easier for industrial traffic executives. To the extent that this is done at the expense of an unnecessarily high transportation rate level this causes relatively little concern to those segments of American industry organized in shipper associations (who account of course for the great preponderance of intercity common carrier tonnage in the United States) because each individual shipper association member passes on to his customer the cost of the transportation function in the distribution process; so long as each competitor is burdened with the same transportation cost per ton mile, none suffers competitive disadvantage from a rise in the transportation rate level affecting all equally. This shifts the focus of expertise in industrial traffic management from adroit use of transportation pricing options to adroit use of the transportation function itself. It encourages the use of private carriage as an alternative to common carriage. It places a premium on good management judgments concerning decentralization of manufacturing and warehousing facilities which react to high common carrier transportation prices by rendering the distribution function less transportation-intensive. In other words, the simplification of common carrier pricing options results in a complication of investment decisions (whether to invest in private carrier truck fleets) and of basic logistics decisions concerning the enterprise (whether to decentralize or to engage in more regional warehousing).

While this sort of solution may be adequate for the parochial shipper or the parochial shipper association, I don't think it is a point of view appropriate for Congress charged with the welfare of the national economy and under enormous pressure in this period of petroleum scarcity and monetary inflation to avoid the waste of scarce economic resources and to suppress unnecessary increases in the overall price level. While the members of the National Small Shipments Traffic Conference may be interested only in the rate levels governing small shipments, and while the members of the Drug & Toilet Preparations Traffic Conference may be interested only in the rates governing drugs and toiletries, it seems to me Congress must have an eye to the national interest and must be concerned about the country's total transportation bill. So long as the national transportation bill remains too high, the citizen, the taxpayer and the consumer is going to be paying more than he ought to for transportation; under a monolithic rate structure the efficient sector of the transportation economy will be earning unnecessary and windfall profits; and the inefficient sector of the transportation economy will be protected from pressures toward market exit and many unnecessary sectors of transportation endeavor will be preserved in operation thereby involving them in wasteful use of capital investment and of man hour input which could otherwise be deployed to increase our standard of living. This is the fundamental theory underlying capitalism and the free market and our departure from it in the sector of transportation is a luxury we can ill afford in today's economy.

For the reasons Mr. Rea points out, the members of many shipper trade associations find this departure not only possible, but also comfortable to live with because it costs them no competitive advantage and because they can pass on the burden of the national resulting economic disadvantage to their own customers in the form of their own price increases. This doesn't seem to be an adequate basis for a national judgment at the Congressional level charged with the welfare of our national economy.

There is a second and less important (but nonetheless significant) reason why many industrial traffic managers representing their companies in shipper trade associations dislike the prospect of changes in the style of carrier bureau ratemaking. Most of the industrial traffic managers responsible for the positions taken by large shipper associations such as the NIT League and NASSTRAC are very experienced and have spent decades acquiring their expertise in the

interpretation and assessment of carrier tariffs and in their understanding of the complicated group ratemaking process now employed by carriers. At the personal level, it is quite uncomfortable to consider changes in this and I think the individual industrial traffic manager is likely to focus on the difficulties rather than the options and the opportunities resulting from Reed-Bulwinkle repeal. A free market means learning a new pricing language. A free market means a much broader range of options—sometimes a range which seems absolutely bewildering and unmanagable. All of this makes the prospect of change of the current carrier pricing system an uncomfortable one for many industrial traffic managers. Again it seems to me the function of Congress to look above and beyond these immediate psychological inhibitions and to consider what can be done for the country as a whole by reforming the system.

These are the two dynamics which I think account for the reservations which shippers have to Reed-Bulwinkle repeal.

At the present time I think it is a matter of semantics when one considers whether shippers today enjoy antitrust "immunity." There isn't any question that carrier action under Reed-Bulwinkle is technically "immune" from the antitrust laws; the statute says so. If and to the extent this Reed-Bulwinkle immunity extends to shippers in their negotiations with carrier groups, then shipper could also be said to have such technical "immunity." The phrase "other persons" in the Reed-Bulwinkle Act is open to the interpretation that it includes shippers negotiating with carrier rate bureaus. It is also open to a contrary interpretation, as indicated in my prior testimony, and there has been neither a decision of a court nor an opinion of the Attorney General which resolves this question of interpretation. If there were nothing more than this "other persons" phrase in the Reed-Bulwinkle Act to justify negotiations between shipper trade associations and carriers concerning transportation rates, I don't believe many lawyers would supply their clients with opinions of counsel that such negotiations ran no risk of antitrust enforcement in the present state of the law, although of course most lawyers would forcefully advance the argument of such shipper antitrust "immunity" in defense against any antitrust accusation brought against their clients.

In my view the only firm and stable premise for a conclusion that shipper trade association negotiations with carriers run no risk of antitrust violation is the *Noerr-Pennington* privilege to petition the sovereign, i.e. to negotiate and petition for rate actions required by a potential or actual appropriate exercise of I.C.C. regulatory jurisdiction. Whether the *Noerr-Pennington* privilege creates an antitrust "immunity" or simply restricts the scope of the antitrust law prohibition is I think largely a matter of semantics and in any event it is what accounts for statements in shipper testimony that shippers have antitrust "immunity."

5. *Question.* If Congress retained some antitrust immunity for carriers, would we need to afford shippers any immunity so that they could continue to negotiate with those carriers?

Answer. To the extent that the Interstate Commerce Commission's power to regulate interstate rates persists, I don't see how or why shippers need any explicit statutory antitrust immunity. In fact it seems to me establishment of such immunity would be contrary to shipper interests. It would imply that shippers are prohibited from engaging in concerted activity except to the extent that they are dealing with carrier groups operating under carrier tariff bureau rules. It might even imply that shippers would have to comply with the procedural rules of carrier tariff bureaus. In the present state of the law nothing prevents a shipper trade association from negotiating with a single carrier concerning a rate level, for example with United Parcel Service. It would, in my view, be deplorable if statutory law were to carry with it any implication that shipper trade associations could not negotiate with UPS unless UPS were to become a member of a Reed-Bulwinkle carrier rate bureau.

However, if what I described in my prior testimony as the worst of all possible worlds for shippers were to occur, namely complete repeal of I.C.C. power to regulate carrier rates and a failure to repeal carrier antitrust Reed-Bulwinkle immunity, then of course it would be vital to endow shippers with the power to combine at least commensurate with that given the carriers by Reed-Bulwinkle.

Yours very truly,

WILLIAM Q. KEENAN.

Senator KENNEDY. Let me just ask Mr. Keenan one question.

One of the points that's raised about the elimination of Reed-Bulwinkle provision, or a substantial modification of it, is the disruptive effect it would have on the industry generally, particularly from an employment situation. There are many that believe that this type of disruption would mean that types of job security, wage provisions, other types of security would be substantially compromised.

I myself have seen in the airline industry where we saw a reduction in rates actually meant more employment, more profits, and a greater opportunity for employees to bargain collectively and to enhance their standard of living.

My own sense would be, from testimony I've heard, is that with an opportunity for greater flexibility in the rate area, it may mean that shippers could transport their goods, more goods, further distances and compete in other markets and mean more employment opportunity.

I have not been impressed by the argument that's been made that because we had regulation, this necessarily has meant that there's been a better opportunity for workers to organize. We've seen with the system of regulation that there are major elements even today that are not organized. And we have seen areas of private carriage which have been organized and yet they have been regulated.

And I am just wondering whether you've given this question much thought or whether you could briefly, because we are under tight time constraints, give us whatever opinion you might have on that issue.

Mr. KEENAN. Well, Senator Kennedy, I haven't given it a great deal of thought and I think it's a most interesting speculation that you invite attention to.

My feeling is that there are two dynamics involved. If we are talking about deregulating and we're talking about Reed-Bulwinkle repeal, to some degree we're addressing ourselves to an aim of lowering an overall price structure. We are proceeding from the premise, certainly with regard to LTL pricing, that the prices generally speaking, are too high.

And the existence of an umbrella that keeps prices too high in a major sector of the trucking industry—and bear in mind, of course, that 60 to 70 percent of the gross of these large truckers comes from LTL—creates, it seems to me, an automatic invitation in the course of labor management bargaining for a relatively soft result from the management point of view when the level is struck concerning increases in the wage rate.

I think it means management's position is soft, in some degree, because there's such a facility to pass through that type of cost increase to the patron and to the customer through a broad increase to the structure.

There is, however, another dynamic, and it's that to which you referred; namely, the volume of traffic, the frequency of use, the extent of use which the shipper makes of the transportation system. The higher the price level, the more restricted, of course, is the radius within which you are going to try to use carriers to reach your market; the more restricted is the volume of traffic you intend to carry.

Any volume increase, I think, in a rigid price structure controlled by the bureaus under limited market entry is a very difficult thing to achieve.

So the other practical result would be an increase in carrier volume and an increased shippers' access to the system; and eventually greater carrier gross and more carrier man-hours expended on the transportation effort and more jobs in the final analysis.

Senator KENNEDY. I don't know, Mr. Crew, do you have anything to add to that just briefly?

Mr. CREW. I'm sorry, Senator, I don't.

Mr. REA. May I add something?

Senator KENNEDY. Sure. Briefly.

Mr. REA. The problem is you would disrupt the coordinated system of transportation and if you eliminate Reed-Bulwinkle, if you don't permit the parts of the system to function together, you destroy the coordinated system. This would have an effect on labor, an effect on management, an effect on trucking companies, which I honestly think would be disastrous.

You would not have the stability which now promotes the well-being of both labor and management; and as for producing an increased demand for trucking service, I just don't see it that way, because I don't believe the demand for LTL motor carrier service is an elastic one.

Senator KENNEDY. Mr. Chairman, I have some other questions, but could I submit them?

The CHAIRMAN. Yes; we'll submit some questions to you for the record, all three of you. We're pressed for time today.

Senator KENNEDY. Maybe—could I just have one quick one, Mr. Crew?

Without getting into the names of the cases, could you just in maybe a minute or a minute and a half tell the kind of abuses you found behind the closed doors?

Mr. CREW. First, I'd like to do so by replying to Mr. Rea when he said the Federal court, in this unnamed action, had found that there was no combination to fix rates in violation of the law. That is not correct. The court merely granted summary judgment because of the exemption or the immunity that was argued by the defendants.

But the evidence, and I will be very careful about anonymity here, demonstrated to my satisfaction that what happens is this: The carriers do meet on a regular basis to discuss rate proposals by each of the carriers. If the three of us were motor carriers and we each have our customers that we're serving and if I happen to propose a rate that is below Mr. Rea's rate on boots from Chicago to San Francisco, for example, the meeting would take place and there would be freight bills produced by the carrier who's handling that freight, and if I were the carrier handling the freight, I'd produce those freight bills to prove that he was undercutting me.

The committee would then vote and disapprove that rate.

It is a combination that is something the Interstate Commerce Commission doesn't even know exists. I think it's that kind of an agreement and, therefore, should be stopped.

The CHAIRMAN. Of course, we've had the suggestion made in the course of the hearings that if the rate bureaus were opened up and

the hearings made public, that that might solve some of the problems. But I won't ask you to comment on that.

Mr. CREW. All right, Senator.

The CHAIRMAN. Thank you very much, gentlemen.

Next we have a panel of Mr. Frank Bender, president, Bender Warehouse Co.; Mr. Larry Gerberi, western distribution manager, Salomon North America; Mr. Donald Visger, western operations manager, Pacific Western Systems; Mr. John Prine, supervisor of transportation, Toto Purchasing and Supply; Mr. Roy E. Olson, vice president, transportation, American Paper Institute; Mr. D. S. Adams, director of support services, Champion International; Mr. Ted Hermann, president, Pacific Freeport Group; Nevada Teamster official, Mr. Albert L. Leniz, secretary-treasurer, Teamsters Local No. 533; and Glade Hall is sitting for Mr. Hermann.

All right, gentlemen, we will ask you to kind of encapsulate your statements, if you can, and we'll make the statements a part of the record in full.

We hope that we'll have some time for questioning. We'll have the little bell here to ring when your 5 minutes are up.

Frank, do you want to head off?

STATEMENTS OF FRANK BENDER, PRESIDENT, BENDER WAREHOUSE CO.; LARRY GERBERI, WESTERN DISTRIBUTION MANAGER, SALOMON NORTH AMERICA; DONALD VISGER, WESTERN OPERATIONS MANAGER, PACIFIC WESTERN SYSTEMS; JOHN PRINE, SUPERVISOR OF TRANSPORTATION, TOTO PURCHASING AND SUPPLY; ROY E. OLSON, VICE PRESIDENT; TRANSPORTATION, AMERICAN PAPER INSTITUTE; D. S. ADAMS, DIRECTOR OF SUPPORT SERVICES, CHAMPION INTERNATIONAL; TED HERMANN, PRESIDENT, PACIFIC FREEPORT GROUP; ALBERT L. LENIZ, SECRETARY-TREASURER, TEAMSTER'S LOCAL NO. 533; AND GLADE HALL

Mr. BENDER. All right.

Senator Cannon, Senator Kennedy, it's a pleasure to welcome you here to Reno.

I'd like to state a few things that are maybe not in my prepared testimony. One of the things you stated, Howard, are the three things we've been talking about today: Entry, ratemaking, and antitrust immunity.

I would suggest to you that entry is a moot point today, that 98 percent of the carriers are people that are applying for ICC authority and getting it. So we really don't have to worry about that particular problem anymore.

The others are very important. I will skip why we have to have an Interstate Commerce Commission, but believe me, gentlemen, we do.

As shippers, it is very important. We have to have some authority that we can go to without having to go to the courts and go to a crowded calendar, some judge that does not know transportation, or refuses to accept the case because he feels he does not have jurisdiction.

You stated, Howard, and I quote, "I have a very real idea of the frustration that the Interstate Commerce Commission must feel in having to administer a statute that has been virtually unchanged in the past 44 years."

Yet I submit to you that since the act to regulate commerce was enacted in 1887, it has been amended well over 200 times and codified last year into title 49, United States Code.

On top of that, you know full well that the ICC has taken its own action in rules and regulation policies far beyond the policy of the act and you have had to tell them to cool it.

I say let's go back to the original principles of the act, go through those rules that the ICC has made that are obviously irrational, tie the ICC's hands in performing only the basic functions.

The majority of people that know and ship freight know and understand those functions. A good manager is often an ICC practitioner and is familiar with the act. They've been through the mill with applying for various commodities. They know they're assured of competition among the carriers. Carriers that cannot serve the account can get out of a rate and carriers, if they want to, can take independent action if they don't agree with the others. And this is what the gentlemen in front of us were trying to tell you, that they don't take independent action.

Well, I have had carriers take independent action for me many times. I have gone before these rate bureaus. I have submitted rates before them, which means that the customer can submit rates and have them accepted. And I've also seen carriers flag out of a rate.

If, after all is said and done, and either side decides something is wrong, they can appeal to the ICC. Sure, the carriers, when meeting in a rate bureau, have antitrust immuntiy, but thank God they do. We have the best of both worlds. We have private enterprise working in concert and in competition under the watchful eye of the ICC. In this way it protects the small communities that enjoy the same.

