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THE MOTOR CARRIER ACT OF 1935;

AN EVALUATION OF THE MOTOR CARRIER ACT OF 1935 ON THE THIRTIETH ANNIVERSARY OF ITS ENACTMENT

Prepared Under the Direction of

WARREN G. MAGNUSON, Chairman

COMMITTEE ON COMMERCE
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FOREWORD

Legislative proposals to decrease or increase regulation of transportation have been hotly debated before the committee in recent years. There has not been general agreement as to what the long-term resolution of these conflicts should be.

This state of affairs is not new. The Congress has confronted similar transportation situations in the past. The success or failure of these previous legislative attempts may furnish a guide as to what might result from the enactment of current proposals.

The 30th anniversary of the enactment of the Motor Carrier Act on August 9, 1935, affords an excellent opportunity to measure the success of a previous change in transportation regulation. There is no doubt but that this legislation has proved to be a landmark in transportation regulatory history. The period of 30 years is sufficient time to evaluate results, and yet not so long a period that all those active have departed

As an initial step in this review of the results of the Motor Carrier Act of 1935, the committee has contacted those still active for their recollections and comments. This collection of reminiscences represents the views of those who have lived through the transition period.

If this detailed examination of a particular legislative enactment proves to be of aid to the Congress in its current considerations of proposed changes, the committee in fulfillment of its responsibilities will give consideration to further studies of this type.

The committee appreciates the assistance of the Federal Bar Association's Council for Transportation and Communication Law, H. Neil Garson, chairman, particularly the efforts of George M. Chandler, vice-chairman, Committee on Motor Carrier Law, who ably aided in editing and preparing for printing the material collected.

The committee wishes to thank all those who have replied to the request for their thoughts and recollections. Unfortunately, limitations of space have made it impossible to include all the replies and have made it necessary to print some of them less than in full. The responses included range from informal reminiscence to scholarly discussion, and in making selections from them the committee has attempted to present a variety of views and comments.

WARREN G. MAGNUSON, *Chairman.*

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AN EVALUATION OF THE MOTOR CARRIER ACT OF 1935

EDWIN C. JOHNSON

Edwin C. Johnson has had firsthand experience with motor transportation as a businessman as well as during his long career as an elected official on both the State and National scenes. When the Motor Carrier Act was passed in 1935 he was Governor of Colorado. He was elected U.S. Senator from Colorado in 1936 for the first of his three terms, and he served with great distinction for 18 years as a member and chairman of the Interstate and Foreign Commerce Committee.

On this 30th anniversary of the enactment of the Motor Carrier Act of 1935, many of us can view with pride an unbelievable advance in the art of transportation in the United States.

Prior to the passage of the Motor Carrier Act of 1935, the operation of interstate motor transportation was a hopeless and precarious business. My knowledge is firsthand since I was in that business myself, in a modest way.

Rates were what you could get, highways were rough, rutty, and a cloud of dust. Tires were a huge bill of expense and the cause of delay on almost every trip. Trucks were not dependable and most of this trouble was due to unprofitable operation.

My truckdrivers were good hustlers, loyal and excellent drivers, and they took great pride in their work. They were about the only incentive to stay in the business. Oil and gas was priced reasonably but everything else was a gamble with the odds against you.

No one could have guessed that the passage of this act could have straightened out this frustrated business so completely, but Senator Wheeler had hopes as did some other leaders in Congress. Nevertheless, the opposition they met in both Houses was terrific and would have discouraged men of lesser vision.

There was no sale for a truckline in those days. One either hoisted the white flag and went back to punching cows or hung on out of pure obstinance. I was Governor of Colorado at the time and got tired of sending good money after bad and sold my trucks. I didn't even make an effort to obtain "grandfather rights."

The 1935 act brought order out of chaos and did it almost overnight. The able men in the ICC must be given the full credit. The leaders in Congress and the Commission did a great job during this period. I had the honor of serving under Senate Chairman Burton K. Wheeler. Harry Truman, Wallace White, of Maine, and Clyde Reed, of Kansas, and many other men of good judgment, backed Chairman Wheeler to the hilt.

I know of no single statute on our books that did quite so much for American transportation or business progress generally as did the Motor Carrier Act of 1935. I am happy that you are observing this anniversary. It is one of the red-letter days of American progress.

JOHN L. ROGERS

Commissioner Rogers joined the Interstate Commerce Commission's Bureau of Locomotive Inspection as a mechanical engineer in 1917. After obtaining his law degree he became an examiner in 1925 and was appointed executive assistant to Commissioner Eastman when he became Federal Coordinator of Transportation in 1933. Upon the passage of the Motor Carrier Act he was made first director of the new Bureau of Motor Carriers. In 1937 President Roosevelt appointed him to the Commission, where he served for 15 years.

My association with the Motor Carrier Act, 1935, was indirect and meager as to its passage. During the time the measure was being actively considered by Congress, and others involved, I was Executive Assistant to the late Commissioner Eastman who was serving as Federal Coordinator of Transportation. As to passage of the act my principal contribution was assisting Commissioner Eastman in planning for the administration of the act if and when it was enacted.

My principal recollections are as to what transpired after the act was finally enacted. The Commission created the Bureau of Motor Carriers and I was selected to be the Director of that Bureau. It was a start from "scratch" with so many things to do.

One of the most important problems was to acquaint the thousands of operators subject to the act with its provisions and their rights and obligations. Many of these operators had only one vehicle and never heard of the Commission or the Motor Carrier Act. This is illustrated by reference to a lady operator from Pennsylvania who had made no effort to comply with the act. When this was brought to her attention she said that she had belonged to the NRA but never got anything out of it and she didn't think she wanted to join the ICC. The magnitude of this problem will be appreciated when it is realized that finally more than 80,000 operators filed applications for operating rights.

The Commission had no organization for this work and no appropriation to finance an organization. As to appropriation, one principal difficulty encountered was a feeling on the part of the Bureau of the Budget that the Commission should build up its organization gradually over a period of time without realizing that by the terms of the act applications for operating authority, schedules of rates and charges, and other provisions became effective on specific dates and not gradually.

It is difficult now, 30 years later, to remember what was involved in this undertaking initially. A young, growing industry carried on by thousands of individuals was all at once subjected to regulation of practically all phases of their operations, including operating authority, tariffs, accounting, safety rules, insurance, and others. Comparable regulation of rail carriers was many years in development.

One of the most important phases of this new regulation was that involving motor carrier rates. There was much mistrust among operators, particularly as to rates. Many of the carriers were content to use railroad rates as a model, making only such differences as were necessary to attract traffic. Others endeavored to establish rates and classifications, based fundamentally on trucking conditions and costs. The first result of compelling motor carriers of property to publish and file their rates was a downward movement in such rates. Competing carriers were by the publication given definite advice of what each was charging and the tendency was for the rates to gravitate to the lowest level. To assist those involved in their efforts to bring about a greater degree of order and stability in the rate structure was one of the most important tasks confronting the Commission.

I am not now referring to the Director of the Bureau of Motor Carriers, but otherwise the Commission was fortunate in securing personnel with fine qualifications and character to make up its organization. On the other hand, in the motor carrier industry were numerous leaders well qualified and anxious to cooperate with the Commission without whom the task would have been much more difficult if not impossible. All of these men gave the best they had regardless of personal inconvenience and long hours.

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CHARLES S. MORGAN

Dr. Morgan writes from the vantage point of one who was an active participant in the research and other labor that went into the planning of the Motor Carrier Act and who was intimately concerned with its early administration. During his long Government career he held the position of Chief Economist of the Interstate Commerce Commission, he was Director of the Section of Research on the staff of Federal Coordinator of Transportation Joseph B. Eastman, and he served as Assistant Director of the Commission's Bureau of Motor Carriers.

THE EASTMAN MOTOR CARRIER BILL

The need for a concentrated presentation of a legislative program

Federal regulation of motor transportation came after a long period of gestation. The epochmaking decisions in *Buck* v. *Kuykendall* (267 U.S. 307), and *Bush* v. *Maloy* (267 U.S. 317), rendered on March 2, 1925, had set interstate motor transportation adrift from such economic regulation as the States had undertaken to provide. S. 1734 immediately followed in the 69th Congress to fill this gap and lay a public-interest basis for Federal regulation. Hearings were held in March 1926. A succession of bills ensued. Hearings were held on the Rayburn bill (H.R. 6836) early in 1934 or 8 years after a start had been made. The Interstate Commerce Commission had conducted two nationwide investigations of motor transportation and offered certain recommendations. *Motor Bus and Motor Truck Operation* (140 I.C.C. 685 (1928)), and *Coordination of Motor Transportation* (182 I.C.C. 263 (1932)). The facts developed in these investigations played a substantial part in the consideration of regulation, but the recommendations as to legislation did not avail. Understanding of trucking operations and measurements of their scope improved as the years passed but did not keep step with the burgeoning of the industry. The bus industry, however, presented less complex problems and had sought regulation in 1926, though there were some dissents in the industry from the bill of that year.

The need for regulation appeared to some to grow apace, but action faltered. A concentrated effort, under respected leadership based on experience and a broad understanding of transportation issues, fortified by a carefully assembled and interpreted body of facts, was needed to catalyze discordant elements into a sufficient degree of harmony to enable the enactment of legislation. This leadership was supplied in the highest degree by Commissioner Joseph B. Eastman, newly armed with special investigatory responsibilities as Federal Coordinator of Transportation.[1]

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[1] The writer may note as perhaps of interest to some and possibly without overstepping the proprieties that he has in preparation and hopes to complete, as a personal undertaking of pretty much the "labor of love" type, a large study of the legislative history of developments in the entire gestation period mentioned above. "Legislative history" is given a broad as well as its traditional meaning. The crude beginnings of the legislative proposals, certain bizarre schemes for the administration of Federal regulation by the States, the evolving positions of various interests, and the consideration given to size-and-weight and tax problems are some of the subjects traced for the benefit, it may be, of lawyers interested in legislative history, fellow economists, some of whom now would reverse much of what was done in 1935, and political scientists, interested in the legislative process.

The Coordinator's program for research on the regulation of transportation and related subjects

The work done on regulatory and other matters here discussed was authorized under the broad language of section 4 of title I of the Emergency Railroad Transportation Act, 1933. This section stated it to be a purpose of the act: "To provide for the immediate study of other means of improving conditions surrounding transportation in all its forms and the preparation of plans therefor." The contrast was with the work the Coordinator was to do directly in aid of the railroads through elimination of duplicating facilities and services and other wastes and of dissipation of earnings. Section 13 directed the Coordinator forthwith to investigate and consider other means "of improving transportation conditions throughout the country" and "from time to time" to submit to the Commission "such recommendations calling for further legislation to these ends as he may deem necessary or desirable in the public interest." The Commission was to transmit such recommendations, with its comments thereon, promptly to the President and the Congress.

The appointment of Commissioner Eastman, the inevitable choice, to the position of Federal Coordinator of Transportation left no doubt as to the subjects he would take up in the regulatory field and areas kindred thereto. The No. 1 subject was, of course, inescapable: The question of need for Federal regulation of motor transportation and for more comprehensive regulation of water transportation or, in the alternative, relaxation of the regulation of railroads. These subjects were assigned to the Section of Research created by the Coordinator.

The matter of public aids had concerned Mr. Eastman for a number of years. The railroads long had been complaining that aids received by other modes of transportation constituted unfair competition. Testimony on this subject had been offered in the *Coordination* case and in congressional hearings. Passages in the Commission's annual reports, undoubtedly written by Mr. Eastman, had stressed the need for an impartial and authoritative investigation of this issue. The opportunity to make such an investigation was provided in the 1933 legislation and it was grasped to the full. All modes of transportation were covered, among them the railroads. This subject, then, was the second assignment to the Section of Research.

Mr. Eastman had an interest in the problems of labor. He explained his undertaking of studies of labor conditions in other than the railroad field in terms of railroad complaints that their competitors observed lower labor standards, of similar complaints of certain carriers against the practices of other carriers of the same mode, and of the fact that conditions of employment clearly were matters that needed to be taken into account "in any consideration of means of improving transportation conditions throughout the country." This work was handled by the Section of Research in conjunction with the Section of Labor Relations, headed by Mr. Otto S. Beyer. That section primarily handled the work in the railroad labor field provided for by the act. The Department of Labor supplied needed cooperation in the studies. In fact, it is well to mention here that a considerable number of Government agencies furnished information and advice on a variety of subjects on which assistance was sought by the research staff. While there was early mention of the possibility that these

studies would lead to legislative recommendations, no recommendations were made. In fact, the Motor Carrier Act, 1935, gave the Commission authority to prescribe qualifications and maximum hours of service of employees of motor carriers. This step was taken before completion of the motor carrier studies.

The Section of Research was set up primarily to deal with these three subjects. Each was intermodal in nature; together, the studies contributed to an understanding of means of "improving transportation conditions throughout the country." [2]

Discussion of the work on public aids and labor standards is omitted here. Several volumes of reports were issued. The public aids question continues to provoke controversy and proposals for legislation. Labor standards in all forms of transportation have risen so far above the conditions of this last great depression period that the problem has taken on quite different emphases. It is difficult to recall, for example, that truckdrivers of the companies surveyed earned on the average 47.2 cents an hour and $24.04 per week in July 1933 and 55.9 cents and $28.33 in October 1935.

Gathering a staff for the Section of Research

The writer was on loan from the Commission to the Committee on Interstate and Foreign Commerce in connection with a series of investigations of holding companies in the transportation and communications fields when Coordinator Eastman called him to his office and asked him to serve as director of his Section of Research.

The Coordinator's office had a year-to-year status. This fact and the urgency of the transportation situation made it necessary to go into high gear quickly and to maintain as high a rate of speed as was consistent with doing good work. Mr. Eastman's inspiring leadership and a sensing of the importance of the assigned tasks led to an unusual degree of devotion by all members of this staff. The writer, for one, recalls, and without regret, that his was a 7-day week, with time out for a minimum of sleep.[3]

Jobs were scarce in those days and it was not difficult to assemble a capable staff quickly. Thus, the late Robert E. Freer, who subsequently served in a liaison capacity between the Coordinator and "the Hill" and thereafter became a prominent member of the Federal Trade Commission, did highly valuable work as a member of the research staff. Another person deserving special mention is the late Henry C. Wilson, a former Commission examiner and later a practitioner before the Commission. He did much of the groundwork on the motor carrier bill.

The Coordinator's funds were relatively limited. It was necessary, therefore, and also advantageous, to supplement the research staff

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[2] The section did other work, mainly the preparation of a report on the problems of short-line railroads. It also handled miscellaneous calls and correspondence. The title of the section should not be misleading if it is kept in mind that several sections engaged in other types of research and that there were "research-assistants" who made special studies without being assigned to the Section of Research. In view of restrictions on his power to effect improvement in railroad conditions, Mr. Eastman characterized his organization as primarily a research institution.

[3] The reader may be interested in these bits of characterization of Mr. Eastman. He was widely known, of course, as a prodigious worker. The writer, during the latter part of the Coordinator period and for several years thereafter, regularly drove Mr. Eastman home 7 days a week, generally around 11. Claude M. Fuoss, referring to these trips, stated in his book, "Joseph B. Eastman, Servant of the People," Columbia University Press, 1952, p. 315, that Mr. Eastman "would still be absorbed in a matter which required concentration of thought." The fact is that, while there were occasions when Mr. Eastman was absorbed in his thoughts, on most nights he "talked shop" and discussed in a most interesting way various Commission matters of current interest. To some extent, he may have been "letting off steam". He also would save up questions for the writer to answer. Doing so wa snot always easy so late in the day.

Mr. Eastman could assemble by borrowing from the Commission. Such borrowing was provided for in the act. The Commission's caseload had fallen with the decline in business conditions. Hence it was possible to obtain the services of a substantial number of able examiners and other staff members for the legislative and other work of the Section of Research. The names of all persons who assisted on the legislative work are listed at pages 1, 98, and 264 of the report now to be mentioned. The Commission also provided office space, first in two buildings at 18th Street and Pennsylvania Avenue and then in its new building on Constitution Avenue.

The report on Regulation of Transportation Agencies

The office of Federal Coordinator of Transportation came into existence in June 1933. A 389-page report, "Regulation of Transportation Agencies," was transmitted to the Senate by Commissioner William E. Lee, Chairman of the Commission, under date of March 10, 1934.

This report, Senate Document 152, 73d Congress, 2d session, was highlighted, it need not be said, by many passages which Mr. Eastman wrote, but the bulk of the report necessarily was written in the Section of Research. Regulation of railroads, water and air carriers, and pipelines, in addition to regulation of motor carriers, was covered. Bills were included to provide for the regulation of motor carriers and, on a broader basis than theretofore, of water carriers. There also were four proposed amendments of the Interstate Commerce Act.[4]

Information as to conditions and problems in the motor transport field was obtained from varied sources. The positions, for or against Federal regulation, of carriers, shippers, State commissions, and others were ascertained largely by means of an inquiry set out in a general press release of November 4, 1933. There were many returns, some of which were discarded immediately for obvious reasons. Useful returns were analyzed and summarized carefully and proper consideration was given to the reasons for the positions taken.

It had been decided at an early date to write the motor carrier bill as much as possible along the lines of the Rayburn bill, mentioned earlier.[5] Any other course of action would have been fruitless. The various departures from that bill, some of very considerable importance, are set out at pages 45–49 of the Coordinator's report. The Interstate Commerce Act and amendments of the Rayburn bill proposed by the Commission and others were drawn upon, of course.

[4] The Coordinator saw need for added regulation in the air transport field but did not offer a bill because of the consideration Congress then was giving to immediately urgent problems in the industry. Mr. Eastman did bespeak Commission regulation when the time came to provide permanent regulation. He saw in this step "a logical rounding out of the program of regulation of the several agencies of transportation * * * recommended elsewhere in this report."

Possibly another generally forgotten bit of history is the fact that the Air Mail Act of 1934, as amended August 14, 1935, gave the Commission jurisdiction over rates of compensation for airmail transportation and over the accounts, finances, and various practices of carriers having contracts with the Post Office Department. A number of pioneering decisions followed. This jurisdiction ceased with the creation of the Civil Aeronautics Authority in August 1938.

[5] It may be of interest to call attention to the origins of the Rayburn bill, as stated at p. 25 of the Coordinator's report: "The Rayburn bill, H. R.6836, now before Congress, was drawn by the Committee on Legislation of the National Association of Railroad and Utilities Commissioners, and derives in turn from a bill largely worked out by that association in cooperation with a committee of the Association of Railway Executives, representing also the electric lines, and a committee appointed by the American Highway Freight Association, a trucking organization which has since been merged into American * * * Trucking Associations, Inc." The latter opposed the Rayburn bill, principally on the ground that the trucking code would serve immediate needs and provide experience on which the need for and form of permanent regulation could best be determined.

To obtain firsthand knowledge of State experience, answers to questions which had to be faced, and documents and statistics of special interest, a former State commissioner, Fred A. Rasch, was engaged to visit and talk with State commissions. His services proved beneficial.

The report gives a summary of "recent trends in State regulation of motor carriers and present extent and character of State regulation," analyses of "difficulties encountered and results achieved in State regulations," and "State regulation of interstate motor carriers." There was also a section on "legality of Federal regulation of motor carriers." After a review of court decisions which had clarified, at least in important respects, the status of contract and private carriers, it was concluded that Federal regulation in this field must "clearly recognize the peculiar characteristics of contract and private carriers as distinguished from common carriers, * * * and provide a character and degree of regulation that is appropriate to each class" (p. 203).

In the belief that lessons could be drawn from experience with the regulation of motor transport in foreign countries, the Coordinator had a survey of such regulation made by persons not attached to the Section of Research. A summary of the results is found in the report.