Without the protection of the rate bueraus, all the shippers of the Reno, Sparks, Las Vegas, and Henderson areas would be devastated. Without proper service and controllable costs, Senator Cannon—if Mr. Shenefield and Senator Kennedy have their way—you can kiss goodbye to the warehousing business in Nevada. This community alone would lose in excess of 10,000 jobs with total deregulation; almost as many as if you take away the rate bureau antitrust immunity.

I have read where Senator Kennedy has stated the shippers would save billions of dollars if his ideas were approved.

Well, Senator, you are not in the distribution business.

Senator KENNEDY. Well, you are, aren't you?

Mr. BENDER. I am.

Senator KENNEDY. So you have a financial interest in a regulated trucking company, don't you?

Mr. BENDER. I have a small 4-percent financial interest in a regulated trucking business, but 99 percent of my business is in public warehousing that represents shippers.

I am speaking as a shipper today and I am speaking as a warehouseman, something that I've grown up in in 35 years of business.

You know very well that well-conducted polls have shown in excess of 80 percent of the shippers in this country are in favor of deregula-

tion. If the shippers in America realize the importance of a regulated industry, why then should carriers, why should Congress change the basic system?

The CHAIRMAN. You said they're in favor of it. I thought the results were that they're not in favor of it.

Mr. BENDER. In favor of regulation, not in favor of deregulation.

Why, then, should Congress change the basic system?

You can doubt my figures just as I doubt yours, Senators, but I have been in the warehouse business and distribution business for 35 years. I've lived and breathed it. I am treasurer of the American Warehousemen's Association and soon to be vice chairman of the board.

Why? It is not healthy for America. For example, not long ago we had seven freight lines that would accept LTL freight under consolidation rates. Today only two are left, and it is questionable how long they will be able to maintain those rates.

Existing trucklines, in order to survive, will have to go get the existing long-haul freight and they can abandon as many communities as they would want to. The bulk of the area we serve from Reno is within 500 miles, and that's considered a short haul. And we ship to hundreds of communities up and down the west coast.

Without the protection of the ICC and the regulations, you will be increasing the number of trucks on the road as these small communities scramble to get their freight delivered. Instead of saving precious fuel, we will be wasting it, as more trucks are moved on the highways.

As for the rates the small communities will have to pay, the sky's the limit, because if someone is in a small community, he either is going to have to go to the major communities to get his freight—and to deviate from my prepared statement here—Reno is sitting 250 miles, roughly, from San Francisco and 400 miles from Los Angeles. There are five major cariers that are serving this area and several smaller ones. In order to get to these points we ship to, they have to climb mountains that are in excess of 7,000 feet elevation.

If you are a small customer in a small community, would you drive 250 to 500 miles to pick up your freight, or would you try to go to the major metropolitan centers to try to get competitive merchandise?

So I say we will jeopardize the warehousing business in Reno, and anybody that has a harebrained idea that the Government should subsidize the added cost of smaller communities, is out of his mind. It would be the biggest pork barrel this country has seen. I don't think the citizens would stand for it.

Let's knock off all the baloney and keep the Interstate Commerce Act intact. It has fulfilled its stated purpose to provide service at fair rates, correct carrier abuses, and fix responsibilities. I say let's not scrap it.

And I have for you, Senator Cannon, some observations that I made on Mr. Shenefield's report to the President, chapter 10 of his report, and I have for you, Senator Kennedy, an article prepared by a professor at the University of Oregon. Never met the gentleman, but I would suggest that maybe it would be interesting reading on the plane as you go home to Washington.

The CHAIRMAN. We'll be happy to receive those, Frank.

[The statement follows:]

STATEMENT OF FRANK N. BENDER, PRESIDENT, BENDER WAREHOUSE COMPANY

Senator Cannon, Senator Kennedy, good morning, welcome to Reno. Howard, I would like to commend you and your committee for working toward a June 1, 1980 deadline to put a reform package before the President. I would like to commend you personally for taking the bull by the horns in your speech to the I.C.C. conference on October 2d. I have a copy of that speech and also your speech on November 2d before the Minority Truck Transport Development Corporation.

I would like to comment on some of the points you made in those speeches. You said—"virtually no one that has testified before us had advocated total deregulation, and absolutely no one that has testified before us has urged a continuation of the status quo". Your major concerns were stated as "entry" "ratemaking" and "antitrust immunity". Well I can agree that some change has to be made. Your three primary concerns have grabbed the headlines—though before you take any drastic action to change them, I would like to suggest that you take a look at the reasons why we have an Interstate Commerce Commission.

1. Rates, charges and tariff rules must be just and reasonable. If they are not—we have to have someone to see that they are.

2. If a truck line has a certificate to serve as a common carrier then they must furnish transportation upon request, or they should lose their certificate.

3. Carriers must not unjustly discriminate between shippers: nor practice preference or prejudice on rates or service.

4. All transport operations, extensions of service, or abandonments need to be controlled by someone. Otherwise the safety of the highways and service to the Nation are in jeopardy.

5. The shippers must have the protection of well established ratemaking principles in order to price their goods and know what their costs will be no matter where they want to ship throughout the Nation. They must be protected from monopoly pricing and destructive competition. I might add right here and now, that a monopoly can just as easily be between a city in a small rural area and a metropolitan center. As between major areas. If small communities are abandoned, the small new carrier taking up the service will more than likely have a monopoly! We are seeing this happen in air service right now. A trucker with a monopoly can charge the limit for his services.

6. We need someone to police the carriers to see to it that they have adequate insurance and are responsible for loss or damage claims.

7. We need someone to settle disputes between shippers and carriers, that is familiar with rules and regulations of transportation, not some judge that already has an overcrowded calendar and no background on transportation.

8. When someone wants to go into the trucking business, no matter who they are, we need the I.C.C. to see to it that they have the necessary fitness and ability to serve the public.

These are the basic reasons we have an I.C.C.

You stated Howard, and I quote again—"I have a very real idea of the frustration that the Interstate Commerce Commission must feel in having to administer a statute that has been virtually unchanged in the past 44 years." Yet I submit that since the act to regulate commerce was enaced in 1887, it has been amended well over 200 times, and codified last year into title 49, U.S.C. on top of that you know full well the I.C.C. has taken its own action in rule and regulation policies far beyond the present authority of the act. You have had to tell them to cool it, let Congress do it. I say to you let's go back to those basic reasons for the act.

Bring it back to its original purpose—go through the rules the I.C.C. has made that are obviously irrational such as you did in the household goods bill S. 1798. Tie the I.C.C.'s hands to performing only the basic function. The majority of people that ship freight, know and understand the general principles.

A good traffic manager is often an I.C.C. practitioner and is familiar with the act. They have been through the mill of applying for rates for various commodities. They know they are assured of competition among the carriers yet are protected in their rates because the carriers use the rate bureaus. Carriers that cannot serve the account can flag out of a rate, or if a carrier wants to serve a customer with a certain rate and other carriers do not agree, then that carrier can take independent action.

If, after all is said and done and either side decides something is wrong, they can appeal to the I.C.C. for suspension until the dispute is adjudicated. Sure, the carriers, when meeting in a rate bureau have antitrust immunity, but thank God they do. We have the best of both worlds—private enterprise working in concert and competition under the watchful eye of the I.C.C. In this way it protects the small communities that enjoy the same rates as their nearby neighbors. Without the protection of the rate bureaus Howard, all the shippers of the Ren Sparks and the Las Vegas Henderson areas would be devastated without proper service and controlable costs.

Senator Cannon—if Mr. Shenefield and Senator Kennedy have their way you can kiss goodbye to the warehousing business in Nevada! This community alone would lose in excess of 10,000 jobs within 5 years of total deregulation, almost as many if you take away the protection of the rate bureaus and antitrust immunity. The Las Vegas area has at long last got its feet wet in the warehousing business and it would dry up there just as fast.

I have read where Senator Kennedy has stated the shippers in the country would save billions of dollars if his ideas on deregulation are approved. Well Senator—you are not in the distribution business so I question your figures. Well conducted interviews and polls have shown in excess of 80 percent of the shippers in the country are not in favor of deregulation.

If the shippers in America realize the importance of a regulated industry, why then should Congress change the basic system? You can doubt my figures just as I doubt yours Senator, but I have been in the warehouse and distribution business for 35 years, have lived and breathed it, am treasurer of the American Warehousemen's Association and soon to be vice chairman of the board.

I know first hand what has already transpired—the counter measures truck lines have taken expecting deregulation. It is not healthy for America. For example, not so long ago we had 7 freight lines that would accept LTL freight under consolidation rates. Today only two are left and it is questionable how long they will be able to maintain those rates. The existing truck lines in order to survive will have to go for the greatest long haul they can get and abandon as many small communities as they can.

The bulk of the area we serve from Reno is within 500 miles and we ship to hundreds of small communities up and down the west coast. Without the protection of the I.C.C. and regulation you will be increasing the number of trucks on the road as these small communities scramble to get their freight delivered. Instead of saving precious fuel we will be wasting it as more trucks are moved on the highways. As for rates, the small communities will have to pay, the sky's the limit and if someone's hair-brained idea that the Government could subsidize the added costs, ever came to pass, it would be the biggest pork barrel this county has ever seen.

I don't think the citizens would stand for it. Let's knock off all the balogna and keep the Interstate Commerce Act intact. It has fulfilled its stated purpose to provide service at fair rates, correct carrier abuses, and fix responsibilities. Let's not scrap it.

Attachment.

STATEMENT OF NINE FORMER MEMBERS OF THE INTERSTATE COMMERCE COMMISSION

We are former members of the Interstate Commerce Commission whose combined service in that agency totals 71 years and 5 months. Our service spans the period beginning July 10, 1953 and ending August 31, 1978.

This statement is published in the hope it may clarify a few basic issues in the current debate on regulatory reform for surface transportation.[1] Our statement implies no criticism of incumbent Commissioners. Sharp differences of opinion exist within the transportation community on the extent to which surface transportation should be regulated. Such differences exist among ourselves.

We recall that the Duchess in Alice in Wonderland said: "If everybody minded their own business * * * the world would go round a deal faster." But that was in Wonderland. If each transportation enterprise minded its own business, if carriers and shippers were not organized to facilitate communication and coordination, the wheels of transportation would turn more slowly and less

[1] This statement was circulated to all former members of the Commission but some, for reasons not necessarily related to its content, chose not to join in the statement.

efficiently. Creation of a national transportation system requires coordination, cooperation, and collective action both with in and between the various modes of surface transportation. Some degree of regulation is required because if each carrier minded its own business, there would be no system to serve the public.

The conflicting claims of individual carrier action and creation of a system of transportation were first resolved by the Congress some 92 years ago. The Congress rejected rampant individualism, on the one hand, and, on the other, state socialism and nationalization of transportation. Charting a safe course between license and regimentation is not a problem peculiar to transportation but the consequences of navigational error are devastating.

There is an essential difference between an industrial cartel and a carrier rate bureau. Members of an industrial cartel have no obligation to create and to operate, for example, a national steel system, a coordinated electronics system, or an integrated system of supermarkets. On the contrary, our economic Magna Charta, the Sherman Act, prohibits any such form of cooperation because it is unnecessary and would deprive the public of the benefits of relatively unrestrained price competition. On the other hand, the concept of a national surface transportation system comprised of privately-owned carriers of different modes necessarily requires the system to be guided by collective action subject, of course, to whatever degree of regulation may be necessary to protect the public interest.

No developed nation has ever denied itself a national system of transportation. The systems are either owned and operated by the government or created and managed by the cooperative action of privately-owned carriers under governmental regulation.

It is not necessary that all carriers function as a part of the national transportation system; that entry into and exit from the system be tightly controlled; or that rates within a broad zone be regulated. A national system of transportation can function reasonably well even though a large number of private carriers, specialized carriers, and small transportation firms operate completely outside the framework of the system, and even though the right of independent action is accorded to essential elements of the system.

Our concern is not that total deregulation would revive "the law of the jungle," or "cutthroat competition," or return the common carrier industry to its condition in the Great Depression. In passing on the extent of deregulation, our concern is that the public may not fully understand the necessity for retaining a national system of transportation. No such system could exist in the total absence of regulation because the antitrust laws would condemn the collective activities required to make it operable.

The savings generally attributed to total deregulation are inflated if it is assumed that users of transportaiton will be portected to the same extent as consumers of goods and other services. If the industry were made fully subject to the antitrust laws and fair trade legislation, litigation in the courts and before the Federal Trade Commission could be costly, time consuming, and confusing, again assuming that the full range of consumer protection is to be accorded to transportation users.

Although we doubt that total deregulation would return the surface transportation industry to its condition in the 1930's, it should not be forgotten that the condition was appalling. A rail transportation system existed but it was debilitated and much of it in bankruptcy. No motor common carrier system existed in any meaningful sense.

Although we differ among ourselves on the optimum degree of economic regulation for surface transportation, we are unanimous in believing that a national transportation system must be preserved and that the Congress should address this issue as soon as possible. Neither the Commission nor the courts can revitalize the nation's surface transportation policy without Congressional guidance. The Commission's power to reshape transportation policy is not only limited but its full reach can be determined only after years of litigation. The Congress, on the other hand, can decide promptly the extent to which the Commission's departures from established policy are sound; whether economic regulation of surface transportation should be strengthened, relaxed, or eliminated; and, if regulation is not abolished, what degree of regulation is necessary to preserve a national system of surface transportation.

For almost a century, surface transportation has functioned as a national system. In the beginning, it was sufficient to outlaw discrimination, to require just

and reasonable rates, and to permit the railroads to satisfy those commands by collective action. When it became necessary to create a more highly integrated system, the Congress responded with the Transportation Act of 1920 to curb unnecessary expansion and to encourage rationalization of plant. When, for constitutional and for other reasons, the States proved unable to foster a national motor carrier system, the Congress enacted the Motor Carrier Act of 1935. Water carriers were recognized to be part of the national system by the Transportation Act of 1940, which also provided a charter for the fair and impartial regulation of the rail, motor and water modes.

That charter, called the National Transportation Policy, has served as the touchstone of regulation for 39 years. At the heart of the policy is the conviction that surface transportation should be regulated as a multi-modal system, not as a horde of disconnected carrier enterprises. The 1940 Congressional declaration of the National Transportation Policy has as its sole objective: "To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States. . . ." Whether the basic policy decision of 1940 should be reaffirmed, revised, or discarded should be resolved not by executive, administrative, or judicial response to legislative inaction but by affirmative Congressional action.

No law more clearly illuminates the existence of a national system of surface transportation than the Reed-Bulwinkle Act of 1948. In the absence of a national transportation system, carrier rate bureaus could only be regarded as legalized cartels. It is only the existence of a coordinated system which separates surface transportation from meat packers, department stores, real estate and other firms in the so-called unregulated sector of the economy. All businesses are important but the nontransportation enterprises are not required to operate as components of a national economic system and have not been since the Supreme Court's decision in *United States* v. *A.L. A. Schecter Poultry Corporation*, 295 U.S. 495 (1934).

What makes transportation different? The essential difference between common carriers and businesses not subject to economic regulation is that carriers must work within a system which serves all other businesses, regions, localities, ports and the traveling public, without discrimination and at reasonable rates. No transportation concept has won greater support than intermodalism; the idea that not only carriers but also modes of transportation should work together in forming a national system so that any commodity can be shipped from any point to any place by any means with a minimum of trouble and expense. For transportation the concept is sound, as shown by the remarkable growth of piggyback and other intermodal movements. On the other hand, a concept of intermodalism for industry generally is so incongruous that it defies formulation.