A great deal of attention was given in the report to "railroad use of other transportation agencies." The Commission had concluded in the *Coordination* case (p. 379), that "the rail and water lines should be encouraged in the use of this instrumentality of commerce [motor vehicles] wherever such use will promote more efficient operation or improve the public service." The Coordinator's report carried this statement of Mr. Eastman's position:

> While railroads should be permitted to use trucks freely in connection with their rail service, there appears to be no present need for encouraging a movement toward the absorption by them of truck, bus, and water operations. Railroad credit conditions permit of no such movement at the present time, and a more or less independent development of the rival agencies is plainly desirable. It is possible that experience may later furnish occasion for changing this view, but that is a bridge which need not be crossed now (p. 35).

The Coordinator's bill provided that railroads could consolidate or merge with or acquire control of a common or (after revision) contract motor carrier or purchase, lease, or contract to operate its properties or any part thereof, on a finding, after hearing, that the public interest would be promoted and subject to such terms and conditions as the Commission might impose. Mr. Eastman, replying to questions at the hearing on his bill, adhered to the thought set out in the foregoing quotation.

Further consideration by Mr. Eastman, assisted by his staff, led to minor changes in the bill to meet criticisms. See "Report of Federal Coordinator of Transportation," 1934, House Document No. 89, 76th Congress, 1st session. Many changes were made, of course, by the committee and on the floor. Notable was the addition of the provision for the exemption of the transportation of unprocessed agricultural commodities and fish. The legislative history of these changes is set out ably in Warren H. Wagner's "A Legislative History of the Motor Carrier Act, 1935" (1935). It need hardly be said,

however, that basically the Eastman bill became the Motor Carrier Act, 1935.

EARLY ADMINISTRATION OF MOTOR CARRIER ACT, 1935

The first question which obviously had to be resolved was whether a separate bureau should be set up to handle the motor carrier work rather than delegate the work, so far as possible, to existing bureaus along functional lines.[6] While the writer's participation here lacks importance, it is recalled that Mr. Eastman asked for his views on this question. A memorandum intended for Mr. Eastman's use was prepared. It stepped on certain bureau toes. Mr. Eastman's reading the memorandum at a Commission conference and identification of the writer by his "style" were unexpected developments. The need for a separate bureau at this stage seemed, however, to be self-evident. The subsequent shifts to a functional basis also were logical and, on the whole, have worked well.

Doubtless others are describing the formidable task of rapidly creating a large organization to deal with the many chores and complex problems which the new legislation created and the administrative problems that loomed up. Despite complications, an able staff was assembled. Breaking in this staff, "beating the bushes" to alert carriers to file by the statutory dates if they were to preserve their "grandfather" rights, getting organized to handle an avalanche of applications for rights, and the receipt and handling of a vast array of tariffs were some of the jobs which required prompt and vigorous early handling.

The writer was soon to be wearing three hats: Assistant Director of the Bureau of Motor Carriers, Chief of its Section of Research, and principal author of an unfinished report on public aids of a then nonexistent Government agency. It is no wonder that there was no letdown in his workweek. The publication of the four-volume report on public aids, on which much work had been done during the Coordinator period, justified this diffusion of responsibilities.

The writer thought he knew the Motor Carrier Act, 1935, backward and forward, and the background of the particular language employed in given passages. Mr. Eastman expressed much better than this writer could the problems encountered in interpreting a new statute. The following is from an address before the American Trucking Associations, Inc., found in Traffic World, October 19, 1935, page 657, and quoted here from *Wagner*, *supra:*

> When a new law like this is passed, it is always found that there are many provisions which require interpretation. Circumstances and situations develop which were not clearly foreseen when the language was drafted and which it does not fit as well as might be desired. It is surprising, also, how often it is found that language which was carefully considered and thought to have a perfectly clear meaning is in fact capable of two or more possible constructions. Some-

[6] It may be remembered that Mr. Eastman prepared a bill (S. 1635) to provide for a 16-man Commission with a Chairman appointed by the President, a permanent coordinator, a control board, three permanent divisions (for example, a motor carrier and air division), and such special divisions as might be created from time to time. This bill was a companion to and dependent upon enactment of the motor and water carrier bills. Mr. Eastman explained and defended his proposal (hearings on the three bills, pp. 101–14). To his "great regret," the Commission opposed the bill. See its letter transmitting the above-mentioned report and Commissioner McManamy's testimony, pp. 126–46.

times it may not have been as carefully considered as it should have been and this is particularly apt to be true of amendments which are introduced in haste on the floor of Congress. A large number of such questions have already arisen and have been brought to our attention. We shall deal with them as quickly as possible, but I should tell you you that the Commission from long experience has found it dangerous to make ex parte rulings on legal questions which may later arise in litigated cases.

Among the events which stand out in the writer's memory is the work done in connection with the preparation of the forms on which applications for operating rights were to be made. Confronted with an awesome deadline, Director John L. Rogers, the writer, and others spent an entire night seeing to putting the finishing touches on these forms and getting them typed in the exact style for printing. After a hurried trip home, the writer and a few others met with Division 5 that morning (a Sunday). The Division was willing to accept the forms as adequate for the purpose. Printing was rushed and in a very short time the forms were in the hands of the Bureau's fieldmen and carriers and, not to be overlooked, of the lawyers.

Extensive hearings were held throughout the country to develop a record for use by the Commission in promulgating regulations of the hours of service and qualifications of drivers and specific safety regulations. These hearings were, of course, highly informative as to conditions and needs. The Commission's requirement of "drivers' logs" came about late in this proceeding. There have been grumblings by drivers and doubtless by some carriers, but the log was a necessary and important enforcement tool and has had other beneficial effects.

It may be interjected that a not unimportant amount of support for regulation of motor carriers came from the special interest of particular Members of Congress in the promotion of safety on the highways. The record shows major accomplishments in the field of safety as the result of this legislation.

As a further aid in undertaking hours-of-service problems, the Commission asked the U.S. Public Health Service to make a study of driver fatigue associated with different periods of service in relation to rest and other off-service periods. The writer served as a consultant on this study. The investigation broke new scientific grounds in various respects and involved a considerable overall period of testing of drivers. See "Fatigue and Hours of Service of Interstate Truck Drivers," Public Health Bulletin No. 265, 1941. Mr. Eastman's foreword as Chairman of the Commission explained why the study was requested and its relations to the Commission's hours-of-service regulations, effective at various dates prior to completion of the study.

Section 325 [7] of the Coordinator's bill provided for a Commission investigation of the need for Federal regulation of the sizes and weight of vehicles and of the qualifications and maximum hours of service

[7] Interestingly, the Eastman water carrier bill bore the "200" numbers and the motor carrier bill the "300" numbers. It cannot be recalled and would be idle to speculate at this time why this degree of precedence was given to water carrier legislation. S. 1629, though it bore the lower bill number, still carried the "300" numbers. Asked by Senator Hastings, of Delaware, which of the bills should be given priority if, in the interest of getting something done, attention were to be concentrated on one bill, Mr. Eastman thought both should be acted upon at the same time and mentioned the similarity of the provisions and problems with respect to the two bills. He did say, however, that he saw no distinction between them "in terms of quality" but that "in terms of quantity, I should suppose that motor truck transportation is of greater extent * * * than water transportation, and it promises to attain even larger dimensions" (hearings, p. 78).

of employees of for-hire and private motor carriers. Mr. Eastman's strong statement of the need for regulating hours of service and an explanation of what the size-and-weight investigation would involve are found in the hearings on S. 1629 (pp. 60–61). The definition of private carriers given in section 325 was shifted to section 203(a)(17) of the act and power to prescribe qualifications and maximum hours of service was granted in section 204(a)(1)–(3). The recommendations on these subjects and related ones as to safety and compulsory insurance were based in part on an investigation of existing State regulations and their effects and on a study of the motor vehicles codes of the day.

A report, "Federal Regulation of the Sizes and Weight of Motor Vehicles," House Document No. 354, 77th Congress, 1st session, was issued in 1941. Hearings were held by a subcommittee of the Committee on Interstate Commerce early in 1942 on a bill, S. 2015, prepared at the Commission, to implement the Commission's recommendation that it be given authority in this field under certain specified conditions. Provision would have been made for cooperation with the Bureau of Public Roads and the States. Pearl Harbor changed the situation into one that required immediate and direct action to liberalize size-and-weight limits where conditions permitted doing so. The Secretary of Commerce headed up this drive. The problem now is before Congress in a different form.

FORECASTS COMPARED WITH REALITIES

Certain objections to regulation then being voiced and considered likely to be raised at the hearing stage were taken up in "Regulation of Transportation Agencies" under the heading "Practicability of Federal Regulation." Comparisons of what was said on these subjects with what has transpired in the ensuing years should be of interest as throwing light on the administrative task and certain of the problems the Commission was called upon to face.[8]

"The most serious argument against Federal regulation of motor carriers" (that is, property, not passenger, carriers) was said to be that effective regulation "would require a large, costly, and bureaucratic establishment with a small army of agents and investigators, the remedy being worse than the disease." Stress then was being laid on the large number of "truck operators," said to run into the hundreds of thousands, on the small scale of their operations, on the difficulty of keeping informed of their movements and charges, on the likehood of extensive "bootlegging" of services and charges, and on the difficulty of obtaining accurate accounting and reports. Reduction of the flexibility of operations also was used as a ground for opposition (p. 27).

The data available for the year 1932 were reworked to produce an estimate of about 107,000 contract and slightly over 10,000 common carriers. The latter were larger in average size. Mr. Eastman did not find compelling merit in these estimates. "The division into the two groups and the differentiation between the private and for-hire operators are probably no more satisfactory than the varying interpretations given to the several classes of operations in the different

[8] Unless otherwise indicated, page references are to "Regulation of Transportation Agencies." Here, as in the preceding section, only the Senate hearings are used.

States * * *. Federal regulation would tend to establish more uniform and clear-cut classifications of operators, which would vary the proportions given above." The percent of for-hire operations was said to advance as lengths of haul increased. It also was noted that contract carriers "would be subjected to much less detailed regulation than the common carriers" (p. 28).

The maximum number of applications with which the Commission had to deal was about 88,000. The proportion of contract carriers was, of course, quite different from the reluctantly made estimate given above. It is clear that, while the number of carriers to be regulated (aside from safety regulation in the case of private carriers) would not run into the hundreds of thousands, the job the Commission faced at the start was a gigantic one. Contrary to the expectations of some, applications for rights have continued to pour in, in large numbers.