If carriers, subject to the supervision of the Commission, are denied the opportunity to consult, confer, and take collective action, the carriers will not be the principal losers. The losers will be shippers who no longer have a voice in the ratemaking process; ports denied rate equalization; and producers of countless commodities who can no longer compete on the basis of price because of their inability to overcome locational disadvantages. A fragmented national transportation network would lead toward the Balkanization of America. The barriers to commerce imposed by State boundaries, which the Founding Fathers leveled by the Commerce Clause of the Constitution, would reappear in the form of barriers raised against the free flow of goods from mode to mode and from carrier to carrier.

We recognize respectable arguments can be made both for tightening or for relaxing economic regulation of surface transportation. Total deregulation, however, poses the question whether the nation would be better served by a national system of surface transportation or by no system at all. A decision on a question of such import will not be durable unless it is made by Congress.

Nothing more clearly reveals loss of faith in a national transportation system than the proposal in the Railroad Deregulation Act of 1979 (S. 796) for a Railroad Transportation Policy as an exception to the present National Transportation Policy. If such an exception is sound, separate policy statements for the bus, trucking, water carrier, and freight forwarder industries followed by interment of the multi-modal National Transportation Policy would appear to be a logical extension. Secondly, the bill would split the rail system into its component parts by repealing the requirement for joint rates and by emasculating the conference method of ratemaking. Hacking our national transportation system into

thousands of disjoined members is a prescription for disaster. Once the system is dismantled, its rebuilding would be as difficult as construction of the Tower of Babel, and for the same reason.

In transportation, as in communication, the system is the solution.

Owen Clarke
Bellevue, Washington
Robert J. Corber
Washington, D.C.
Abe McGregor Goff
Moscow, Idaho
Dale W. Hardin
San Marcos, Texas
Alfred T. MacFarland
Lebanon, Tennessee
Donald P. McPherson
Gettysburg, Pennsylvania
Robert W. Minor
Columbus, Ohio
Rupert L. Murphy
Gainesville, Florida
Charles A. Webb
Washington, D.C.

Inquiries concerning this statement may be addressed to: Robert J. Corber, 1747 Pennsylvania Avenue, N.W., Suite 1050, Washington, D.C. 20006. Tel.: (202) 833-3500.

[The following information was subsequently received for the record:]

DECEMBER 21, 1979.

Mr. FRANK N. BENDER,
Bender Warehouse Co.,
Reno, Nev.

DEAR FRANK: Many thanks for your testimony in Reno on the trucking issue. Also, I want to thank you for your follow-up letter enclosing the reprint of the Las Vegas Sun editorial concerning the issue.

As I indicated at the hearing, the Committee would like to pose some questions to each of the witnesses on that last panel for inclusion in the hearing record. Accordingly, if you would be kind enough to respond to the questions below, we would be most grateful.

1. In your testimony you indicated that, "Without the protection of the rate bureaus, all the shippers of the Reno/Sparks and the Las Vegas/Henderson areas would be devastated without proper service and controllable costs." Would you please expand upon that statement and explain why the elimination of collective ratemaking would create those results.

2. You indicates that shippers need to be protected from monopoly pricing. In your view, would greater freedom of entry provide any sort of safeguard against monopolistic practices?

3. In your statement you indicate that we have the best of both worlds—"private enterprise working in concert and competition under the watchful eye of the ICC." Yet, the ICC tells us that they do not have the resources to monitor to any substantial extent the workings of individual rate bureaus. Given this fact, do you think that opening rate bureau proceedings to the sunshine where concerned shippers would be able to listen to the discussion and observe the votes on rate issues would be a constructive reform that the Congress should enact?

4. Please explain for the record why, in your view, the position that you take on this issue is so very much different from the positions taken by other members of the panel who are in approximately the same positions as you with respect to relying upon the transportation industry. In other words, are there unique characteristics about either your operations or those of the other members of the panel who do not agree with you that would make a substantial difference in your points of view, or is the question simply one of general philosophy?

Once again, many thanks for participating in the hearing and providing the factual information that you did both during the hearing and after. In my view, the hearing was a well-balanced one that served to sharpen the focus of the committee on the various issues raised. Accordingly, I judged it a success.

With best wishes, I am

Sincerely yours,

HOWARD W. CANNON,
Chairman.

BENDER WAREHOUSE CO.,
Reno, Nev., January 16, 1980.

Senator HOWARD CANNON,
Senate Office Building,
Washington, D.C.

DEAR HOWARD: Tomorrow I'm off to Hawaii to attend the AWA Convention we invited you to attend. Sorry you are not going to be with us so that we could have some time to chat about my testimony vs. the others on the panel held here in Reno. So I'll have to answer your questions as follows:

1. Rate Bureaus provide shippers and the public with an established, orderly mechanism for determining rates—Not to favor the carriers, but to provide published, non-discriminatory, common carrier rates which are fairly and freely available to all parties involved. Now the law requires that rates be just and reasonable, and not discriminate against any person, locality or commodity.

If carriers are not prohibited from discriminating as to rates, it gives them the economic power to determine which manufacturer or distributor of goods will have access to given markets. This is one of the situations which led to the passage of the Interstate Commerce Act in the first place. I've mentioned to you several times that when the General Motors Parts Warehouse opens in Sparks later this year, with 500,000 sq. ft. of space, they will be in a position without regulation, to call the shots on service and rates.

At present my two automotive parts customers taking up about 5,000 sq. ft. can ship at the same rates as GM and expect equal service. Take away the controls and where would they be? Do we really want to go back to the days when big firms negotiated attractive rates, where rebates and discounts for such customers were common?

In those days the little shipper, the new business, the small town or inner-city entrepreneur without leverage, was out of luck. Back in 1935 Congress responded to the public need and created a regulatory framework to bring about fairness and equality. Long before I got into a very minority position in a truck line (4 percent) I attended hundreds of rate bureau meetings along with other shippers in the Reno/Sparks area.

We worked hard and long to develop the rates that have made this area the largest central distribution point in the West. If we had tried to work with each truck line individually, we never would have made it. The rates we established cover zones where the outlying communities are covered by the same rate as the larger cities. This allows the shipper from Reno to cover all the small communities at reasonable rates. If I'm not mistaken, deregulation would mean the end of the publication of rates as a requirement of law. Carriers could change rates from day to day, and the rates would vary from carrier to carrier and from shipper to shipper based on consideration other than cost.

The shippers in the Reno area have about ten truck lines to use (plenty of competition) so the shippers couldn't determine the lowest rate for a particular service on any given day, except by continual shopping among the various carriers. As service to the small towns deteriorated, it would mean the small shipper would demand their suppliers store their products within easy pick up points. For example, today we can serve Santa Rosa easily, but if that retailer has to send a truck to pick up merchandise, would he send it to San Francisco for one manufacturers product or over Donner summit to Reno for a comparable product? Reno's attraction as a central distribution point would become a thing of the past!

2. In answering question No. 1, I didn't mention monopoly pricing. I am certain the rate bureaus protect the shipper from monopoly pricing. I have pointed out before, that if you deregulate you will be forcing small communities to find a trucker fo fill the gap left when the long haul carriers abandon the community. Rarely is there enough freight for one carrier to serve them, and no back haul to offset costs. Yes; someone will fill that gap because he will have a monopoly! His charges will have little bearing on his costs. You will be creating far more monopolies throughout the country than you will be eliminating—mark my words! Today, I'm sure you will find more monopolies in the unregulated carriers than in the regulated ones.

3. Last week I gave a talk on this subject to the Reno/Sparks chapter of Delta Nu Alpha—the transportation fraternity made up of shippers and carriers. I read the same speech I gave as testimony at your December 3rd hearing and I also read Mr. Herman's speech. Then I read your letter—the one I'm answering, and asked if anyone there felt the rate bureau proceedings should be open to the

62-322 O - 80 - 16

public. There was not one person in the 50 people there that was in favor of open meetings.

At least half were shippers and one of them pointed out that the NIT League is not in favor of open meetings. As I said, I attended hundreds of rate bureau meetings as a shipper and also as Chairman of the Greater Reno Chamber of Commerce Transportation Committee.

I am positive we would not have come away with the best system of consolidated rates in the country if the truckers present at those meetings had been required to conduct them in open sessions. Oh, how I wish you could have been with us in those early days, just to be able to look back and see how well they operated. Nothing much has changed, except inflation has forced them to meet more often!

4. Studies have shown that 80 percent of the shippers in the county do not favor deregulation. I gave you a copy of one such study when I testified against the rail deregulation bill introduced by the President. I know I am on the side of the majority.

The bulk of articles that I have seen favoring deregulation have been authored not by the users of transportation and not by those directly involved. I firmly believe the closer the person is to the basic job of getting the freight moved, the more they find the present transportation system fair and workable. Those that are close to the scene, but are in favor of deregulation—the other 20 percent—often have a particular axe to grind.

Take Ted Herman for example. He stated in his testimony that he had been trying for years to get into the trucking business, but what he won't tell you is that he has antagonized every truck line in the area. The Chamber Transportation Committee many years ago decided to invite the presidents of all carriers serving the area to visit Reno. We had all nine of them, took them on a bus tour and then feated them at a dinner attended by about fifty local businessmen.

All but one of us welcomed them graciously and sold them on the area. Guess who got up and called them just about every name in the book and threatened them with all kinds of sanctions if they didn't do his bidding.

Several years later we asked all the traffic managers of the truck lines to meet with us and again the same individual berated them as crooks, highway robbers and words for worse than that. After about 25 minutes of harangue, I looked up at him and in a firm voice said, "Ted, for Christ's sake sit down." I apologized to the truckers present, but one Mr. Herman has had trouble getting service ever since that meeting.

He was on the Reno (now Cannon) Airport Commission and from what I gather made the other members so uneasy that when he offered his resignation it was accepted immediately. He tried later to say he didn't mean it—it was all written up on the papers at the time. He has good qualities, but he sure makes a habit of making himself unpopular. Howard, I wouldn't even consider responding to his testimony in this way if it weren't so important to the Nation. You of all people have to know why his bitterness to the trucking industry was so intense in his testimony.

By the way, when I spoke to Delta Nu, after the speech one man got up and said his company rented about a third of Mr. Herman's warehouse facility, but that Mr. Herman had not contacted him on his stand on deregulation and he was not in agreement with Mr. Herman.

On the other hand I have contacted many of my customers to see if I'm taking the right position in their behalf. After all I do not own any of the merchandise I ship because I'm a public warehouseman and I have to represent the feelings of my customers through my testimony.

You know that I am a conservative Republican. I hate big government as much as Milton Friedman or Bill Simon, yet I know there has to be a balance between government and private industry. I'm amazed that the I.C.C. has told you they do not have the resources to monitor the workings of the rate bureaus. If they would get back to the original intent of Congress and cut out all the harassment, they would have ample staff to monitor the rate bureaus. The power of the I.C.C. is awesome. The fines they can impose for infractions of the rules—I personally watchd how the Southern Pacific and the Western Pacific railroads cringed when the I.C.C. found they had failed to charge detention of piggy back trailers. It was resolved in court and I was a witness. The I.C.C.'s power—like the Internal Revenue Service—keeps the truckers honest. They don't have to investigate each and every rate—just a few will do.

Well Howard, by the time you get finished reading all this, I'll be in Hawaii having a Mai Tai, and thinking of you.

Cordially,

FRANK N. BENDER,
President.

The CHAIRMAN. Next, Mr. Roy Olson, vice president of transportation, American Paper Institute.

Mr. Olson?

Mr. OLSON. Thank you, Senator Cannon. In the interest of time, our presentation will be made by Mr. Adams.

The CHAIRMAN. All right. Pass that microphone right over to Mr. Adams who is the chairman of the Transportation Committee, American Paper Institute, director of support services, Champion International.

Mr. ADAMS. Thank you, Senator Cannon.

Senator Cannon, my name is Donald S. Adams. I am director, logistics support services, Champion International Corp., Knights Bridge Drive, Hamilton, Ohio.

Present with me today is Roy E. Olson, the vice president of transportation of the American Paper Institute.

We appear here today on behalf of American Paper Institute, the national trade association of the pulp, paper, and paperboard industry. The testimony we give is concurred in and supported by three additional organizations: the American Plywood Association, the American Pulp Wood Association, and the Southern Forest Products Association.

Our industry is a very heavy user of truck transportation for both inbound wood and other raw materials and for outbound products. These outbound products cover a large variety of loading characteristics from light loading sanitary papers to the very heavy printing papers and wood products.

We have filed with your committee a 10-page written statement, which covers in detail the various sections of S. 1400. Our testimony in two railroad deregulation proposals have made clear our vigorous support of the elimination, as soon as feasible, of Federal economic regulation of the rail industry. Also, this is our position in relation to the trucking industry.

As part of its overall vigorous support for the ending, as soon as feasible, of Federal economic regulation of the transportation industry, the American Paper Institute strongly supports the thrust toward deregulation embodied in title I of S. 1400. This is borne out by our testimony in our full statement on such subjects as transportation policy, entry and service, rates, consolidation, and mergers and so forth. There are three reservations which our industry has and which I would like to treat briefly in the remaining time allotted to us.

First of these relates to section 113, truckload transportation. It is our recommendation that rather than wait for 2 years after the enactment of S. 1400 to free truckload transportation from ICC jurisidiction, it should be done immediately. This is especially important in view of the proposed rail deregulation.

We would favor the elimination of specific minimum weight standards such as 10,000 pounds. If, however, your committee believes that a weight standard is essential, then we suggest a modifier such as full

visible capacity be applied. Our concern in this area relates to the shipping of light loading sanitary paper products.

Second, with reference to Section 111; Private Carriage, our industry sees no need for imposing the burdens of sections 10922 or 10923 upon such private carriers. This is especially the case with reference to truckload transportation.

As we have noted above, such transportation is scheduled to be exempted from regulation in 2 years. We have recommended that it take place immediately.

Finally, section 107, rate bureaus, is a very important part of this legislation. The legislation terminates the present authority for motor carrier collective ratemaking agreements.

In approaching this subject, it is important to take note of the nature of our industry. Our product moves throughout the Nation, literally into every city, town, and hamlet. As previously stated, our industry is dependent on truckers, particularly the LTL general commodity carriers.

In moving our inbound materials and outbound product, we must take into account thousands of truck rates, including joint rates. Our needs are met through territorial rate scales.

Equally important to rate schedules are the matters of route, rules, regulations, practices, and other tariff provisions which are intertwined with the rates themselves. Presently dealing with these matters is handled through the rate bureaus. Some viable substitutes must be provided to meet these needs if the authority for collective ratemaking is terminated.

Far more than motor carrier rates is involved, for example, one important issue is the problem of continuing the publication of freight classification. This classification includes the uniform packaging standards developed by the trucking industry. These standards contribute substantially to the free flow of commerce. If packaging requirements were different for individual truckers, it might well be impossible to transfer freight from one carrier to another, thereby obstructing transportation of the freight to destinations. Many shippers are small companies with no professional packaging staff. Such shippers benefit materially from the previous testing, analysis, and experience reflected in the results of the present classification system.