The importance of the small scale of most operations in 1935 was not minimized. Mr. Eastman saw, however, no merit in the view that "it is useless to attempt such regulation, and that it will break down." Here he referred to the Commission's having to "feel its way along" (hearings on S. 1629, pp. 81–82). Mr. Eastman stated, moreover: "It is also very likely that regulation of the kind proposed will considerably increase the average size of operations, both by discouraging the smaller scale operations and by introducing greater order into the industry, so essential to planning and operation on a broad scale" (p. 28). Again, "As the units in the industry become larger and better organized and the number of operators decreases, regulation will be simplified" (p. 30). Also, "It is likely that regulation will * * * set up requirements which small or poorly financed operators will not be able to meet" (p. 33). Mr. Eastman stated, however, at the hearings that he did not see why regulation should put small operators out of business, though he anticipated that "gradually there will be a development of larger operations, because I believe that they will be more economical when well organized" (hearings, p. 66).

As a result of cessation of operations, sales, and mergers, there has been a continuing reduction in the number of carriers subject to economic regulation by the Commission. As of June 30, 1963, there were 17,571 motor carriers of property, of which 2,420 or 14 percent were contract carriers, and 1,248 motor carriers of passengers.[9] Mr. Eastman's expectation has been verified, not to say abundantly. Yet in 1962, 26.25 percent of the carriers of general commodities, 32.25 percent of the household goods carriers, and 25.24 percent of other carriers of special commodities had revenues of $25,000 or less.[10]

The "most serious" argument against the practicability of regulation has been proved groundless. The "small army of agents and investigators" has not developed. The Commission's motor carrier field staff numbers about 250, or 1 man for each 75 carriers, subject to economic regulation. These men also must deal with exempt and private carriers as to safety matters and with carriers' engagements in unauthorized operations. There also is a clerical force of about 165. A larger field force is desirable and needed, but this force never

[9] Interstate Commerce Commission, 77th Annual Report, p. 55. Carriers operating exclusively under temporary authorities are not included.

[10] Interstate Commerce Commission, 78th Annual Report, pp. 149–50.

will reach the proportions of a "small army." The Coordinator's report held up well on this point, particularly if it is considered that unanticipated enforcement duties resulted from the agricultural exemption and attendant leasing practices.

The statement that, "in general," securing "grandfather" rights will require only proof of operations conducted and of proper qualifications (p. 31) underestimated the magnitude of the problems involved in construing what an applicant was entitled to on the basis of a showing—often very inadequate because of the lack of records—of past operations. The report noted that the information the States, and that being collected under NIRA auspices, was expected to be "a great aid" and such proved to be the case.

The task of granting "new" operating authorities was said not to be "easy, owing to the rather frequent shifts in personnel and operations in the trucking industry and the controversies which will arise in determining 'public convenience and necessity.'" Experience in the States and in foreign countries was said to show, however, that control of entry "is not an impracticable undertaking." It was added: "The certificates, permits, and, if required, registrations will furnish the basis of all administrative action" (p. 31). The recognition here of the continuing nature of the work under the entry control provision did not go so far as to indicate in even general terms the possible magnitude of this unending chore.

Stress also was placed by opponents of regulation on the difficulty of keeping informed of the movements and charges of the carriers. It is true that the Commission has had to deal with numerous cases in which carriers were considered to be operating beyond the scope of their rights. The problems in this area have not proved of large proportions. The issues frequently have involved interpretations of operating rights without, in all cases, an effort to violate in law. Carriers now have their rights in such ready and convenient form that shippers who desire to check on a carrier's authority to perform given services have no difficulty in doing so. This point is of some importance, as such shippers as are willing to skirt the law by using unauthorized operators cannot excuse their action on the ground of ignorance of existing rights.

Obtaining observance of tariffs has not proved to be a problem at all or at least not a problem of any proportions. The Coordinator answered the contrary view by stating that experience with the railroads had not shown the problem to be a serious one. It was stated: "Trucking tariffs will be much less complex than railroad tariffs" (p. 30). This prediction has not proved entirely accurate. While the rates, in themselves, are less complex than rail rates, the large number of carriers, the many exceptions to Bureau rates, and the numerous and diverse tariff arrangements relative to interchange add up to a considerable degree of complexity.

The Coordinator foresaw no difficult problem of enforcement of the rates of common carriers but said: "Contract operators will present a more difficult problem, but the tendency—and a most desirable one—under regulation will be for the contract carriers to become common carriers." The "better types" of contract carriers were having "little difficulty" in expressing their costs in their charges, "some of which are substantially tariffs, in that they are open to anyone on equal terms." States which have undertaken to regulate contract

carriers believe successful regulation of their rates is possible (p. 30). In certain respects, this discussion of contract carriers reflected the prevailing lack of a firm conception of contract carriage. The term "private carrier" still was being applied to contract carriers in some jurisdictions. The statement about conversion of contract into common carrier operations was interesting and prophetic.

"The fixing of minimum rates when necessary," for any mode "is not a simple or an easy duty." The need for and practicability of minimum-rate control was stated to be attested to by the insistence of the trucking industry on the inclusion of provision for such control in the trucking code. "The task should on the whole be less difficult than the fixing of maximum reasonable rates on all sorts and conditions of railroad freight traffic, a duty which the Commission has performed for many years" (p. 31). The only comment that will be made is that increased competition, anticipated by the Coordinator, has shifted the emphasis away from maximum to minimum rates.

Regulation of the "freight broker," provided for in the bill, will remove, it was said, "one of the most serious present obstacles to reasonably adjusted contract and common carrier rates. The influence of these brokers has been demoralizing" (p. 30 and an appendix on "motor transportation agents"). The undesirable practices of some brokers were explained at pages 97–99 of the hearings. On the whole, this prediction of the effect of regulation has proved correct as to brokerage in connection with regulated transportation. Brokers do exert a large influence on transportation movements which involve. return loads for operators engaged in transporting exempt commodities As stated earlier, the Coordinator did not anticipate the exemption of agricultural commodities which Congress added.

"Bootlegging" of service, with its attendant cutting under published rates, has proved, however, to be a troublesome problem in more recent years. Mr. Eastman's statement that the "risk of operation without such authority will be too great to be disregarded" (p. 31) therefore was not entirely realistic. Progress is being made in dealing with the problem of the illegal operator, but more effective results could be achieved if legislation, desired by both motor carriers and railroads, were enacted to clarify the problem, increase the penalties, and reduce the procedural steps involved in identifying and punishing violators. Here the fears expressed by some opponents of regulation have proved justified to some extent, but again it needs to be said that amendments to the Eastman bill planted the seed from which unlawful practices developed.

The importance of supervision of carrier accounts and reports was stressed on the basis of experience with the railroads. Motor carrier accounting was seen as simpler than rail, and such has proved to be the case. The necessity of keeping accounting and reporting requirements for smaller carriers "very simple" was mentioned and with good reason. While "not much can be expected from them, particularly at the beginning," the problem should work itself out gradually as average size of carrier increases and there is improvement in responsibility, training, and experience (p. 31). The record shows the correctness of these prophesies.

It was charged further by opponents of regulation that "if Federal regulation could be made to work, it would be at the expense of the flexibility and quick adaptation to special conditions which is one of

the great virtues of trucking operations" (p. 27). There is, or course, a loss of flexibility in any regulatory program which rests on a system of operating rights and published rates. On the other hand, this very flexibility was a basic source of the difficulties which motor carriers, railroads, and shippers were experiencing prior to 1935. The choice of an orderly conduct of the industry was inevitable under the circumstances.

It was pointed out, as proof of the practicability of Federal regulation, that the States were expanding and strengthening their regulation of motor carriers and were pressing strongly for comprehensive Federal regulation. "* * * State regulation could not have progressed as it has without substantial support from public opinion" (p. 27). "Troublesome problems in the separation of interstate and intrastate operations," however, were foreseen (p. 29). There have been difficulties here, but they have not been of large importance. Mention also was made of the trucking code as "in itself a concession by the industry that a very considerable degree of regulation under Federal auspices is both practicable and necessary" (p. 27; see also hearings, p. 82–83). Mr. Eastman provided for continued use of code organizations in connection with Federal regulation. This provision, in his bill (S. 1635) for reorganization of the Commission and other purposes, is a matter of some historical interest (hearings, pp. 82–83).

"The States are ready and anxious to cooperate" and many are well organized for this work. Full utilization of State cooperation should be provided for. Doing so will reduce greatly the number of Federal agents and investigators (pp. 29–30). While these observations have proved to have some merit, there are gaps in State enforcement activities and more complete cooperation between the Commission and the States would make for more effective results.

A number of general remarks about the compliance problem may be noted. Thus, it was said: "It is a mistake to assume that there will be any general desire or attempt to violate or evade the law." While "a substantial proportion" of the operators "will be unreliable and even lawless," many more carriers will wish to conform to the law and will welcome greater stability and order. "To an important degree regulatory laws of this character are self-enforcing," (p. 29). The last statement doubtless would be regarded as having been of a somewhat optimistic nature.

Again: Motor carriers who wish to observe the law, shippers, and carriers in other modes will supply information as to violations by others (p. 29). This point has proved sound, but both motor carriers and railroads have attempted to obtain legislation which would enable them to appear in court as complainants rather than have to depend on the slower process of having the Commission appear as the complainant.

Further: "* * * it is unnecessary to provide for complete surveillance." Unannounced test checks and prompt and effective penalties will suffice. This system was stated to have worked in the enforcement of the penal provisions applicable to railroads. Cancellation of operating rights, provided for in the bill, will prove, it was said, "a very effective remedy" (p. 30). The Commission has employed the test-check method on many occasions and with good results. As stated earlier, there is need for more fieldmen for this type of enforce-

ment and other work. It is to be noted, however, that illegal operators seem able by various devices to escape these checks to a considerable extent. Also, the cancellation of rights has been hampered by cumbersome procedural requirements and it cannot be said that a general program of this kind has been pursued as actively as might be.