Our industry regards it as essential that this national freight classification continue to be available along with the rules and regulations, packaging provisions, and other related guidelines.

S. 1400 presently fails to provide a suitable substitute. It is our urgent concern that such a statute mechanism be provided.

In conclusion, we reiterate our ultimate objective of deregulation of the trucking industry and we believe that S. 1400, with the revisions which we have just enumerated, will take a major step toward ending deregulation of our transportation system.

Thank you.

[The statement follows:]

STATEMENT OF AMERICAN PAPER INSTITUTE, INC.

My name is Donald S. Adams. I am Director, Logistics Support Services, Champion International Corporation, Knightsbridge Drive, Hamilton, Ohio, 45020.

Present with me today is Roy E. Olson, Vice President Transportation, American Paper Institute, Inc., 260 Madison Avenue, New York, N.Y., 10016.

We speak here today in behalf of American Paper Institute, Inc. (API), the national trade association of the pulp, paper and paperboard industry. It consists of approximately 175 manufacturers, which produce approximately 90 percent of the nation's output of these products. In 1978, our industry produced approximately 62 million tons of paper and paperboard, valued at approximately $27 billion. The primary industry, including its converting segments, which operates in all states of the Union, employs more than 700,000 people.

The members of API are all substantial users of for hire truck transportation and have a vital interest in the matters embraced in the legislative proposals here before you.

INDUSTRY SUPPORT OF GOVERNMENT DEREGULATION OBJECTIVE

In its testimony in support of the railroad deregulation bill S. 796 our industry has made clear its vigorous support of the elimination as soon as is feasible of Federal economic regulation of the transportation industry. This is also our position as to the trucking industry. It is our judgment that the achievement of such deregulation will result in improved transportation service arising from a much more competitive environment. We also recognize the widely held view that reduction of Federal regulation will make a substantial contribution toward solving the problem of inflation.

ELEMENTS OF TITLE I

Our industry strongly supports the thrust toward deregulation embodied in Title I of S. 1400. For convenience, we shall treat Title I under the following categories: (1) Transportation Policy; (2) Entry and Service; (3) Rates and Rate Bureaus; (4) Consolidations and Mergers and (5) Miscellaneous.

(1) TRANSPORTATION POLICY

The proposed changes in the governing transportation policy in Section 101 represent genuine progress. We support (1) maximum reliance on competitive market forces and on competition among all transportation modes; (2) reduction of regulatory barriers to entry; (3) the development and maintenance of a transportation system responsive to the needs of the shipping public generally.

(2) ENTRY AND SERVICE

Restriction removal

Section 102—Restriction Removal takes three sound approaches: All back haul restrictions and all prohibitions on making intermediate stops are removed immediately. All route restrictions are removed by the end of 1981. By the end of 1982 all commodity restrictions are removed and all other restrictions by the end of 1983.

In the view of our industry these changes will contribute markedly to more efficient and economic truck transportation.

Restriction reductions through ICC action

The legislation also requires reduction in restrictions through the procedures of the Commission itself. The Agency is directed to adopt liberal standards and expedited procedures in the handling of carrier petitions for removal of individual restrictions prior to the above-mentioned deadlines. Of particular importance here, and extremely desirable, is the provision that those who oppose the carriers' petitions have the burden of proof to demonstrate why a restriction should not be removed.

Broadening authority through ICC action

The Commission is to develop a program to enable existing carriers to broaden their operating authority by a limited amount each year without formal Commission approval. In addition, the Commission is directed to enhance the opportunity to serve smaller communities.

Procedural reform

Section 103—Entry And Procedural Reform, while not eliminating regulation, will contribute to greater availability of truck service. Of key importance is the reversal of the burden of proof, requiring opponents to show that the authority

sought would be inconsistent with the public convenience and necessity. New and less exacting standards will be applied under the "public convenience and necessity" benchmark. Of tremendous importance is the new requirement that the Commission must make a final decision on entry applications within 90 days or the application shall be granted.

Our industry unequivocally supports all of the above changes.

Exemptions

Progress is also made toward the objective of economic deregulation by the provisions of Section 103—Exemptions. The Commision may grant an exemption consistent with the new Transportation Policy.

This takes care of the primary interest of our industry, although we do note the liberalizing of exemptions for agricultural cooperatives as well as the general agricultural commodity exemption.

Studies

Section 114—Studies directs by January 1, 1983 a detailed report from the Secretary of Transportation on the implementation of the Act and whether continued regulation of the trucking industry is required.

It is the hope and expectation of our industry that these studies will confirm the soundness of the deregulation steps which will have been taken and the desirability of additional steps toward deregulation.

Contract carriers

Section 105—Motor Contract Carriers takes another progressive step. The Commission is barred from limiting the number of shippers a contract carrier may serve. It is also made clear that a carrier can operate both as a common and a contract carrier.

Truckload transportation

An enormously important amendment would be accomplished under Section 113—Truckload Transportation. Truckload transportation, other than by general freight carriers, would be exempted from regulation two years after enactment.

These provisions, embracing as they do so much of our industry's transportation needs, will be extremely helpful. We would, however, favor elimination of any specific minimum weight standard, such as 10,000 pounds. Bona fide truckload shipments of a lesser weight are often made. With that reservation, our industry recommends immediate adoption.

Private carriage

Increased service and increased competition in the trucking industry are further strengthened by Section 111—Private Carriage. Private carriers may also operate as common or contract carriers, and may lease equipment without time limitation. There is a broader definition of private carriage.

Our industry sees no need for imposing the burdens of Sections 10922 or 10923 upon such private carriers. This is especially the case with respect to truckload transportation. As we have noted above, such transportation is scheduled to be exempted from regulation in two years. We have recommended that such exemption take place immediately.

(3) RATES AND RATE BUREAUS

Rates

Section 106—Rates of Motor Carriers and Section 108, Investigation of Rates of Motor Carriers, while not freeing the truckers from regulation of their transportation pricing, do take meaningful steps to broaden the carriers' managerial discretion. Section 106 creates a zone of reasonableness for the first two years, immunizing from suspension rates increased each year by 5 percent or decreased by 20 percent. The same immunity extends thereafter as to increases up to 7 percent annually, and as to decreases down to the carrier's variable cost.

The Commission may not suspend any other rate increase (outside the above zone of reasonableness) unless by verified complaint it is shown that this will cause substantial injury and that it is likely the complainant will prevail. The Commission may not suspend any proposed rate decrease. The period during which a rate may be suspended is limited to three months.

Rate bureaus

Section 107—Rate Bureaus is an important provision. It terminates the present authority for motor carrier collective ratemaking agreements.

In approaching this subject it is important to take note of the special nature of our industry. Our products move throughout the nation literally into every city, town and hamlet. In terms, for example, of inbound supplies and our outbound finished products, we are heavily dependent upon the truckers—and particularly the LTL general commodity carriers. We must take into account thousands of truck rates, including joint rates. Our needs are met through territorial rate scales which apply from all origins to all destinations in a given territory. Related are the matters of routes, rules, regulations, practices, and other tariff provisions, all intertwined with the rates themselves. Presently these needs are met through the rate bureaus. Some viable substitute must be provided to meet these needs if the authority for collective ratemaking is to be terminated.

But far more than motor carrier rates is involved. Aside from rates there is the problem of continuing the publication of a national motor freight classification.

This includes, for example, uniformity of packaging requirements, contributing substantially to the free flow of commerce. If packaging requirements were different for individual truckers it might well prove impossible to transfer freight from one carrier to another, thereby obstructing transportation of the freight to destination. Many shippers are small companies with no professional packaging staffs. Such shippers benefit materially from the previous testing, analysis and experience reflected in the results of the present classification system.

Our industry regards it as essential that this national freight classification continue to be available along with the rules, regulations, packaging provisions and other related guidelines that are found in such publication.

S. 1400 presently fails to provide a suitable, workable substitute mechanism for such a national motor freight classification publication.

(4) MERGERS AND CONSOLIDATIONS

Section 110—Merger of Motor Common Carriers of Property has the ultimate objective of terminating I.C.C. regulation in this sphere. Five years after enactment of the law the Commission's jurisdiction will end and mergers, consolidations and acquisitions of motor carriers will be subject to the pertinent Federal antitrust laws.

In the interim, in exercising its authority in this area, the Commission is directed to take into account various factors bearing upon the impact on competition and the meeting of significant transportation needs. We particularly note the important provisions whereby the Commission could approve a transaction where its anti-competitive effects are authorized by significant transportation needs that could not be satisfied by a reasonably available alternative having materially less anti-competitive effects.

Our industry strongly supports the ultimate objective of removing I.C.C. regulation and the interim steps directed toward that end.

(5) MISCELLANEOUS PROVISIONS

We are mindful that there are other miscellaneous provisions: Section 109—Notice; Section 112—Air Cargo Exemption; Section 115—Federal-State Relationship; Section 116—Motor Carrier of Property Securities; Section 117—Motor Carrier Brokers. There are also provisions with respect to freight forwarders.

With respect to these, our industry presently takes no specific position except to reiterate our ultimate objective which is deregulation of the trucking industry.

We have prepared separate testimony on Title II of S. 1400 together with S. 1390, Truck Safety Act.

[The following information was subsequently received for the record:]

DECEMBER 10, 1979.

Mr. DON S. ADAMS,
American Paper Institute,
New York, N.Y.

DEAR MR. ADAMS: For the purposes of completing the record of the hearing in Reno, Nevada, before the Senate Commerce Committee, I am requesting a written response to a question which, because of time limitations, I was not able to ask.

Questions:

1. Would deregulation of truckload traffic improve the availability of competitive truck service to the paper industry?
2. Why is that?
3. How much extra cost is passed on to consumers by the paper industry as a result of your having to use "Bureau" carriers? What percentage would you estimate?

I would appreciate a response at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

EDWARD M. KENNEDY.

CHAMPION INTERNATIONAL,
Hamilton, Ohio, December 27, 1979.

Senator EDWARD M. KENNEDY,
Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your letter of December 10th directed to me through the American Paper Institute. For the hearing record, our reply to your questions would be as follows:

1. Yes, we believe that deregulation of truckload traffic would improve the availability of competitive truck service.
2. We would anticipate this improved availability because carriers, under deregulation, would be spared the time and expense involved in obtaining certificates and permits to serve the paper industry. Also, as a company's markets shift or expand, carriers presently serving the industry could expand their area of operations to meet the need without the delay involved in filing for expanded authority.

We would also anticipate an increase in competitive truck service due to the elimination of the many limitations which now apply to truckers' operating authorities.

3. Because of the wide range of local conditions and load patterns over which the paper industry operates, we are unable to provide an estimated percentage of variance between "bureau" and irregular route carriers. Any answer we could give would be speculation and certainly would not therefore be meaningful or helpful to your Committee.

We appreciate the opportunity to testify at the Reno, Nevada hearing and hope that these answers to your questions will serve to clarify our position for the record.

Sincerely,

D. S. ADAMS.

The CHAIRMAN. Thank you very much, Mr. Adams.

Next, Mr. Donald Visger, western operations manager, Pacific Western Systems.

Mr. VISGER. Mr. Chairman, I'm the area manager for Pacific Western Systems. We manufacture test and processing equipment for the semiconductor industry.

We operate factories in Mountain View, Calif.; Elko, Nev.; an Indian reservation in Nevada and two facilities in Winnemucca. And I think we're rather unique, because we have a very diversified operation in almost all the small towns in northern Nevada, and I have a few points here that I would like to make in favor of, as I see it, some sort of deregulation. Perhaps not total deregulation, but some sort of deregulation.

And these are the kinds of things that I come up against. Due to regulatory restrictions, there are no licensed carriers who can ship between all our interstate plants. In other words, I cannot ship at my own will between all our plants in Nevada because in some cases there just are not carriers that cover that route.

For example, Highway 95 going north out of Nevada does not have a licensed carrier except for a package carrier, a small mail-type operation. If I want to ship a machine, there is no way to do it. I have to do it myself.

Another thing that sort of irritates me, if I order a 10,000-pound machine from Connecticut or somewhere east, there is no carrier east of Denver, I believe, that can pick it up and drop it off in Winnemucca. Consequently, these things are handled back and forth and ultimately are shipped right through Winnemucca, through Elko to Reno.

They're off-loaded in Reno and they are shipped back an additional 160 to 300 miles by a second carrier, dropped off in Winnemucca, and that has, in the past, resulted in damaged equipment and extra lost time just getting the equipment into the plant.

And it just doesn't make sense in this day of energy shortage to ship a 10,000-pound machine all this extra distance.

Due to these regulations, we're in the private carrier business and we don't want to be in it, but we have to, for our defense. We have to maintain our own truck drivers and fill in the gaps, so to speak, in order to do business in these small towns in Nevada.

I feel that there is a real opportunity in these small towns for some small competitive carriers that could exist. Not only in my industry, we have a lot of other industries in Nevada, potatoes, mainly agricultural, but we do have some real carrier problems in the small towns in northern Nevada.

Perhaps it's a matter of economics, but I think that the ICC regulations perhaps prohibit some of the solutions that we should have.

In summary, I'd just like to say that we're operating very successfully in the small towns in Neveda without any Government support or assistance. We don't have any programs. In fact, we have an entire factory on an Indian reservation in northern Nevada that's operated by a complete Indian staff and this is being done entirely within the free enterprise system, and I believe the trucking industry can do just as well.

[The statement follows:]

STATEMENT OF DONALD VISGER, WESTERN OPERATIONS MANAGER, PACIFIC WESTERN SYSTEMS, INC.

I am the area manager for Pacific Western Systems. We manufacture, test process equipment for the semiconductor industry.

We operate factories in Mountain View, Calif., Elko, Nevada, Fort McDermitt Indian Reservation in Nevada and two facilities in Winnemucca, Nevada.

I am in favor of some type of freight deregulation for the following reasons:

1. Due to regulatory restrictions, there are no licensed carriers who can ship between all our intrastate plants.

2. Fuel is wasted because regulations permit only very few carriers to off load in the small towns along Interstate 80. Consequently all large shipments coming from the east are shipped through Winnemucca and Elko and are offloaded in Reno, resulting in an extra 350 to 600 miles of shipment as well as an extra transfer to another line. This has resulted in damaged equipment and unnecessary delay in delivery.

3. ICC regulations have put us into the private carrier business where we do not belong or do not want to be.

4. I feel deregulation would open the door to small competitive companies, who could exist on revenue generated by small towns.

SUMMARY

Our company operates very successfully in the small towns in Nevada without Government support or assistance. In fact, in addition to our regular factories, we have developed an entire factory to do highly skilled work on an Indian reservation with a complete Indian staff. This is being done entirely within the free enterprise system. I believe the trucking industry can do as well.

The CHAIRMAN. Thank you very much, Mr. Visger.

Mr. Gerberi?

Mr. GERBERI. Good morning, Mr. Chairman. I appreciate this opportunity to have my testimony heard before this committee.

My name is Larry Gerberi. I am currently the western distribution manager for Salomon-North America in Sparks, Nev. We are a major supplier of ski equipment to the United States.

My total experience in the distribution industry is in excess of 8 years. During these years I have been involved with the shipment of goods to small communities. The majority of these shipments have been routed through a general commodities common carrier.

It is a concern of Salomon's that the service to the small community may be threatened if a significant alteration were to occur to our present regulatory structure.

As you are aware, common carriers must now serve all points covered under their authority. Due to the nature of the ski industry, many of our customers are located in small mountain towns. These can be economically unattractive.

It has been my experience that many of these towns are served by a single carrier. If deregulation were to occur, a condition may arise where monopolistic practices could occur. If so, certainly the freight charges would occur at a rate alarming to us. As our shipments move collect, the profitability of our dealers in these areas could become threatened. The high cost of freight would undoubtedly have to be passed on to the consumer.

We are concerned with the difficulty our customers located in small, relatively remote locations that are competing with their counterparts in larger communities. Purchasers of ski equipment may no longer wish to buy products outside of major ski markets. A severe effect would certainly arise.

It does not appear that there would exist any serious competition among carriers to serve these communities unless the freight rates were extremely attractive. If deregulation occurred, we and our customers could be at the mercy of a single trucking company, or left without adequate service. Under certain conditions, price competition between carriers, under deregulation, may not exist for us at all.

We find an opportunity here to point out that price competition appears to exist under the current regulatory structure. The companies I have served have each been successful in negotiating rates to their various markets. The majority of these rates have been through carrier independent action.

Reduced rates have been offered, approved, and made available to the benefit of our customers. Various commodity rates have been introduced, docketed, and approved by the rate bureau. We have no reason to expect that price competition of this nature should not continue to exist. Under deregulation, the bargaining of small companies with

remote destinations may be threatened. Certainly, larger, more powerful corporations would use their big volume to advantage. With the dissolution of the current regulatory structure and the possibility of each carrier issuing independent, nonpublished rates, our protection from prejudice would no longer exist.

The Interstate Commerce Commission has been recognized by the Supreme Court as an expert in transportation matters. Should the carriers lose antitrust immunity, would the Department of Justice, who would undoubtedly adjudicate undue preference and prejudice, be staffed with personnel of similar expertise? If so, the staffing requirements of the Department of Justice could be staggering.

We must point out that a change and reform are in order for the regulation which exists today. A major area of concern is the elimination of gateway requirements, which are wasteful to our energy resources. We do feel uncomfortable with the discussions and collusive nature of the National Motor Freight Classification Board. It is felt that the members of the trucking industry cannot act impartially on proposals introduced by shippers on classification changes. Possibly, some impartial group should exist who can objectively resolve classification issues.

Certainly, the powers of Congress and the authority of the Interstate Commerce Commission attempt to insure that the public interest is protected under the ratemaking system enjoyed today. We do feel uncomfortable with the discussions that occur under the rate bureau system, but are not convinced that deregulation will lead to lower freight costs for our customers in isolated areas. Today's system does provide order, protection from discrimination, and encourages efficient carrier operation.

Certainly, no inefficient and unprofitable carrier can competitively exist in our transportation system today. We would certainly support major deregulation or the lifting of immunity from the antitrust laws for motor carriers if and only if it is insured that order, protection from undue prejudice, and prompt service at reasonable rates for our customers are retained.

The CHAIRMAN. Thank you very much, Mr. Gerberi.

[The statement follows:]

STATEMENT OF LARRY J. GERBERI, WESTERN DISTRIBUTION MANAGER, SALOMON/NORTH AMERICA, INC.

Good morning, Mr. Chairman. I appreciate this opportunity to have my testimony heard and entered before this Committee. My name is Larry J. Gerberi. I am currently the Western Distribution Manager for Salomon/North America. Inc. We are a major supplier of ski equipment, and operate distribution facilities in Sparks, Nevada, and Peabody, Massachusetts. I hold a graduate degree from Loyola University, have been admitted to practice before the Interstate Commerce Commission, am a member of Delta Nu Alpha and the National Council of Physical Distribution Management. My total experience in the transportation/distribution industry is in excess of eight years.

During these years, I have been involved with the shipment of goods into small communities. The majority of these shipments have been routed via a general commodities common carrier. Modification to the present situation is certainly in order, but modification must be conducted in a cautious and enlightened manner.

It is a concern of Salomon's that the service to the small community may be threatened if a significant alteration were to occur to our present regulatory

structure. As you are aware, common carriers must now serve all points covered under their authority. Currently, many small communities only receive service because of this requirement. Due to the nature of the ski industry, many of our customers are located in small mountain towns. Due to low volume traffic and the general unavailability of outbound freight, these destinations in and of themselves can be economically unattractive for motor carriers.

It has been my experience that many of these towns are only served by a single carrier. If deregulation were to occur, a condition may arise where monopolistic practices could appear. If so, certainly the freight charges for service into these points would increase at a rate alarming to us. As our shipments move collect, the profitability of our dealers in these areas could become threatened. The high cost of freight would undoubtedly have to be passed on to the consumer.

As a believer in the American free enterprise system and as a supporter of competitive practices, we are concerned with the difficulty our customers located in small, relatively remote locations may have competing with their counterparts in larger communities. Purchasers of ski equipment may no longer wish to buy products outside of major markets. A severe negative effect on the economy of the small community would certainly arise. It does not appear that there would exist any serious competition amongst carriers to serve these communities unless the freight rates were extremely attractive.

If deregulation occurred, we and our customers could be at the mercy of a single trucking company, or left without adequate service. Under certain conditions, price competition between carriers, under deregulation, may not exist for us at all. As a proponent of unrestrained competition, we find an opportunity here to point out that price competition appears to exist even under the current regulatory structure. The companies I have served have each been successful in negotiating rates to their various major markets.

The majority of these rates have been through carrier independent action. Reduced rates have been offered, approved, and made available to the benefit of our customers. Various commodity rates have been introduced, docketed, and approved through the rate bureau collective rate making operations. We have no reason to expect that price competition of this nature should not continue to exist. On the other hand we have suspected that during some occasions, the dialogue allowed between carriers has proved detrimental to our proposals of rate reductions.

Under deregulation, the bargaining of small companies, with remote desinations, may be threatened. Certainly larger, more powerful corporations, would use their volume to advantage to secure lower rates. With the dissolution of the current regulatory structure, and the possibility of each carrier issuing independent, non-published rates, our protection from undue preference and prejudice would no longer exist. How could a firm monitor the rates offered to its competitors for similar movements of goods? We are opposed to closed door dealings between the large power corporations which may not benefit the public as a whole.

The Interstate Commerce Commission has been recognized by the Supreme Court as an export body on transportation matters. Should the carriers lose antitrust immunity, would the Department of Justice, who would undoubtedly adjudicate alleged undue preference and prejudice be staffed with personnel of similar expertise? Would they be better prepared to offer permanent solutions to transportation disputes? If so, the staffing requirements of the Department of Justice would be staggering if they were charged with hearing all transportation issues.

We must point out that change and reform are in order for the regulation which exists to date. A major area of concern is the elimination of gateway requirements which are wasteful to our energy resources. I do believe that protection of our energy should be a prime concern no matter the regulatory environment. We do feel uncomfortable with the discussions and collusive nature of the national motor freight classification board. It is felt that the members of the trucking industry cannot act impartially on proposals introduced by shippers on classification changes. Possibly, some impartial group should exist who can objectively resolve classification issues. Unlike the current collective rate-making system, the national motor freight classification board realistically has the final say on classification matters, and not the government or other unbiased body.

Certainly the powers of Congress and the authority of the Interstate Commerce Commission attempt to insure that the public interest is protected under

the rate-making system enjoyed today. We do feel uncomfortable with the discussions that occur under the rate bureau system, but are not convinced that deregulation will lead to lower freight costs for our customers in isolated areas. Today's system does provide order, protection from discrimination and encourages efficient carrier operations.

Certainly no inefficient, and thereby unprofitable carrier can competitively exist in our transportation system today. We would certainly support major deregulation or the lifting of immunity from the anti-trust laws for motor carriers if and only if it is insured that order, protection from undue preference and prejudice, and prompt service at reasonable rates for our customers are retained.

[The following information was subsequently received for the record:]

DECEMBER 21, 1979.

Mr. LARRY GERBERI,
Western Distribution Manager,
Salomon North American, Sparks, Nev.

DEAR MR. GERBERI: I want to take this opportunity to thank you for your appearance earlier this month at the hearing of the Senate Commerce Committee in Reno concerning the question of motor carrier regulation. As I said during the hearing. the Committee would have questions to pose to witnesses on the final panel with respect to their testimony. Accordingly, I would very much appreciate your reaction to the following questions for the hearing record.

1. In your testimony you state that many small communities currently receive service only because of the common carrier requirement under the existing regulatory structure. Yet, at the same time, we are told by the ICC that it spends very little time ordering carriers to serve points that they do not want to serve. If that is indeed the case, why in your view are carriers currently serving small communities if it is unprofitable to do so and the Government is not forcing them to do so?

2. In your testimony you state that, "We have suspected that during some occasions, the dialogue allowed between carriers proved detrimental to our proposals of rate reduction." Do you believe that opening rate bureau meetings to public scrutiny, including the discussion and voting of the carriers on various rate proposals, would alleviate the problem that you have indicated here?

3. In your view, would a liberalization of entry policy in which new carriers could more easily enter the trucking business and existing carriers expand their current services, be in the public interest?

Once again, let me thank you for your participation in the hearing. I think that you provided a very valuable addition to the Committee's understanding of the issues. In advance, I want to tell you that I appreciate your consideration of these additional questions for the record of the hearing.

With best wishes, I am

Sincerely yours,

HOWARD W. CANNON, *Chairman.*

SALOMON/NORTH AMERICA, INC.,
Sparks, Nev., January 24, 1980.

Senator HOWARD W. CANNON,
Chairman, U.S. Senate Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR SENATOR CANNON: I appreciate your gracious remarks regarding my testimony concerning motor carrier regulations which was submitted recently at Reno, Nevada.

The additional questions posed have been carefully considered and the responses to each are indicated below.

Your first question read as follows: "In your testimony, you state that many small communities currently receive service only because of the common carrier requirement under the existing regulatory structure. Yet, at the same time, we are told by the ICC that it spends very little time ordering carriers to serve points they do not want to serve. If that is indeed the case, why in your view are carriers currently serving small communities if it is unprofitable to do so and the government is not forcing them to do so?"

At the present time, I do not believe that motor carriers are finding it unprofitable to serve small communities. The current schedule of arbitraries added to the basic rate is designed, as I understand it, to help compensate for the additional cost of serving the out of the way destination. Due to volume considerations, the provision of transportation into small towns may be less profitable, however, than that of service into the larger communities. Although I am aware of the debates being conducted by those more expert than myself regarding economies and scale on motor transportation, I cannot help but feel that economies due to volume exist.

Under the current structure, the government has created an atmosphere where more than one carrier can participate in through rates. The ICC reviews rates and allows only those deemed just and reasonable. Any shipper who feels the rates are not reasonable has an avenue to pursue his contention. If this function were changed, one would expect that the competition for freight destined for large communities would be fierce; again, due to the efficiency of larger volume and the related lower unit cost of moving an item.

Those carrier, due to competitive reasons, unable to participate in the volume movements undoubtedly would turn attention to the smaller community. Quite possibly the following could occur. Competitive pressure would force rates lower and lower for the efficient movement between large communities. These carriers would be less and less able to allow the splits in revenue associated with through rates and interline service. Eventually, only the larger communities would be served by through rates and movements to the smaller town would be characterized by combinations of the local rates. Revenue splits occurring today on through interline movement could no longer be maintained—revenues would no longer be shared. The short haul, low volume carrier, with none of the associated volume efficiencies would need increasing rates to move the traffic. Competition for their freight would only arise when rates were sufficiently high to be attractive.

At the present time, small communities are served primarily by marketing pressures placed upon the carrier by the shipper. At this time, intelligent shippers do not allow the carrier to select only that freight that the transportation companies find attractive. The carrier must handle both the desirable as well as the less desirable movements. In my view, this is why carriers serve small communities—because serving an account's total needs is what is highly profitable. I do feel that reminding carriers of their lawful obligations is helpful and important to having the total transportation needs met. Without this protection, the shipper of less attractive freight would experience difficulty moving this product to his customer.

I must concede that in reality carriers do ardently request of certain shippers that freight not be routed by their line. Generally this is not pursued through the ICC, but a carrier desirous of handling the freight is contacted. It is the current competitive environment amongst carriers which provide service, although the rates and revenue remain the same.

The second question posed was "In your testimony you state, 'We have suspected that during some occasions, the dialogue between carriers proved detrimental to our proposals of rate reduction'. Do you believe that opening rate bureau meetings to public scrutiny, including the discussion on voting of the carrier on various rate proposals, would alleviate the problem that you have indicated here?"

I would recommend opening the rate bureau meeting to public scrutiny if we retain the current regulatory structure. Carriers should be able to discuss openly their views without fear of retaliation from the shippers involved. The carriers would have to discuss each proposal based upon its transportation merits and characteristics rather than upon marketing considerations. The shipping community would have an opportunity to view those carriers who act responsibly in such discussions. A shipper who proposes a rate reduction would have an opportunity to see exactly why his proposal was not approved. If an appeal was necessary, the proposer would have an avenue to correct the deficiencies of his arguments. The question is why a rate proposal was not approved, not who it was that was against the proposal.

At the very least public rate discussions would discourage the marketing department of a carrier from indicating support of a proposal when in fact none exists.

I must point out, however, that the ultimate solution would be removal of the anti-trust immunity from rate proposals which makes the question you

pose mute. Rate proposals would be with the single carrier or a group of carriers acting independently. The only dialogue which would occur is that between shipper and carrier or buyer or seller—that of a typical business relationship.

Our concern is implementing such a change without affecting the order, protection from discriminatory pricing, and service levels we now enjoy.

Question three stated, "In your view, would a liberalization of entry policy in which new carriers could more easily enter the trucking business and existing carriers expand their current services be in the public interest?"

Under the current structure, it appears to me that the ICC has been too liberal in granting entry. This is how the efficiencies associated with volume get diluted when discussing service to the small community. If a carrier can handle all the volume to a less populous area, they may be assured of an efficient operating atmosphere. If the volume is reduced by a half, a third, or some other fraction, due to competition entry into the market, no one carrier would efficiently serve the community. Costs rise due to this inefficiency, and consequently rate increases must be had for service to remain constant. Since the rates remain constant, service is generally the component which deteriorates. Further, the rates only remain constant because of the current supervision of the ICC over them.

I do feel, however, that entry should be granted based upon cost reduction. If the carrier can show reduced rates for like service, he should be granted authority. This is assuming he would eventually enjoy all the volume previously held by the other carrier, and the volume efficiencies would remain. Price competition should be encouraged. A problem would result, however, if one carrier simply met the prices of the other; the volume would be diluted and neither carrier would operate efficiently. This is the situation noted above. Some protection from price cutting simply to destroy the competition must be preserved. Rate increases cannot be granted so that once the competition goes out of business, the rates are returned to where they were initially.

I would predict easing of entry would mean a demise of many of the smaller carriers, who do not have the flexibility their larger counterparts have. Volume, however, should lead to efficiency. We would see fewer trucking companies competing, but a balance would be reached over time. I am convinced that the general commodities motor carrier system would consist of a few large companies offering national coverage at the same rate, under consistently slow service levels, with a number of small specialists serving specific populous areas at lower rates and expedited service. Uncontrolled entry would mean a change in the system as we know it today. Would it be in the public's interest? For the general public, probably, but not for the public outside the metropolitan areas.