Interesting remarks about private carriers are found in the Coordinator's report. It was stated that the number of such carriers which were operating beyond the local delivery radius of 10 to 20 miles "is now impossible to determine, but it can hardly be of the order of magnitude often estimated." Only the larger industries were considered likely to engage in trucking beyond a rather limited radius, annual mileage per vehicle was "much lower" than in the for-hire field, and the average load factor was lower (p. 28). The proposed legislation, by barring private carriers from for-hire carriage unless they obtained operating authority, would discourage private carriage or "certainly not * * * encourage (it) any more than conditions encourage it at the present time" (report, p. 33; hearings, p. 62). Mr. Eastman believed that the position of common carriers would be strengthened by regulation and that such a result would be in the public interest and of particular benefit to the smaller shipper (hearings, pp. 61–62; report, pp. 33–34). There was, however, no provision in the Eastman bill for the exemption of the transportation of unprocessed agricultural commodities or, of course, any anticipation of the lengths to which the exemption written in by Congress would be carried by the courts. Also, leasing practices were not as fully exploited or as well understood as they were to come to be. The following statement, however, has a modern ring: "The possibility of private operation will, however, set limits to rates, both for the railroads and for the common carrier and contracts trucks, and if these limits are not observed, there will be a material increase in private operation" (pp. 33–34). As to the benefits which Mr. Eastman thought common carriers would derive from the proposed legislation, the tremendous growth in this branch of truck transportation in the past 30 years may not be overlooked.

It also was stated in the Coordinator's report: "In order to establish the true character of the trucking done by private operators, it may be necessary to provide for the registration of their trucks." This registration could be accomplished, it was said, by and, in fact, left solely to the States. Prevention of private business from engaging in for-hire operations "will be troublesome, but the fact that intercity private trucking is chiefly by large and responsible industries will simplify the task. Farmer-operated trucks will in effect be exempted. The act should be drawn to prevent evasion through various devices, some of which are well understood, and should carry effective penalties" (pp. 30–31). It may surprise some to learn that the question of registration of private trucks was raised over 30 years ago. Such action has been advocated from time to time since, with no result. As noted earlier, the act as passed greatly complicated the enforcement problem in this area. In fact, a good many points on which the predictions have not been realized or fully so are explained by the fact that Mr. Eastman was talking about complete regulation and not regulation with a big gap in it.

The question of practicability and its bearing on undertaking regulation were summed up broadly as follows:

> Summing up the situation, Federal regulation of the motor transport industry will not be easy, but it is not impracticable. Federal regulation of railroads, when it was first undertaken, was a more formidable task. Difficulties will be encountered, mistakes will be made, improvements in practice and in the statute will be found necessary. There is, however, no sound reason for holding back on the ground that the job cannot be done (p. 32).

What has transpired in the 30 years of operation under the Motor Carrier Act, 1935, clearly affirms the accuracy of this statement.

This statement is found in the Coordinator's report: "The ultimate effect [of the proposed legislation] may, in fact, be a degree of improvement in the conduct and effectiveness of the [trucking] business which will surprise certain of the ardent proponents of regulation" (p. 33). Among the "ardent proponents" were the railroads. The following few facts bear out this statement. The truck portion of total intercity ton-miles (exclusive of coastwise ton-miles) was estimated in the report at 9.2 percent in 1932; the latest figure, for 1963, obtained by a better estimate of truck traffic and inclusive of coastwise ton-miles, was 23.8 percent. All types of trucking are covered in these figures. The railroad percent, 73.9 in 1932, was 43.0 in 1963. Many factors other than regulation explain these trends, but regulation provided the basis on which trucking was able to stage its advance.

Railroads recently have accelerated their competition for traffic which trucks handle. This competition takes the form of reduced rates, improvements in service and facilities, and increased emphasis on efficiency. Railroads also are seeking reductions in regulation. Mr. Eastman had something to say in 1934 about the likely effects of "free and uncontrolled competition" on the rate structure. He concluded that "there is more chance of keeping this tendency [for competition to disrupt the rate structure] within reasonable limits with comprehensive regulation than without" (p. 34; see also "Report of the Federal Coordinator of Transportation, 1934," pp. 10–14). The discussion was in terms of basic factors and was not conditioned by the depression then being suffered. In the earlier report, Mr. Eastman admonished the railroads to put self-help in the forefront of their thinking (p. 35).

The Coordinator's position on "integration" or "common ownership" has already been discussed. He saw, on the other hand, coordination among the modes as a source of carrier and public benefit (pp. 34–35). It is not possible to go into this subject here but it may be interesting to recall that section 315(a) of the Coordinator's bill made it the duty of motor common carriers to establish through routes and joint rates not only among themselves but also with common carriers by railroad and water. Express was added later (see also hearings, p. 81). This provision did not survive in congressional consideration of the bill. Voluntary coordination among modes in the form of through routes and joint rates, while growing, has not achieved importance. Many efforts have been made by motor carriers to bring about such arrangements.

This comparison of preregulation forecasts with subsequent developments necessarily is incomplete, but it is hoped that it may prove of some interest as a means of appraising the workings of the Motor Carrier Act, 1935, in terms of administrative tasks it has presented, of problems dealt with successfully, and of old and newer problems which currently require consideration.

MICHAEL T. CORCORAN

When the Motor Carrier Act of 1935 was enacted, Michael T. Corcoran, then a young attorney with 5 years' experience at the ICC, was assigned to the Commission's new Bureau of Motor Carriers. He was sent to the field to help with processing "grandfather" applications, and later served as a hearing examiner. He now practices law in Denver, having retired after 30 years of Government service.

On August 9, 1935, the Motor Carrier Act of 1935 was approved by President Franklin D. Roosevelt. It placed under Federal regulation the transportation of passengers and property by motor carriers engaged in interstate or foreign commerce and vested this regulation in the Interstate Commerce Commission. Any reasonable doubt about the need for such regulation, which had been the subject of prolonged research, study, and debate, sometimes acrimonious, had been resolved for some time, but the character and scope of the regulation, and the selection of an agency to which it should be entrusted, concerning which stubbornly held divergent views existed, had presented a serious hurdle to passage of a regulatory law. This hurdle finally was overcome, under pressure of the need for action, by compromise which undertook to but did not completely remove the fear held by many motor carriers, the users of their services, and by Members of Congress that the Commission might have a tendency to disregard differences in conditions between railroads and motor carriers and regulate the latter in a manner preferential to the former, that is, that the Commission might be "railroad minded." The provisions of the bill proposed by Hon. Joseph B. Eastman, then Federal Coordinator of Transportation, which with some changes was enacted, were carefully framed in an endeavor to forestall any such tendency. And the Commission, out of deference to those who held such fear and being acutely aware of its past, sometimes frustrating, experience in the evolution of railroad regulation and of the responsibility which would be placed upon it, agreed to create a new and autonomous Bureau of Motor Carriers and a new division of its membership, Division 5, consisting of three commissioners, to administer the new act.

The new Motor Carrier Act, while patterned after the existing railroad regulatory law, applied to an infant industry comprising many thousands of individual operators whose characteristics, size, methods, service, and problems differed widely. Certainly they differed in many and important respects from the railroads. Overall they could be considered provincial, the provision of through or joint-line motor service being quite limited in scope and confined principally to passenger carriers. They actively competed with each other, to the point of engaging in the most destructive kinds of competition, and with the railroads and water carriers. In New England, for example, there were about 100 motor common carriers of prop-

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erty for every railroad and they were vigorously competing with each other, and with thousands of private and contract motor carriers, as well as with the railroads and water carriers. Except for some of the larger carriers which had been active in the administration of the codes of business conduct promulgated by the National Recovery Administration they were not organized and therefore were lacking in truly representative national leadership. Dependent upon its administration, Federal regulation could promote or hinder the healthy growth and development of this infant mode of transportation.

The impossibility of Congress foreseeing, and by specific provision providing for, all the multitude of situations that would require decision by the regulatory agency was obvious. General standards only could be set out in the act and these standards necessarily carried with them an aura of vagueness or uncertainty which involved doubt in their application to specific, concrete situations. Thus "grandfather rights" depended upon "bona fide operation"; the inauguration of new operations, or extension, or consolidation, or merger or existing operations depended upon the "present or future public convenience and necessity" or consistency with "the public interest"; and the lawfulness of rates and charges depended upon whether they were "just," "reasonable," and free from any "unjust discrimination" or "undue or unreasonable prejudice." The significance of these and other vague and indefinite standards in the determination by the Commission of the proper course to adopt in specific and concrete situations, which in time might chart the general course, of necessity depended upon the mental outlook and personal point of view of the individual commissioners who would constitute the majority of those voting on the matter, subject, of course, to review by the courts and the Congress. Such review as a practical matter would not provide a speedy or easy means of overthrowing or changing the course adopted by the majority of the Commission, but might well result in frustration unless the course taken by the Commission was eminently sound. The members of the Commission obviously were cognizant of these imponderables; of the importance to the carriers and the public of their sound resolution; that such resolution involved exercise of a wide range of discretion; and that the responsibility was theirs. This awareness no doubt affected the selection of the members of the new Division 5, the adoption of liberal rules with respect to the receipt and disposition by the Commission of petitions by interested persons, and, in turn, the successful administration of the new act.

The members of the new Division 5 were: Joseph B. Eastman as Chairman, a New Englander learned in economics and experienced in public regulation, a genius in ascertaining the reliable and controlling facts and on the basis thereof arriving at and enunciating a practical solution of the problem presented, an exemplary public official who deserved and had the respect and admiration of Congress and the public generally; William E. Lee, a southerner by birth and a prominent citizen of the Northwest by adoption, a talented and devoted lawyer, a highly respected former chief justice of his adopted State of Idaho. He served as a member of Division 5 for almost two decades and left an indelible imprint on sound transportation regulation; Marion M. Caskia, a southerner and an experienced business executive, knowledgeable in the operation and the distribution and

transportation needs of productive industry. They accepted their responsibilities with a spirit of optimism and were unsparing of their energy.