In conclusion, I feel that repeal of the anti-trust immunity for motor carrier rate making operations, would be advantageous to commerce. I do not advise, however, that a major modification to the interstate commerce act be pursued at this time. The questions of national freight classifications, fair transportation pricing amongst competing shippers, and orderly tariff issuance must be resolved, however, if this action occurs.

Hopefully, the above will clarify and enrich my previous testimony. I do appreciate the further opportunity to express my opinions on this delicate matter, and I trust that the public hearings you and your committee have conducted will lead to the appropriate actions regarding improvement of our regulatory system.

Sincerely,

LARRY J. GERBERI,
Western Distribution Manager.

The CHAIRMAN. Next is Mr. Glade Hall, on behalf of Pacific Freeport.

Mr. HALL. Yes; thank you, Chairman Cannon.

On behalf of Ted Hermann, I would state that he is the president of the Pacific Freeport Group, which is a group of large firms in moving and warehouse storage in the Reno area. He is also the president of the Nevada Taxpayers' Association and immediate past president of the Nevada Chamber of Commerce.

His firm serves 35 to 40 national firms by distributing their products; namely, to 11 Western States. This group's survival depends upon adequate and dependable highway transportation.

Mr. Hermann believes that regulating of interstate highway transportation has outlived its usefulness. Contrary to what some will say, Mr. Hermann firmly believes that deregulation will bring lower cost of transportation and better service.

For over 10 years now our business has sought to obtain authority to deliver goods from Pacific Freeport to points in other States without success. Because our industry is new to Nevada, we did not inherit grandfather rights or authority which would enable us to deliver goods across the State lines. Thus, we have been totally dependent upon highway common carriers under ICC regulations.

Mr. Hermann has been advised by two attorneys that with the current attitude at the Interstate Commerce Commission, he could file for and probably eventually receive interstate operating authority, but this would only come after lengthy and extensive hearings, at which vigorous protests would be heard from certified truckers.

Granting such authority after these drawn-out proceedings does not serve the public interest. It only perpetuates the series of lawyers, advisers, and so-called experts who only produce what is really an initiation rite into a closed fraternity of truckers who have ICC authority.

Mr. Hermann would much prefer to avoid this outdated fraternity initiation rite by having the trucking industry deregulate so he can get on with the business of serving his customers.

He is aware of the stories being passed around about small towns and how they will suffer if highway truckers are deregulated. He does not believe this is true. The standard of living enjoyed by Americans, which is above that of all the rest of the world, is the result of private enterprise having the freedom to meet the needs of the marketplace. If deregulation of highway trucking would deny the small community the benefit of America's progress, then we must conclude that small communities are presently deprived because they are small and that simply is not the case. If large highway carriers abandon service to small communities because they feel service to principal cities over the long haul is more lucrative, their business will become more competitive and prices will go down. Meantime, the small community will be served, as it has always been served, by those entrepreneurs who capitalize on what others overlook.

If there are cases where large carriers are rendering service to small communities at rates which are not compensatory and this service is abandoned, then small operators will fill the gap. This will result in lower overall cost to the small community and to all shippers.

Small communities don't have today the service or the rate advantages they will have under deregulated trucking.

For some time now there has existed on the part of regulated carriers too little concern for either the consistency of service or the adequacy of service. If a carrier is able to deliver from, say, the Reno-Sparks area to San Francisco overnight, then the shippers and consumers alike expect that service, but they find out, to their dismay, that it is not consistent.

Regulated highway carriers are prone to promise one thing, but deliver another, simply because they are protected by regulation.

Service to shippers under ICC regulation is a confused gray area, which works to the disadvantage of the consumer and the small businessman. For business to compete in the marketplace, product must be delivered both at a price and at a critical point in time. If the product arrives too late there is no sale.

Much of our marketplace is dominated by impulse buying. If one's product is not there, a competitor makes the sale. Regulated highway carriers have little, if any, liability for late delivery.

I would just sum up, Senator Cannon, by stating that Mr. Hermann was concerned about the hodgepodge of inconsistent ratemaking and the difficulty in challenging the present ratemaking scheme.

He is further concerned with damage of freight while in the hands of interstate common carriers and the process of collecting compensation for damage, which is complex, fraught with volumes of paperwork and extensive delays.

He complains about the efficiency of common carrier operations and states that the utilization of freight to common destinations, pallet and container handling, conveyors, slip sheets in lieu of pallets, and many other developements have been introduced to the industry which slashed the manhours for handling or rehandling of product as it moves from factory to consumer, yet few, if any, of these developments have shown up in the operation of the common carriers under regulation.

He does not believe labor is to blame for this. The men who drive the trucks and handle the freight for the highway common carriers are no less nor no more productive than those employed in the industry. The difference is management and management incentives.

Three other matters that he felt concerned with were that every major highway common carrier holds authority which he does not use and that authority is then used to prevent others from getting similar authority. There are many exploitations of ICC authority which are carried out within the letter of the law, but certainly outside the spirit of the law as it was written, such as transfers of authority for profit and the area of the owner-driver who hauls under the authority of a large firm. The certificate holder makes a profit solely because he has the authority and, to put it in the words of one owner-driver, their ICC authority becomes a license to steal.

He sums up, and I just want to read this last paragraph:

> I believe the freedom of private enterprise is the answer to America's greatness. Government regulation of the means of transportation had a purpose at one time. That purpose has long since come and gone. I believe the Government should only be entering into those functions of our society which cannot be handled by any other means. Certainly, the tremendous growth of private carriage of companies hauling their own products, the growth of contract carriage and the immense growth of the small business owner-drivers only prove that the need for regulating common carriers has passed. The ones who suffer most as a result of continued regulation are small businesses, small communities, and the consumer.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Hall.

[The statement follows:]

STATEMENT OF TED HERMANN, PRESIDENT, PACIFIC FREEPORT GROUP

Chairman Cannon and Senator Kennedy, I am Ted Hermann, President of the Pacific Freeport Group which includes Pacific Freeport Warehouse Company, Trans Western Leasing Corporation, Part/Time Services, Nevada Convention Service, Pacific Customhouse Brokerage and Commercial Transfer Moving and Storage Company. I am also President of Nevada Taxpayers Association and am immediate past President of Nevada State Chamber of Commerce.

Our business is primarily public warehousing; we serve 35 to 40 national firms by distributing their product mainly to the eleven western states. We have over one million square feet of warehouse space and we employ about 100 people. This business has grown from very small beginnings 19 years ago. Today, by U.S. standards, we are still a small business. Our survival now depends upon adequate and dependable highway transportation.

I believe that regulation of Interstate Highway Carrier Transportation has outlived its usefulness. Current regulations do not accrue to the benefit of either the shipper or the consumer. Contrary to what some will say, I firmly believe that deregulation will bring lower cost of transportation and better service.

For over ten years now our business has sought to obtain authority to deliver goods from Pacific Freeport to points in other states without success. Because our industry is new to Nevada we did not inherit grandfather rights or authority which would enable us to deliver goods across state lines. Thus we have been totally dependent upon highway common carriers under I.C.C. regulation. There is not, to my knowledge, another interstate distribution firm of our size in the United States that does not have interstate highway carrier authority. Our business and our customers need such authority in order to perform the service that is necessary in today's competitive marketplace.

I have been advised by two attorneys that with the current attitude at the Interstate Commerce Commission we could file for and probably eventually receive interstate operating authority. But this would only come about after lengthy and expensive hearings at which vigorous protests would be heard from certificated truckers.

Granting such authority after these drawn out proceedings does not serve the public interest.—It only perpetuates a series of lawyers, advisors and so-called experts who only produce what is really an initiation rite into a closed fraternity of truckers who have I.C.C. authority. I would much prefer to avoid this outdated fraternity initiation rite by having the trucking industry deregulated and let me get on with the business of serving my customers.

I am aware of the stories being passed around about how small towns will suffer for lack of service if highway carriers are deregulated. I simply do not believe this is true. The standard of living enjoyed by Americans, which is above that of all the rest of the world, is the result of private enterprise having the freedom to meet the needs of the marketplace. If deregulation of highway trucking would deny the small community the benefit of America's progress then we must conclude that small communities are presently deprived because they are small and that simply is not the case.

If large highway carriers abandon service to small communities because they feel service to principal cities over the long haul is more lucrative, their business will become more competitive and prices will go down. Meantime the small community will be served, as it has always been served, by those entrepreneurs who capitalize on what others overlook.

If there are cases where large carriers are rendering service to small communities at rates which are not compensatory and this service is abandoned, then small operators will fill the gap. Concentration on long hauls by large trucking firms will result in lower overall costs to the small community and to all shippers.

Far too much has been made of what some regulated highway carriers threaten will happen to the small community. History has taught us, however, that there is no free lunch. If carriers are operating non-compensatory routes then they are either now, or soon will be, rendering inadequate service or abandoning those routes.

Small communities don't have today the service or the rate advantages they will have under deregulated trucking.

The mention of service leads to the main fault of the present regulated trucking industry. For sometime now there has existed, on the part of regulated carriers, too little concern for either the consistency of service or the adequacy of service. If a carrier is able to deliver from say the Reno/Sparks area to San Francisco

overnight then shippers and consumers alike expect that service, but they find out, to their dismay, that it is not consistent. There is an old saying in our distributing business concerning our highway carrier friends, "If you can't deliver in the time you advertise, please say so, at least we will know what to expect." Regulated highway carriers are prone to promise one thing, but deliver another simply because they are protected by regulation.

Service to shippers under I.C.C. regulation is a confused, grey area which works to the disadvantage of the consumer and the small businessman. For business to compete in the marketplace, product must be delivered both at a price and at a critical point in time. If the product arrives too late there is no sale. Much of our marketplace is dominated by impulse buying. If one product is not there, a competitor makes the sale. Regulated highway carriers have little, if any, liability for late delivery.

Rate making under I.C.C. regulation is a hodge-podge of inconsistency, complexity and confusion. The Tariff Bureau system, as it operates in the real world certainly does not conform to the intent of the Bullwinkle Amendment and probably does not even conform to the letter of the law. After all, who is there to look after the interest of small business or the small shipper?

Representatives of regulated highway carriers meet, process and approve rate changes and service changes which are only subject to over-view by the I.C.C. and are seldom, if ever, challenged.

The meeting place of these rate committees is moved from city to city within the area the carriers serve. Meeting places can be 1000 miles apart and in the West, they are seldom less than several hundred miles apart. What small shipper, or small businessman for that matter, can afford to travel these distances, or spend the time on the faint hope that his pleadings will be heard? And if he is heard and ignored, those to whom he has pleaded know that he cannot afford the expensive appeal process the law allows.

Meanwhile big nationwide shippers who offer at least a threat of legal clout can reach an accommodation with these same tariff bureaus.

Damage of freight while in the hands of interstate common highway carriers has become an increasing problem. The carrier's liability for damage is limited by law and is never adequate to compensate for the loss incurred by damage. The process of collecting compensation for damage is another problem. It is complex, fraught with volumes of paperwork and extensive delays. An unregulated business must pay for damage for which it is responsible and pay promptly and in full or the marketplace dictates that they will soon be out of business. Not so with the regulated highway common carrier, the law is his protection.

Another area of the operation of highway common carriers that bears some scrutinizing is the efficiency of their operations. Recent years have produced giant strides in the handling of material. The unitization of freight to common destinations, pallet and container handling, conveyors, slip sheets in lieu of pallets and many other developments have been introduced to industry which slash the man hours for handling or rehandling of product as it moves from factory to consumer, yet few, if any, of these developments have shown up in the operation of the common carriers under regulation. Trucks are still being loaded and unloaded much as they were 25 or 30 years ago. A very high percentage of highway common carrier freight is "store door" delivery, yet a pitifully small amount of highway carrier equipment is equipped with hydraulic tail gates for unloading to street level. How can we really expect the highway common carrier to introduce lavor saving devices which will cut his costs when his tariffs and his profits are based upon his total cost structure regardless of how inefficient it is?

Labor is often blamed for the high cost of highway carrier transportation. I think this is a cover-up. The men who drive the trucks and handle the freight for the highway common carriers are no less, nor no more, productive than those employed in all of industry. The difference is management and management incentives. When the cost of inefficiency means going out of business, management can indeed become very resourceful. Undoubtedly, the screen of regulation keeps the trucking industry from being shown up as the antiquated operation it really is.

Three other matters deserve at least passing reference . . .

1. The misuse of authority by highway common carriers.
2. The exploitation of I.C.C. authority, and
3. The advent of the owner/drivers.

Every major highway common carrier holds authority which he does not use, but by holding it he prevents someone else from getting similar authority. If high-

way carriers hold authority they should be required to use it or lose it. But enforcement of the voluminous I.C.C. regulations is difficult at best and perhaps impossible at worst. Authority should not be held if it is not used. To do so is a misuse of that authority. De-regulation is the answer.

There are many exploitations of I.C.C. authority which are carried out barely within the letter of the law, but certainly outside the spirit of the law as it was written. For example, transfers of authority are not supposed to be exchanged for profit except as they might be tied to equipment, real estate or good will. However, it is common practice to so obscure the price paid in the transfer of authority that large amounts of money are actually paid for the slip of paper which entitles a highway carrier to operate under the authority of the Interstate Commerce Commission.

Owner/drivers now haul a substantial segment of the freight that moves over the interstate highways of America. These drivers are small businessmen who contract to haul freight with trucking companies who own authority. They do it on a cents-per-mile basis furnishing the motor power and the manpower. By this means, holders of extensive I.C.C. Highway Common Carrier authority are able to operate without heavy capital investment. Or to put it in the words of one owner/driver, "their I.C.C. authority becomes a license to steal".

I believe the freedom of private enterprise is the answer to America's greatness. Government regulation of the means of transportation had a purpose at one time, that purpose has long since come and gone. I believe that government should only be entering into those functions of our society which cannot be handled by any other means. Certainly the tremendous growth of private carriage of companies hauling their own products, the growth of contract carriage and the immense growth of the small business owner/drivers only prove that the need for regulating common carriers has passed. The ones who suffer most as a result of continued regulation are small businesses, small communities, and the consumer.

[The following information was subsequently received for the record:]

DECEMBER 21, 1979.

Mr. TED HERMANN,
President, Pacific Freeport Group,
Sparks, Nev.

DEAR TED: I would like to take this opportunity to express my sincere thanks for your statement before the Senate Commerce Committee in its hearing concerning motor carrier regulation in Reno earlier this month. I believe that this hearing was most helpful in sharpening the focus of the Committee on the very important issues before it in the motor carrier debate. During the course of the hearing I indicated that additional questions would be submitted to the members of the panel for inclusion in the record.

Accordingly, I would very much appreciate it if you would be able to answer the following questions to be included in the Committee record.

1. As you know, during the hearing the Committee received testimony from other individuals that were also in the warehouse business in the State of Nevada. However, these individuals had a different point of view than that which you expressed. In your view, what is the difference, if any, in the operational circumstances that result in these conflicting views, or is the debate merely one of general philosophy?