The first Director of the new Bureau of Motor Carriers was John L. Rogers, who later served with distinction as a member of the Commission, an extraordinary Government official dedicated to duty and having a capacity for and record of accomplishment. The staff of the new Bureau, which was selected with care by Division 5 and Director Rogers, was recruited from the Commission's own experienced staff of examiners and attorneys, from State regulatory commissions, from industry, and from the legal profession. Like the Director of the Bureau, the staff members generally were exceptionally well qualified and certainly devoted to outstanding performance of the duties assigned to them.

The first baffling problem encountered was the surprising lack of interest displayed by the motor carriers by and large. As the deadline date for the filing of applications to protect and insure their "grandfather" rights was approaching only a handful of applications had been filed although it had been estimated that thousands of individual carriers were covered by the act. Division 5 took prompt action in the form of a vigorous educational campaign. With the assistance of State officials, existing carrier associations, local chambers of commerce, and local newspapers throughout the country in publicizing them, successful meetings were held at numerous cities at which representatives of the Commission explained the new law with particular emphasis on the requirements for protection of "grandfather" rights and on the risks involved in not complying with such requirements as well as with the other provisions of the act. Division 5 also promptly prescribed a skeletonized form of "grandfather" application with provision for later furnishing of needed details called for in the previously prescribed form of application. The result sought was accomplished with the timely filing of over 81,000 "grandfather" applications. Some like problems developed, and were solved by educational programs, in insuring compliance with the rates and charges, insurance, reporting, and safety requirements of the act.

All of the major activities of the Bureau were first carefully considered and approved by Division 5. Frequent conferences were held by members of Division 5 with the Director and the chiefs of sections on pending matters. Oral argument by interested parties was heard by Division 5 with regularity and by the entire Commission on many occasions. The day-to-day decisions on contested operating authority and finance applications, rate disputes, investigations, prosecutions, and other matters of significance generally were reached in conference of the Division members. Petitions for reconsideration or rehearing were liberally accepted and were filed in abundance. Each petition was first considered by Division 5 and if not granted by a majority of the Division it was circulated to the entire Commission. Entire Commission conferences were held at least twice monthly at which each member of the Commission was afforded the opportunity freely to express his viewpoint and the reasons therefor on each pending petition. It should be obvious that the course of action in the regulation of motor carriers during the first two decades after the passage of the act which resulted from this method of conducting its business by Division 5 and the entire Commission truly reflected a condensation of

the varying points of view of the individual members of the Commission and the assumption by each of them of knowledgeable responsibility. The Congress was kept informed by annual and other reports to it by the Commission, and the chairman of the Senate and House Commerce Committees, who always have been especially interested in the success and progress of the regulatory acts of Congress, were kept more intimately informed by reports by the Commission on proposed and pending bills affecting transportation and by the members of the Commission and its staff appearing as witnesses at committee hearings.

The State regulatory commissions were generous and helpful in cooperating with the Commission from the beginning of Federal regulation of motor carriers. Their members freely gave of their time and knowledge and experience by serving on the joint boards which were provided for by the act. This procedure was designed to insure that motor carrier services which may be of minor importance from the standpoint of adequate national transportation, but which were of vital importance locally, would not suffer from Federal regulation.

Over the years since 1935 the courts have considered many appeals to them from decisions by the Commission. Broadly speaking, the Commission's action has been upheld in the cases of major consequence on transportation regulation except in a relatively small number of such cases. Generally, and somewhat antithetical to adjudications in the early days of the Cullom Act, the courts have held that the Commission had applied too strict and narrow an interpretation on considered provisions of the Motor Carrier Act. For instance, too restrictive a view on the extent of the "grandfather" rights which Congress directed be granted and too restrictive a view on the granting of contract carrier authority as directed by Congress. Also, over the years, the Congress has cooperated in improving and strengthening transportation legislation by the passage of amendatory acts needed to stabilize conditions beyond the reach of the existing legislation. And further, over the years, the regulation of motor carriers has resulted in the development of an educated, aggressive, and responsible Commission bar which has contributed much aid to the Commission and, in turn, to the successful administration of the Motor Carrier Act.

World War II had a diverse effect on the motor carrier industry. Passenger carriers generally were overburdened with business and short on equipment and reaped rich rewards which most of them, to their credit and with the encouragement of the Government, retained for the rehabilitation of their equipment and facilities following the war. Many property carriers also fared well, but, on the other hand, the greater number suffered losses of traffic vital to the conduct of successful operations. A substantial number of the smaller property carriers were forced to suspend their operations. Congress provided for the needed readjustment in carrier regulation during the war period in the War Powers Acts. Since the war both the passenger and property carriers have shown a continuous expansion of their operations and have enjoyed a substantial increase in traffic and revenue.

The war period also brought about some radical changes in the Commission's organization of its bureaus in that it signaled the beginning of the erosion of the Bureau of Motor Carriers by later

internal reorganization by the Commission of its regulation of surface transportation on a functional basis.

In recent years a new concept, embracing the delegation to many members of its staff of authority to make controlling decisions on numerous matters of moment to the carriers and the public which they serve, has been found necessary, and adopted, by the Commission with the blessing of both the Congress and the courts. And the Commission has found it desirable to, and has, greatly curtailed the acceptance of petitions from interested parties in contested proceedings and has almost completely eliminated entire Commission consideration of petitions.

History confirms the soundness of the procedure and practices followed by the Commission in the first two-plus decades of its administration of the Motor Carrier Act. The infant motor carrier industry of 1935 now is a soundly established, stable, and prosperous giant in the field of transportation, today, on the 30th anniversary of the passage of the Motor Carrier Act of 1935, one of the two most important parts of our national transportation system. The new concept adopted by the Commission in recent years appears to be generally effective in accomplishing the object sought and in continuing effective administration of the act, but only the conditions which will prevail in the future will be determinative of its efficacy and considered acceptance by the public. It is hoped that the decades to follow will be as noteworthy in accomplishment in transportation regulation as have been the first 30 years of the Motor Carrier Act of 1935.

ALBERT E. STEPHAN

One of many young Interstate Commerce Commission attorneys sent out to deal with the flood of "grandfather" applications resulting from the taking effect of the Motor Carrier Act, Albert E. Stephan writes of his experiences in those then unchartered waters. He has for many years been engaged in private law practice in Seattle.

I am happy to give my memories of the act. As a young graduate of Harvard Law School, I was assigned as an examiner to Commissioner Brainard in 1929. The following year the Commission instituted its docket 23400, Coordination of Motor Transportation, and I was assigned as attorney for the Commission. The Supreme Court had rendered various opinions at that time which impaired the States' power to regulate. Competition among carriers was rife as we entered the depression. Hearings were had at many cities throughout the country. Examiner Flynn rendered a brilliant report. The Commission, however, determined to make it more specific and I was assigned by Commissioner Brainard to aid, along with Chief Economist Morgan, the preparation of detailed recommendations.

A year or so later, in the depth of the depression, Congress convened after President Roosevelt's inauguration and Senator Dill became chairman of the Senate Commerce Committee. Through him and Commissioner Eastman, I was assigned to work with the Senate committee. The urgent financial needs of carriers resulted in enactment of the Emergency Transportation Act. Joseph B. Eastman, one of the truly great public servants of this century, was appointed Federal Coordinator of Transportation. Among other major activities, he gave detailed consideration to the regulation of motor carriers. A parenthetical insight to his character was a liberal budget which enabled him to attract topflight men in industry. Though his own abilities outshone most of those able men whom he attracted, he was thoroughly content to receive his modest salary of $10,000 per year and pay many of his assistants the then munificent incomes of $15,000 and more, without any resentment.

In 1934, I went with the newly created Federal Communications Commission, and Senator Wheeler succeeded Senator Dill as chairman of the Senate Interstate Commerce Committee; he had another experienced man from the Commission, Robert E. Freer, assigned as his assistant. Bob Freer was again a devoted public servant who later served as Commissioner, and Chairman, of the Federal Trade Commission. He had the privilege of working with the committee during the year of enactment of the Motor Carrier Act.

Meanwhile, after its enactment, I, who had always wanted to settle in the Pacific Northwest, availed myself of the opportunity to return to the ICC from the FCC and become the regional attorney-examiner for the Commission with headquarters at Portland, Oreg. There were 16 divisions and I had a great mass of grandfather-clause cases as did

all of the other examiners. I was pleased once to be told that we cleared more cases than any other district. But later upon reflection, after entering private practice, I felt the honor was not well earned. Because my only job was to serve the Government, and I had many attorneys in private practice who participated in hearings which began at 9 a.m. and went through to 6 p.m., then recessed to 7 o'clock for dinner, then reconvened and often going through until 10 p.m. Thus, we discharged the heavy workload of grandfather-clause applications. But thus, also, I am afraid that my ardor impaired the obligations which lawyers in private practice must devote to other clients, and such a brisk schedule offered scant opportunity. I sometimes mention this in talking to young men who go into Government because, while I worked hard, I think that my lack of experience in private practice, with its attendant responsibilities, proved to a degree a handicap.

Nonetheless, we did have a heavy docket and we did clear it with diligence; and I recall with great pleasure the past experience with such notables as Senator Dill, Senator Wagner, Senator Hatch, Senator Couzens, Senator Wheeler, Senator White, and many others, and with warm friends in Government and in industry. One lasting impression of my Government experience, particularly on "the Hill", is that, while there are clowns and fools and corrupt men in all walks of life, basically my experience with the Members of Congress has been that familiarity breeds respect.

HOWELL ELLIS

As a member and chairman of the Indiana Public Service Commission from 1926 to 1933, Howell Ellis was a "regulator" of motor transportation before the Federal Government entered this area. He has devoted his professional life to a large extent to the practice of motor carrier law and is a past president of the Motor Carrier Lawyers Association.

My experience in the field of motor carrier regulation has included service as a member and chairman of the public service commission in my home State, Indiana, and as a practicing attorney representing motor carriers before the Interstate Commerce Commission. During 1963–64, I was president of the Motor Carrier Lawyers Association, the motor carrier bar of the Interstate Commerce Commission. In these and other capacities, which will not be recited here, I have been directly concerned with motor carrier regulation, not only since 1935, but also prior to that time. I make these brief personal references solely to indicate the basis of the opinions expressed herein.

In my own State, the legislature enacted a law placing regulation of motor carriers under the public service commission in 1925, 10 years before Federal regulation was authorized. Similar action was taken by a number of States prior to 1935, some antedating the Indiana law.

As a member of the Indiana commission, I took part in instituting the regulatory program in that State. The State law was only a skeleton of what was found to be required, and was revised several times. Now the Indiana law is very similar to the Federal act. While our State commission dealt primarily with intrastate matters, we attempted some regulation of interstate carriers, on the theory that in the absence of Federal legislation assuming jurisdiction of the subject, the State had power to act. We achieved some degree of success in the interstate field, particularly in connection with hours of service of drivers and other safety regulations. The motor carriers generally were most cooperative. By reason of our experience, however, I favored Federal regulation, and I know that many members of the National Association of Railroad and Public Utilities Commissioners were of the same opinion.

In view of the prior, even if limited, activities of a number of States in the field of interstate regulation, there were included in the 1935 act a provision giving some recognition to the States in the overall Federal regulatory program. This was done by the requirement making it mandatory that the Interstate Commerce Commission, when three or fewer States are involved, refer certain types of motor carrier proceedings to a joint board composed of representatives of those States for the initial hearing and a written recommendation as to the final disposition and determination which should be made by the Federal agency.

Many of the States have assigned trained and qualified representatives as joint board members, and they do an excellent job. However,

there has not been complete acceptance of this responsibility, and a number of States, especially some of the larger, refuse to take any part in the joint board program. This creates a somewhat anomalous situation where a provision of the act intended to give all of the States a part in the regulatory process is rejected by some of them.

The refusal of certain of the States to name joint board members and to assume the responsibility tendered by the act, does not, in my opinion, reflect disagreement or dissatisfaction with Federal regulation. Rather, it appears that the position flows from the fact that the field of regulation of interstate motor carriers generally is recognized as one where the primary authority is that of the Federal Government, and the nonparticipating States in the joint board program apparently prefer to regard this matter as solely a Federal responsibility.

In connection with the actual drafting of the 1935 act, mention certainly should be made of the extensive work of the late Joseph B. Eastman, longtime Chairman of the Interstate Commerce Commission, and Senator Burton K. Wheeler. These two men had much to do with the text of the original act.

When the act was in its formative stages, consideration was given to where and by whom the regulatory power should be exercised. There were those who desired a separate agency such as was created to regulate air transportation. Placing the regulation of motor carriers engaged in interstate and foreign commerce in the capable hands of the Interstate Commerce Commission not only was the logical thing to do, but also it has proved to be the wisest choice which could have been made.

The Interstate Commerce Commission, since it was established in 1887, has been generally recognized as a Federal agency which is dedicated to serving the public interest. I have personally appeared in numerous motor carrier cases before the Commission, including some of a precedent-making nature. I have not always approved of everything the Commission has done in connection with the regulation of the motor carrier industry. It is my opinion, however, after having closely observed the Commission in action over the years, that the decisions of the Commission, even if occasionally erroneous, always represent its best and honest judgment on the particular matter at hand. No one should ask more.

Certainly the experience had during 30 years of Federal regulation has demonstrated that only trained and experienced persons should be named to serve as members of the Interstate Commerce Commission. It is to be hoped and expected that the present President of the United States, and future Presidents will nominate only qualified persons for membership on this highly important Commission.

The individual motor carriers which have been subjected to Federal regulation generally have increased in size and prospered financially since 1935. Some, of course, have not. I am of the opinion that most informed persons, however, will agree the motor carrier industry as a whole has been greatly benefited by Federal regulation. I believe that few, if any, existing interstate motor carriers would want to go back to the unregulated days and the attendant evils, even though regulation, at times, becomes irksome.

Economic conditions, good and bad, World War II, during which the regulated motor carrier industry made a major contribution to

final victory for our country, and other factors undoubtedly have had their effect on motor carriers during the 30-year span under consideration. Certainly a number of these circumstances, including the passage of time itself, have brought about a part of the substantial growth of the motor carrier industry. Just as surely, Federal regulation is entitled to a fair share of the credit in making motor vehicle transportation a vital part of the economy of the Nation. The regulated motor carriers of the United States are operating in the public interest and contributing to the general welfare, far better than an unregulated industry would find possible.

There is a great deal more I could and would like to say about the past 30 years, because all of my work during that period, in one capacity or another, has been involved with regulation of the motor carrier industry. Perhaps, however, this expression has already extended beyond the bounds of propriety. Summing it all up, 30 years after, I will say that Federal regulation has not been a noble experiment, but, on the contrary, has been a noble success.

CHESTER G. MOORE

The only person to serve continuously on the executive committee of the American Trucking Associations from its organization to the present is Chester G. Moore who, when the Motor Carrier Act was passed, was manager of the Central Motor Freight Association. Although now retired, he retains his active interest in motor carrier developments.

At the first Annual Convention of American Trucking Associations held in Chicago in 1934, the ATA Policy Committee met all day Sunday, October 21, in a morning, afternoon, and evening session that went well beyond midnight.

There were three questions on the agenda but two of them, largely having to do with housekeeping functions, were settled rather speedily. The third question had to do with establishing a policy as to Federal regulation of the trucking industry, above and beyond the NRA Code for the trucking industry.

On this question of regulation I was the first to speak on the question and I find that my remarks are contained in the minutes of the meeting as follows:

> Mr. Chester Moore remarked that he felt the convention should determine upon a policy and that this must be either for or against regulation; that he favors establishment of power to fix uniform rates, at least for over-the-road operators; that he has given up hope for rate benefits under the code in its present form; that he does not favor Federal regulation in any form unless rate relief cannot be obtained otherwise; that he believed it would be difficult to take a negative stand against a regulatory bill if the President recommends its passage; that an effort should be made to get an amendment to the code to handle rates but that if this cannot be done, then the association should draft and sponsor the right kind of a bill for Federal regulation but that this should not provide for control under the ICC.

Many of the rest of the folks there shared my views. That was about the situation when the convention adjourned. By a series of efforts, however, the ATA in the following year lent its efforts, after numerous amendments, to the passage of a regulatory bill sponsored by the Federal Coordinator of Transportation, Joseph B. Eastman, and the bill was finally signed into law by President Roosevelt on August 9, 1935.

I followed all these developments very closely over the years as I am the only member still living who was elected the first ATA executive committee at Chicago in that year of 1934 and who has served continuously on that committee right down to today.

Regulation brought to the motor carrier the duty of filing its rates and charges with the Interstate Commerce Commission on or before April 1, 1936.

A review of the tariffs filed then clearly illustrated the chaotic rate situation in the industry. As one illustration, a carrier in the Philadelphia area who had never carried any cigars found out that the carriers who enjoyed the traffic had filed a certain rate. He thereupon filed a supplement which slashed this published rate, hoping to get the traffic. This occurrence was repeated hundreds and thousands of times throughout the country.

The establishment by the carriers of rate organizations in the various areas as a means for them to join together and establish a rate structure brought some broad degree of stability. Carriers still continued to file individual tariffs, however, in considerable number.

Within 2 years the Interstate Commerce Commission, to bring order out of this chaos, began setting out minimum rate orders in the various territories and gradually stability was restored.

In late 1937 the railroads petitioned the Interstate Commerce Commission to grant a 15-percent increase in rates across the board with some few exceptions. This proceeding became known as *Ex parte 123*. I was one of the witnesses who appeared on behalf of ATA in this proceeding. This was the first general rate case the trucking industry ever appeared in before the ICC.

The late John E. Benton, general solicitor, National Association of Railroad & Utilities Commissioners, cross-examined me, among others. He asked me a question on the order of "Do you still beat your wife?" When I attempted to qualify my answer he demanded a "yes" or "no" answer. J. Ninian Beall, ATA counsel, objected and appealed to the Chairman, the late Clyde B. Aitchison, on the grounds that Mr. Benton was hazing the witness. Chairman Aitchison instructed me to proceed in my own way in answering the question, stating that if anybody could haze a witness it was he, the Chairman.

Because of the large number of less-than-truckload shipments transported by the carriers, it soon developed that there was a need for a different rate scale for the less-than-truckload shipment as contrasted with the truckload shipment. As a result, there came into being an less-than-truckload rate structure tailored for this type of traffic to reflect the added cost of handling.

In 1952, as a result of the Commission's order in dockets 28300 and 28310, uniform class rates and classification, the industry adopted a uniform classification and the basic uniform rate scale, again with variations, particularly in the area of less-than-truckload rates.

The year 1958 marked the growth of piggyback, freight-all-kinds rates, and shipper associations, many of the latter of doubtful legality.

In order to meet competition and rising costs, the industry has gone to automation through the use of data processing equipment, improved handling methods of freight such as that proposed by the Regular Common Carrier Conference using the so-called batch handling method and semiautomated terminals.

Research is still being done on a project that would establish a high-speed computer at a central site with high-speed communication equipment connecting it with the carrier's terminals, this to the end of cutting costs in rating, billing, and other fields.

JOHN V. LAWRENCE

John V. Lawrence retired in 1964 after serving for more than 30 years as general manager and managing director of the American Trucking Associations. He participated in the formation of that organization during the days of the NRA.

Many changes have occurred in the motor carrier field since the passage in 1935 of the Motor Carrier Act or part II of the Interstate Commerce Act as it is now known. Not the least of these changes is the growth in size of the industry in those 30 years.

No reliable figure of total gross revenue was available in 1935. In 1938, however, gross revenue of all class I, II, and III carriers reporting to the Interstate Commerce Commission stood at $700 million. Last year gross operating revenues of class I, II, and III carriers are estimated at $9,200 million. In 1965, revenues of regulated for-hire motor carriers exceeded for the second time those received by the class I railroads for hauling freight.

Having passed the Senate, the bill S. 1629 was taken up by the House of Representatives on July 31, 1935. That was a field day in proposing exemptions from economic regulation by the Interstate Commerce Commission which from the character of the debate and the evident limited congressional purpose appeared not too important at the time.

The debate on the exemption of agricultural products, fish, and shellfish clearly showed that the purpose was to assist the farmer or the fisherman in getting his products to market. Proponents of the exemption objected to the House committee language which referred to these products as "unprocessed." The phrase was changed to "not including manufactured products thereof" and that apparently is where the trouble began.