2. Others at the hearing and previous testimony before the Committee have indicated that it is only because of the so-called "common carrier obligation" that small communities in many areas are currently receiving service today. In your view, is this statement accurate?

3. In your statement you indicate that deregulation is the answer to most of the problems currently in the motor carrier industry. In your view, should there be any residual regulation with respect to the fitness of individual carriers to operate within the motor industry?

Once again, many thanks for the efforts that you made to participate in the hearing. I very much look forward to hearing your replies to these questions.

With best wishes, I am

Sincerely yours,

HOWARD W. CANNON,
Chairman.

PACIFIC FREEPORT WAREHOUSE CO.,
Sparks, Nev., January 9, 1980.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR HOWARD: Replying to your letter of December 21, here are the answers to your questions:

1. Regarding the differing points of view from that expressed by me by other individuals in the warehouse business in the State of Nevada.

Differing views come from a conflict of interest with the certified carriers. For example, people who own stock in highway common carriers even though they may be in the warehouse business defend regulation. The same is true of warehouses owned by trucking firms. Basically there are no differences in operational circumstances but only one of general philosophy depending upon what hat is being worn.

2. Regarding service to small communities being maintained only because of "common carrier obligation."

If there are any common carriers serving small communities that are not making money on that service it is a result of one or two things. Either they have cut back the service where it is only "token service" to maintain an image for the I.C.C. or the carrier simply hasn't gotten around to suspending the service. The statement simply is not accurate that service is being rendered in significant amount to small communities simply for "common carrier obligation."

3. Regarding the advisibility of any residual regulation with regard to the fitness of individual carriers to operate under deregulation.

No; there is no justification for any residual regulation. In the free enterprise society such as ours the day has long since passed when any governmental regulation benefits the shipper or the public in general.

Howard, I hope that you will get behind the deregulation bill and do all you can to push it through. If I can be of any help either here or in Washington, please feel free to call upon me.

Sincerely,

E. T. HERMANN,
President.

The CHAIRMAN. Next, Mr. John Prine, Supervisor of Transportation.

Mr. PRINE. Thank you, Mr. Chairman.

I, John Prine, appear here today on behalf of Toto Purchasing & Supply. I appreciate the opportunity to testify on the landmark decision granting Toto Purchasing the right to operate as a common carrier from Las Vegas, Nev., to southern California, and as a private carrier from southern California to Las Vegas, Nev. This is better known as the Toto decision, 128 M.C.C. 873 of 1978.

Before we were granted these rights we operated as a private carrier hauling building materials to our yard in Las Vegas, Nev., from southern California. We operated our own trucks because we could not use a common carrier and be competitive. We ran approximately 2,000 miles a week, using almost 655 gallons of diesel fuel. This is about 104,000 miles per year, of which 52,000 of these miles were empty miles. We burn approximately 34,060 gallons of diesel fuel a year, of which 17,000 gallons of it was burned running empty miles.

In late 1975, as you well know, we started having an energy crisis. We were contacted by Richard B. Colby of Flintkote Supply and by Kevin B. Crawford of Johns-Manville Corp. asking us to apply for ICC rights in southern California. We were running to southern California empty. Both Flintkote Supply and Johns-Manville stated they could not get enough common carriers to do their hauling. Toto Purchasing felt that we could better serve our customers by hauling both ways and passing the savings on to them. We also felt that running

loaded both ways would put a stop to burning fuel on empty miles. We decided to file for ICC rights in southern California and became a private carrier to Las Vegas. Nev.

In February of 1976 we filed for these rights; at this time we were protested by Milne Truck Lines, F&B Truck Lines, and Tri Delta Building Materials. Milne Truck Lines and F&B Truck Lines withdrew their protest, leaving only Tri Delta Building Materials as a protestor. At that time Toto Purchasing proved that Tri Delta could not provide enough equipment.

Even though we proved the need for equipment on March 31, 1977, the ICC denied our petition. At this time Toto Purchasing asked for and received a new hearing. On the 19th day of March the Interstate Commerce Commission made the landmark decision, better known as the Toto decision. Since the granting of these temporary rights we have traveled approximately 260,000 loaded miles a year and used about 86,666 gallons of diesel fuel.

Toto figures that if we had not run loaded both ways, we would have run 130,000 miles per year empty and would have used about 43,334 gallons of diesel fuel at a cost of approximately $26,000 per year.

We feel since we are now hauling both ways that we are now more competitive in the building material business and indeed pass much of these savings on to our customers.

Since we have been issued this authority, the consignee of both Flintkote and Johns-Manville wallboard now get better service, as we now deliver to the jobsite. Before the common carrier took the loads of wallboard to Flintkote and Johns-Manville yards in Los Angeles, Calif., and then reloaded onto their trucks and delivered to the jobsite. With us hauling directly to the jobsite we are saving fuel costs plus emitting less pollution since there are less trucks being used.

Toto Purchasing also supports the Carter administration proposal. Toto feels that we, in no way have diverted any shipments away from a regulated carrier, nor do we feel that private carriers that seek authority will divert any traffic from a regulated carrier. Toto also feels that the ICC will only issue authority if there has been a proven need for this service. We feel if Congress approves the Toto decision it will be doing a great justice, not only to the shipper but also to those doing the hauling. We feel it will give the shipper and the hauler a greater bargaining power and it will make a very healthy situation for all of us concerned.

We also feel that legislation is needed on the Toto decision, so that other shippers will have a clear signal on their rights, and be able to give a greater service to their community. If all other reforms do not pass, this alone will be a big step in the right direction. Thank you.

[The following information was subsequently received for the record:]

DECEMBER 21, 1979.

Mr. JOHN PRINE,
Supervisor of Transportation,
Toto Purchasing & Supply,
Las Vegas, Nev.

DEAR MR. PRINE: Many thanks for coming to Reno to testify in the hearing of the Senate Commerce Committee concerning the question of motor carrier reg-

ulation. Your testimony was most enlightening for the Committee and was especially appreciated coming from a firm that is now clearly a household word in the transportation debate. The specific data that you included in your testimony was most helpful for the Committee's better understanding of the "Toto" issue.

I would, however, appreciate your response to one question which results from your testimony. You stated that Toto believes that it has in no way divetered any shipments away from regulated carriers nor that any other private carrier seeking authority will divert traffic from a regulated carrier. In your view, would it be reasonable to include a standard in any statutory confirmation of the Toto decision that would preclude a private carrier from obtaining authority if it could be shown that traffic would indeed be diverted from a regulated carrier?

Once again, many thanks for your fine participation in this hearing and your excellent testimony.

With best wishes, I am

Sincerely yours,

HOWARD W. CANNON,
Chairman.

TOTO PURCHASING & SUPPLY CO., INC.,
WHOLESALE BUILDING MATERIALS,
Las Vegas, Nev., January 9, 1980.

Mr. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation

DEAR SENATOR CANNON: I received your letter dated December 21, 1979, and I would like to thank you for the opportunity that was offered to Toto Purchasing to appear at your hearing in Reno, Nevada.

In answer to the question you asked in your letter about my view on a private carrier obtaining authority, if it was shown that a private carrier was indeed diverting traffic from a regulated carrier. I feel that there should be a proven need before a private carrier or any carrier should be granted authority. For this reason alone I feel that the trucking industry should not be deregulated.

Senator Kennedy made the statement that deregulation of the airlines and railroad has worked, and I feel that it has. But I also feel that everybody who works for the railroad or airlines cannot buy a railroad or an airlines. Also at least one out of every fifty truck drivers think that if the trucking industry is deregulated he will be able to go out and buy a truck and get started in the trucking industry.

I have been in the trucking industry for approximately 25 years. I have driven for regulated carriers and nonregulated carriers. I also have owned my own truck and I know that when I owned my own truck I was trying to feed my family and trying to make truck payments, so I started hauling anything I could haul.

I would venture to say that 80 percent of the shippers that I hauled for, did not care whether I had I.C.C. Rights or not, all they cared about was the hauling price. Needless to say I went broke in the trucking business.

I feel that to keep up the service, not only to the shipper, but also the consumer, the trucking industry must be kept under the I.C.C. jurisdiction.

Thank you,

JOHN PRINE, *Supervisor of Transportation.*

The CHAIRMAN. Thank you.

Mr. Leniz?

Mr. LENIZ. Mr. Chairman, members of the committee, and distinguished guests:

Since my name was deleted when you called the panel, I would put it in the record that I am the secretary-treasurer of Teamsters Local No. 533 and we cover all of northern Nevada.

I also, since time is limited, I have submitted a more detailed report, and I ask your committee to study this written report so that you may better be informed.

Now, I'm sure your committee has heard all the pros and cons as to why we should or should not regulate the trucking industry, so there's no reason for me to go into detail on the safety factors and the thousands and thousands of lives that have been saved and will be saved by regulation of the trucking industry, or the benefits of the backhaul and the fuel which would be saved, or the loss of service to small and out-of-the-way towns.

And even the added cost it will impose on the consumers of this country and the millions of paychecks that will be affected by such a move.

Or the controlled trucking industry versus the uncontrolled trucker, a cutthroat, helter-skelter, "hooray-for-me, the-hell-with-you" attitude. Or how effective and reliable to controlled trucking industry has been in the last 50 years.

No, I don't have the time to elaborate on the evils of deregulation, but I can tell you that the vast majority of the officials of the Teamsters Union have worked their way up through the system and many of us from the very beginning of regulation of the trucking industry.

Deregulation of the trucking industry would put one of the biggest industries in this country into a tailspin, total chaos, and in the end will be a cutthroat business like this country has never seen. And who better to judge than teamsters and employers alike, many of us who have worked under both systems.

So that you will have all the facts, I suggest that you visit the Teamsters' international office right across the street from the Capitol Building in Washington, D.C. They are ready, willing, and more than able to give your committee all the pertinent, important, needed facts for your committee to make any recommendations regarding deregulation.

I would suggest to you that reasonable controls such as those—excuse me, reasonable controls such as those imposed on the trucking industry and the balance with the free enterprise system has helped make this country the envy of the world.

On behalf of myself, Teamsters Local No. 533, and commonsense, I deplore any move to deregulate the trucking industry.

Thank you, Mr. Chairman.

STATEMENT OF ALBERT L. LENIZ, SECRETARY TREASURER, TEAMSTER'S LOCAL NO. 533

Mr. Chairman, I thank you for exercising your prerogative and setting aside a minute for the home folks. With so many witnesses here from the east, we felt it was important that you hear some of the concerns of Nevadans.

My local Union has approximately 2,000 members and many of us are employed as truck drivers. We have a strong sense of pride on our part in fulfilling the growing transportation needs of our State. At the same time, we are deeply concerned as to the impact that deregulation would have on our lives and on our State.

All of us feel that deregulation of the trucking industry would immediately and adversely affect our jobs, our wages and highway safety. On these key issues, I feel I can speak for all Teamster drivers because our interests are the same.

Because we would lose our jobs, our members are strongly opposed to proposals which would do away with entry controls and would flood the highways with indpendent owner-operators and encourage unstable companies to try their hand at the trucking business. The resulting cutthroat competition would force most of these into bankruptcy and, in the process, many existing companies would be forced out of business as well. Only a few of the very strong giants of the industry would be able to withstand the desperate struggle for survival.

I have heard about deregulation in other countries and of the results that have followed. In Australia, only four carriers survived, and in Sweden, highway safety conditions got so bad that they went back to regulation within a few short months. All of us would be the losers if such an experience were repeated in this country.

Our Union supports S. 1497 because our jobs, our wages and our safety on the highways are very much dependent on control of entry, the obligations of common carriers and a financially healthy industry. We believe that anyone seeking a certificate to provide motor carrier service should demonstrate that his operations will be energy efficient, economically feasible and will not adversely affect highway safety. S. 1497 would require the Interstate Commerce Commission in acting upon application for certificates to make findings regarding the operational feasibility of a proposed service, adequacy of existing service and the effect on highway safety and on energy efficiency of existing carriers. In the difficult times which face our nation, we believe that it is essential that the ICC consider the adequacy of evisting service and the effect that a grant of an application would have on fuel usage and the ability of existing carriers to operate economically.

Safety on the highways is our highest priority. The highways are our work place and both our lives and our livelihoods depend on highway safety. For this reason, we are deeply concerned at the prospect of any action which would throw open our highways to unnecessary and unsafe equipment. Drivers for regulated companies have by far the best safety records. In addition to our own concern, the carriers for whom we work and their insurance companies see to it that safety rules are observed.

No one wants to drive unsafely, but studies have shown that independent owner-operators regularly violate safety rules, driving too long and at speeds which are much too high. Faced with the reality of an unequal bargaining position, these independents are forced to disregard safety rules by the economic necessity to make the payments on their trucks and to support their families. If the ICC is permitted to issue certificates to any and all comers without a showing of need for their services, the numbers of independents on our highways and the safety problems will vastly increase.

We believe that Nevada would lose much of its trucking service if Congress or the Interstate Commerce Commission discontinues regulation. Over the past 10 years, one major carrier with rights to serve Nevada sought consistently to eliminate the handling of small shipments to and from Nevada. This company went to shippers in Los Angeles and told them it no longer wanted to handle shipments under 500 pounds. Service declined drastically from approximately 5 or 6 schedules a night to one and often none. Refrigerated service was totally discontinued.

The carrier had no interest in providing service to Las Vegas and Reno, let alone the smaller towns in our State. It was interested solely in longhaul freight destined to cities far to the east. When a shipper called in with a shipment for Nevada, the carrier accepted the call and neglected to pick up the shipment. In the process of cutting off service, the carrier discharged a large number of employees in an effort to maximize its profits.

As a regulated carrier subject to the Interstate Commerce Act, this carrier has an obligation to provide service to anyone on demand, to handle small shipments as well as large, to serve all shippers whatever their size, and to serve every point in Nevada which was covered by its certificate.

Our Union filed a complaint with the Interstate Commerce Commission concerning this situation. We hope and expect that the carrier will be required in the future to render full service to Nevada.

If carriers had no obligation to provide service, others might well decide to cut back on service to Nevada and more employees would lose their jobs. Just how can this sort of thing be in the public interest?

The bill we support provides for strong enforcement of the obligation of regulated carriers to serve the public. We believe that any carrier that receives a certificate from the government should lose that certificate if it fails to provide safe and adequate service to the communities it is authorized to serve.

We also urge you to establish a zone of reasonableness within which carriers may increase their rates without approval by the Commision. Too many carriers have gone bankrupt and too many of our members have been thrown out of work because of the failure of the Commission to grant timely and adequate rate increases.

Finally, S. 1497 would require that owner-operators leasing their equipment to regulated carriers be afforded the status of employees of the company. Under present conditions, owner-operators are often treated as independent contractors and not as employees. As independent contractors, they cannot bargain collectively for fair wages and working conditions, nor can they become members of any union, no matter how much they might desire that status.

We urge the Committee not to take a step backwards to the time when it was everybody for himself. Some of our ghost towns here in Nevada are silent testimony to the folly of that type of approach.

The CHAIRMAN. Thank you very much. Your longer statement will be made a part of the record. We appreciate all of you abbreviating your statements, and those statements will be made part of the record in full.

We will have some questions we would like to submit to you. I regret that because of the time constraints now that we won't have the time for a question-and-answer period now, but some questions have been raised in my own mind, and particularly I want to hear Frank Bender's response to Ted Hermann's paper, since they are in similar businesses and come to a diametrically opposed point of view.

And, Mr. Leniz, I can assure you that we are concerned about the safety issue, too, and we don't want to take any action in this regulatory reform atmosphere that is going to reduce safety.

As a matter of fact, we are now considering a truck safety bill independently and expect to report that out very shortly when we return to Washington.

I want to express my appreciation to all of you for being here today. That says my time is up.

I also have a statement here from Noel Clark on behalf of the State of Nevada, and that will be made a part of the record.

I want to again express appreciation to all of you for giving us the benefit of your views, and if any of you have any additional statements or suggestions that you'd like to call to my attention, feel free to do so. We are going to keep the hearing record open for a period of time because, as I said earlier, it is my hope that we'll try to get some kind of a bill by about June of next year making some needed changes in the regulatory reform system with respect to the trucking industry.

Thank you very much. The hearing is adjourned.

[Whereupon, the hearing was adjourned.]

[The following information was subsequently received for the record:]

STATEMENT OF NOEL A. CLARK

Dear Senator Cannon, it has been my intention to appear at one of your hearings held in Nevada on truck deregulation to testify on this issue. However, unavoidable conflicts have prevented my doing so. Accordingly, I would like to have the following statement entered in the record.

My name is Noel A. Clark, and currently I am the Director of the Department of Energy for the State of Nevada. However, the views set forth below are based on my experience as a member of the Nevada Public Service Commission from 1956 to 1977, and as the Commission Chairman for 7 years.

I am greatly disturbed over the implications involved in the proposal to deregulate interstate truck transportation as it effects the State of Nevada. Service to all Nevada towns, with the exception of the Reno-Sparks area and Las Vegas, depends on the combining of interstate and intrastate freight by fixed route common carriers certified by both the Interstate Commerce Commission and

the Nevada Public Service Commission. There is simply not enough intrastate freight moving to and from such areas to warrant any sort of scheduled service. There is, however, sufficient interstate freight volume moving to and from the Pacific Coast and states to the east through Nevada and also between the Reno-Sparks area and Clark County, to be attractive. The carriers providing this interstate service also hold Nevada intrastate certificates, and currently provide reasonably adequate intrastate service incidental to their more profitable interstate movements. It is my concern that any development which would adversely affect the interstate movements would result in the elimination of the intrastate service.

We have had some experience which illustrates that point. When I first came on the Commission in 1956, we were faced with a rash of applications, both on the interstate and intrastate level, to discontinue service to many small Nevada towns, or to curtail deliveries to no less than one day a week. Investigation revealed the following:

"(1) Due to a lack of enforcement by the ICC, unauthorized carriers were picking off the more profitable large interstate loads, leaving the certificated carriers with only the LTL freight, which by itself, was not profitable.

(2) Due to a peculiar circumstance in Nevada a large number of carriers were issued Contract Carrier Permits in the early 40's to transport General Commodities statewide, however, they had no obligation to file rates. Consequently, when a large load of intrastate freight became available, and knowing from the certificated common carrier's tariff what his rate was, the contract carrier would quote price below that of the common carrier and take the load. Here again, the common carrier was left with the non-profitable LTL freight.

Because of the above situation, the fixed route common carriers found it impossible to handle either interstate or intrastate freight to Nevada's small towns at a profit, or even on a break-even basis. The result, the applications to curtail or eliminate the service.

We addressed the above problem in two ways. First, a stepped up program of enforcement, with Nevada PSC personnel working with the ICC Supervisor in Nevada in reporting unauthorized movements of interstate freight. And second, by converting all of the outstanding contract carrier permits to Irregular Route Carriers, with obligation to file tariffs and quote rates. The result was a stabilization of the fixed route common carriers income from service to Nevada's small town to a point where it was not a financial burden, and to where it remains possible to provide reasonable adequate regular service to such places.

It is my view that any action by the Congress which would permit diversion of the more profitable loads from interstate carriers providing service to Nevada's smaller communities would inevitably lead to the situation we faced in the 1960's, and to a loss of both interstate and intrastate service to those places. I believe the system we now have has proven beneficial to our citizens, and should not be disturbed.

CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY,
Chicago, Ill., *November 13, 1979.*

Hon. HOWARD W. CANNON,
Chairman, Senate Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CANNON: The Chicago Association of Commerce and Industry submits the following views on Federal regulation of the trucking industry.

The Chicago Association of Commerce and Industry, consisting of 6,218 members including manufacturers, distributors, shippers and receivers of freight, and carriers engaged in all modes of transportation, is a voluntary organization under the laws of the State of Illinois, created for the purpose of protecting and promoting industry, trade, and the public good. Consistent with this purpose, a primary objective of the Association is the fostering and promotion of adequate, efficient, and economical transportation services by all types of carriers. Although the name of our organization is THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY, is functions as the chamber of commerce for the Chicago Metropolitan Area.

the name of our organization is The Chicago Association of Commerce and Industry, it functions as the chamber of commerce for the Chicago Metropolitan Area.

Chicago is the transportation center and is involved in all forms of transportation. With its strategic location, central in the nation, Chicago is the junction between the eastern and western railroads; the hub of highway and air transportation; the largest terminal on the Great Lakes waterways; and the link between lake and inland waterway traffic.

Chicago leads all United States cities in volume, variety, and importance in transportation. More people and more tons of goods are daily transported from Chicago by rail, air, highway, and water to the rest of the nation in less time, at less cost, and with fewer transfers than from any other city. About 150,000 Chicago raea residents are responsible for the effective and successful operation of this the world's largest transportation complex.

The Chicago Association of Commerce and Industry has adopted as policy the two statements (attached) entitled "New Directions in National Transportation Policy" and "Motor Carrier Regulation." The Association's Transportation Policy Committee developed and approved these statements which were subsequently approved by our Board of Directors.

The Transportation Policy Committe includes in its membership users of transportation services and carriers representing all modes. We ask that this letter and the attached statement be made a part of the record of the current hearings involving motor carrier regulatory reform.

At the attached statement indicates, we believe that the Interstate Commerce Commission should retain sole responsibility for economic regulation including rates and mergers.

In exercising this authority in rate cases, the ICC should encourage creative ratemaking and the right of shipper protest should be retained without a shift in the burden of proof. Finally, rate bureaus should be retained as an Administrative forum for the handling of changes in freight rates, rules or regulations including publication, and antitrust immunity to permit those Administrative functions.

The Association believes that these motor carrier regulatory reforms will provide modernization of government economic intervention through greater reliance on competition, and less on economic regulations; and which should occur in an orderly manner to minimize social and economic dislocations. Government regulation should be reduced to produce a more competitive environment, and permit more managerial freedom to allow individual carriers to make economic decisions in their own profitability interest. Further, these goals require faster rulings, and removal of artificial restrictions on carriers' operating authority which limit transportation to only specified commodities or via specified routes and gateways; and provide easier entry and exit that will enhance the national transportation system. The main test of entry provisions should be the needs of, and costs to the shipping public.

In summary, the Chicago Association of Commerce and Industry supports the private sector utilizing the marketplace system of competition to meet the Nation's transportation system needs to the maximum extent feasible.

The Moor Carrier Regulation changes outlined in the attached statement would accomplish these goals through a review and modernization of ICC regulation of motor carriage, but not a de-regulation or abandonment of that system.

Warm regards,

E. Stanley Enlund,
President.

Enclosure.

Motor Carrier Regulation

The Chicago Association of Commerce and Industry supports statutory reguglation of the motor carrier industry as essential to the maintenance of our transport system. The Association recognizes a need for legislative review and modernization of the statutes that govern our regulatory system rather than by administrative procedures.

We accordingly support:

1. The Interstate Commerce Commission retaining so'e responsibility for economic regulation. The Commission shall encourage innovative rate making.

2. Time limits being provided for motor carrier rate cases similar to those provided for rail cases in the Rail Revitalization and Regulatory Reform Act.

3. The right of shipper protest but are opposed to any reduction in that right or the shifting of the burden of proof to shippers.

4. The need for Rate Bureaus as an administrative forum for the handling of changes in freight rates, rules and regulations. Immunity from antitrust laws to permit these administrative functions for the public interest.

5. Changes in the statutes to provide for lawfully mandated intercorporate hauling authorizing more efficient use of private and contract carriage between subsidiaries.

6. Liberalization of statutes governing private carriers leasing to regulated carriers and permitting efficient use of the private transport system.

7. Provisions for easier operating rights entry extensions and exit that will enhance the national transport system. ICC standards should permit fit and financially able companies to obtain rights. The right of existing carriers to protest limited to those able to demonstrate substantial involvement in the transportation for which authority is sought.

8. Liberalization of restrictions on operating rights so as to better utilize the inherent flexibility of the industry for the public benefit, i.e., return hauls, flexible routes and broad commodity descriptions.

9. Uniformity of State and Federal regulations to enhance our national transport system.

CLARK TANK LINES,
Salt Lake City, Utah, December 10, 1979.

Mr. HOWARD W. CANNON,
Russell Senate Office Building,
Washington, D.C.

Recognizing that your Committee desires input from responsible and interested parties, I am sending a copy of prepared remarks which I would have presented personally had time been allotted to appear before the December 3, 1979 Committee Public Hearing in Reno, Nevada.

Mr. Chairman, Committee Members, my name is Anthony T. Bozich, my residence is 3608 Brighton Point Drive, Salt Lake City, Utah 84121.

I am President and a Principal in Clark Tanklines Company, headquartered at 1450 Beck Street, Salt Lake City, Utah 84110. Clark Tanklines is a for-hire tank truck carrier operating principally within the eleven Western States.

Today, I hope to represent, both accurately and concisely, the interests of the for-hire tank truck industry in what is turning out to be a most critical round of regulatory reform. Fundamentally, I hope to convince this committee that specialized carriers (such as the tank truck industry) should not be treated differently from their breathren in the so-called general freight industry.

Allow me to give you some background on the tank truck industry. As I'm sure you recognize, we operate highly sophisticated equipment for the transportation of petroleum products, chemicals, and dry bulk commodities. Most of these commodities are considered 'Hazardous', either from the standpoint of safety or as a potential threat to the environment, should a product release incident occur. Generally speaking, our shippers demand and receive service tailored to their specific needs. This may include designated times for pickup and deliveries, insulated trailers, drivers with specific training, etc.

In the past, this high degree of specialization has blended with the regulatory structure to produce a system wherein Interstate Commerce Commission certificated carriers enjoy the trust of the investment community. That community knows that our Certificates have value (often collateral value). It is important to recognize that the average tank truck carrier is translated into dollars and cents used to build terminals and buy trucks.

The regulatory structure has also prompted the Nation's bulk shippers to utilize our services (rather than invest in duplicative private carriage) because our service is specified, our rates are published and stable, and our carriers have been shown to be fit, willing and able. To say the least, current developments in motor carrier regulation have served to undermine the shipper/carrier relationship to the ultimate detriment of the public.

It is obvious that this Committee and, specifically its Chairman have the same concern. Personally, and on behalf of the tank truck industry, we applaud the needed admonition to the Interstate Commerce Commission to stop administra-

tive deregulation pending Congressional review. We applaud, equally, the establishment of a firm legislative time-table during which we can discuss and (hopefully) disarm a Commission proposal, known as the "Master Certificate Concept" which would be applied to the bulk segment of the trucking industry.

Briefly stated, the "Master Certificate" is a free-entry creature born of a belief within the I.C.C. that there is no such thing as "Common Carrier Obligation" within the tank truck industry. It is a bad idea. It is based on a fallacious premise.

Three prime areas from the "Guts" of the proposal:

1. Carriers would be able to "declare" their intentions to serve any and all comers with no enforceable proof of their actual ability to serve.

2. Carriers would see their present Certificates suspended. This can only mean loss of the carriers' ability to use collateral value to attract investment and would mean millions of dollars in lost value on the Companies' books.

3. Carriers would lose their right to collectively make rates. It should be noted, here, that while the I.C.C. advertises that the "concept" is permissive and voluntary, it is not. One carrier after another would be forced, through competitive pressures, to utilize Master Certification, and the Commission knows it.

Without belaboring the details of the I.C.C. proposal, allow me, if you will, to comment on its premise, that there is no common carrier obligation in the bulk carrier industry.

Initially, it is important to note that two years ago the I.C.C. held a series of cross-country hearings in which shippers and consumer representatives were invited to criticize the present regulatory structure and suggest modifications. It is more than interesting to note that not one of the scores of witnesses at those hearings offered one, subsantive, negative comment regarding bulk transportation. Since many of the nation's largest bulk shippers testified, one is led to the assumption that a great degree of satisfaction with our rates and services was (and is) evident.

Secondly, and from the viewpoint of dealing "one-on-one" with shippers for twenty-six years, let me assure you that they both recognize and utilize the tank truck industry's common carrier obligation. Shipper support of applications for authority historically have been based on service failures of competing carriers, real or alleged. Tariff proposals have been challenged and litigated, based on public filings and reports mandated by the Commission's enforcement of this obligation.

Lastly, I have yet to meet the first representative of the shipping community who is too timid to utilize I.C.C. processes regarding claims. Duplicate payments, over-payments or rate application to the fullest extent. None of these items would be available, or enforceable, without the basic structure and intent of the common carrier obligation.

Mr. Chairman, at this point, I'd like to add one other area wherein the Commission's anxiousness to "Deregulate" the tank truck industry is faulty, in the extreme. That is: SAFETY.

I stated earlier that most of the commodities we haul present serious safety and/or environmental implications in the event of a product release incident.

Today, we (as carriers) are subject to the Hazardous Materials Transportation Act of 1974 and the National Environmental Policy Act, among a multitude of other pieces of legislation.

As an industry, the tank truck sector has spent millions in driver training, emergency response, redundant safety systems, spill reporting and clean-up and effluent treatment equipment. Realistically, such requirements have become a vital part of that "Common Carrier Regulation" of which I speak.

Yet, the Commission, which denies the existence of that obligation, is proposing a regulatory regime which would create a "Come-one, Come-all" entry standard.

Thus, Mr. Chairman, we are presented with a dichotomy. On the one hand, our carriers are under increasing pressure to be more responsive to legitimate public concerns regarding safety and environmental protection, while on the other hand, the Interstate Commerce Commission insists on creating an entry regime in which those least able to provide adequate safeguards are being invited into the bulk transportation marketplace.

Frankly, we hold that a rubber-stamped piece of paper and an insurance policy, underwritten to I.C.C. minimum levels, are neither sufficient public protection, nor fair to carriers who have traditionally made the necessary expenditures and investment geared to social concerns.

In summary, Mr. Chairman, I ask you to note that in the past few years, an entirely legal phrase, "Common Carrier Obligation" has not been abrogated. Indeed, it has taken on a new dimension. What was once a tool to assure shippers non-preferential treatment has been expanded to include social responsibility.

I hope I have convinced you that the "Tank Truck Industry" does meet both aspects of that *obligation*. I hope that I've demonstrated that the underlying premise of the I.C.C.'s move (to use their own words) "to deregulate carriers of bulk commodities is not only in error, it is contrary to the public interest".

Thank you.

A. T. BOZICH,
President.

○