The late John W. Blood, of Kansas, then first vice president of American Trucking Associations, was in town at the time and I recall that sitting in the House gallery he indicated he would have given anything to take the floor and explain the bill. He felt few of the Members as evidenced by the debate knew very much about what they were doing.

Nevertheless after passage by the House, Mr. Blood, Clinton Reynolds, and I met with the Federal coordinator, the Honorable Joseph B. Eastman, and with Senator Wheeler, chairman of the Senate Commerce Committee, and indicated we thought it wise to accept the House amendments.

On August 5 the Senate concurred in the House amendments and the bill went to the White House. John Blood sat in the gallery, his purpose to see final passage. He called ATA late in the afternoon, stating that Senator Dickinson was still speaking at length so he was going to catch his plane for home. He was quite surprised to learn the bill had passed an hour and a half before, evidently when he had stepped out of the gallery to stretch for a couple of minutes.

JOHN L. KEESHIN

John L. Keeshin, of Chicago, has been a major figure on the motor-carrier scene for many years. He was one of the first to envision the potential of long-haul truck service, and he was engaging in "piggyback" operations before most businessmen had realized the value of motor transportation. In the early 1930's he was instrumental in organizing the young motor carrier industry.

I consider it a great honor to submit my recollections about the passage of the Motor Carrier Act, 1935, and what it has accomplished.

Frankly, the struggles and adversities encountered during the early 1930's to direct the trucking industry to its highest plane of public service, constituted, to borrow an old aphorism, "blood, sweat, and tears." Fortunately for me, youth was in my favor together with energy and a hardhitting spirit. I believe one of the many problems which gave me the impetus to get out and fight for Federal regulation of the trucking industry came about in the early 1930's when the Rock Island Railroad agreed to join with me in inaugurating the transportation of Keeshin trailers on their railroad flat cars between Chicago and the Tri-Cities. I thought this would be a true picture of truck-rail coordination demonstrating a very successful operation. At that time we referred to the operation as "trailer on flatcar"—today called "piggyback". Unfortunately, this practice was ordered to cease due to railroads' and forwarders' rate complaints and it was not to again commence until more than 20 years had passed.

I had commenced my activities with a wagon and two splendid horses operating between Chicago and nearby Illinois points. Through hard work, and by that I mean commencing at 4 in the morning and working long hours, we began to prosper and enlarge our fleet. I later implemented our fleet with the use of trailers by putting several of them into a specialized service confined entirely to refrigerated units. It was then that I first commenced to observe that there was utter lack of cooperation and coordination, not only within the trucking groups, but in other modes of transportation as well.

During all of the years prior to Federal regulation, we were constantly confronted with "chiselers," shippers of questionable honor and gypsy operators who floated hither and yon hauling for whatever the traffic would bear.

At my own expense I packed my bag and rode to Washington for a talk and advice from my old friend, Mr. Joseph B. Eastman, who was Chairman of the Interstate Commerce Commission and who had also been appointed Federal Coordinator of Transportation.

Commissioner Eastman, for whom I had the greatest respect and admiration, extended to me much more of his valued time than I had hoped for, and he listened with deep patience and understanding to

my reports concerning the chaotic condition prevailing throughout the country and confronting the truckers. It was immediately apparent to me that the Coordinator of Transportation already was in possession of considerable information, and he immediately agreed with me that Federal regulation was necessary to cure the many ailments I had described, such as the broker operators who, without any investment of their own, would place advertisements in newspapers to attract men to purchase trucks and would guarantee them earnings of $200 to $400 per week for the loads transported, which the broker would solicit and get for the driver who bought the truck. I mentioned the "gypsy" who would haul anywhere for whatever he thought the shipper could pay, regardless of operating costs. I discussed certain auto manufacturers and oil distributors together with others who were opposing any move I made to bring about groups in favor of regulation, including the freight forwarders and certain high railroad officials.

Upon conclusion of our meeting, it was decided that I should endeavor to form a national organization consisting of truck operators who were sincere and were imbued with the same feeling that, if the trucking industry expected to grow nationally, it would be through unity and tight cooperation. It was apparent to me that the competitive strife between motor carriers and railroads was intense and bitter; its continuation would be the undoing of both. I went directly to the Transportation Building in Washington and rented sufficient space for our use as headquarters. My next move was to plan and arrange to gather together the types of truckowners and other interested parties I had faith in and believed would join with me in a bold and lively battle for regulation under the Interstate Commerce Commission.

I was most fortunate in obtaining the services of one of America's outstanding transportation lawyers, Mr. Charles Cotterill. He had had previous experience with the Interstate Commerce Commission's legal division. Attorney Cotterill, after listening to my plans, went to work with me preparing and executing forms to obtain a charter for the American Highway Freight Association, presently known as the American Trucking Associations, Inc.

I then called a meeting of the vanguard to support and fight with me for Federal regulation. I would indeed be remiss in reporting my recollections if I failed to mention the following outstanding individuals who rallied to the cause and worked side by side until our objective was attained:

Mr. William E. Humphries, Jacobs Transfer, Washington, D.C.
Mr. Al Burgmeier, Chicago DuBuque Express.
Mr. Maurice Tucker, president, Tucker Freight Lines, South Bend, Ind.
Mr. Joe Preston, administrative assistant to the late and lamented Congressman Jim McAndrew of Chicago.
Mr. George Whitehead, president, Arrow Carrier Corp., Paterson, N.J.
Mr. Harry Siedenberg, president, Pyramid Freight Lines, Philadelphia, Pa.
Mr. Calway Sims, Sims Motor Line, Columbia, S.C.
Mr. Bob Barnwell, president, Barnwell Bros., North Carolina.

Mr. Everett Arbour, president, Arbour Motor Lines, Massachusetts.
Mr. Alvin Watson, Burlington Truck Lines, Kewanee, Ill.
Mr. John Binghaman, president, Binghaman Motors, Scranton, Pa.
Mr. Tony Nelson, president, Red Star Trucking Co., Chicago, Ill.
Mr. Barney Cushman, Cushman Delivery, Inc., Chicago, Ill.
Mr. Joseph Hays, then general counsel for the Iowa & Nebraska Truck Lines.
Mr. Morris Forgash, Universal Carloading Co., New York.
Mr. R. V. Fletcher, general counsel, Illinois Central Railroad, Chicago, Ill.
Mr. Joe Wright, assistant counsel, Illinois Central Railroad, Chicago, Ill.
Mr. Carl Ozee, president, Hayes Freight Lines, Mattoon, Ill.
Mr. Leland James, president, Consolidated Motor Lines, California.
Mr. Mel Hall, president, Hall Freight Lines, Illinois.
Mr. Larry Stone, president, White Line Storage, Des Moines, Iowa.
Mr. Bill Wilson, president, Wilson Forwarding Co., Sioux Falls, S. Dak.
Mr. Frank Kramer, president, Kramer Bros., Detroit, Mich.
Mr. Martin Kennelly, president, Kennelly Storage & Transfer, Chicago, Ill.

Inasmuch as I am indulging in recollections, I sincerely trust that I have not omitted anyone deserving of recognition, because the fight was hard and costly and every man gave his utmost to combat the opposition and all sustained me through the years.

Having received our charter as the American Highway Freight Association, and having been elected its president, I traveled throughout the United States preaching the gospel of truck regulation, pointing out the existing evils. I don't mind saying I took considerable abuse as I traveled the byways and highways for support.

On October 6, 1934, I submitted a report to President Franklin Roosevelt concerning our progress and what my personal viewpoints were. He had requested that I keep him advised as had Coordinator Eastman, with whom I never failed to consult and to whom I shall remain indebted for his wise counsel and guidance.

On May 12, 1934, I was invited to speak before the Associated Traffic Clubs of America in Birmingham, Ala., together with my good and kindly friend, Judge R. V. Fletcher, then general counsel, Association of Railway Executives, Washington, D.C.; Mr. John McAuliffe, president, the American Steamship Owners Association; and Mr. Emory R. Johnson, professor of transportation and commerce, University of Pennsylvania. The theme of the convention was "Transportation Legislation." My speech, entitled "Motor Trucks," of necessity was rather lengthy. I was introduced as a man with broad and sound ideas as to national transportation policies. I was identified as president of Keeshin Motor Express, Chicago, and the president of the National Highway Freight Association. I would like to deviate, if I may, from my speech because I believe it important that I explain the change of name from the American Highway Freight Association to that of the National Highway Freight Association. Due to the need for me to return to my own business in Chicago and more or less complete exhaustion, I was obliged to relinquish the presidency of the American Highway Freight

Association and my good friends who had worked so hard with me, Maurice Tucker, and William E. Humphries of Jacobs Transfer, Washington, D.C., who had been our treasurer since the inception of American Highway Freight Association finally recommended that Ted V. Rogers of the Rogers Truck Line, Scranton, Pa., be the candidate to carry on as president to replace me. Consequently, with my approval Mr. Rogers became the president of American Highway Association. Later the name was changed to the American Trucking Associations, Inc.

Shortly thereafter information was relayed to me by members of the original group that there was considerable strife and disagreement among Rogers and the members of American Highway Freight Association, and that our original proposals and plans for Federal regulation were not compatible nor in accord. My thoughts involved regulation of motor common carriers, but it became apparent under ATA and Rogers' leadership, that contract carriers and every other mode should be considered. I was again obliged to rush back to Washington, and with the aid and assistance of my good friend, Mr. Joseph Hays, who had been working with the Iowa and Nebraska motor carriers, we formed the new National Highway Freight Association to bring about the legislation we originally set out to seek. I became its president and under the new banner we continued our progress toward proper legislative action.

My talk in Alabama was received amid applause and a vote of thanks for my "fearless and vigorous" presentation of the factual conditions then confronting unregulated carriers in the United States. I reminded the group that President Franklin D. Roosevelt, while campaigning in Salt Lake City, made the statement that if elected President of the United States it was his thought that transportation over the highways competing with rail carriers and others should be put under Federal regulation, and that we, the members of the National Highway Freight Association, were entirely in accord with that historic statement. I concluded by urging this distinguished group to support the President in his statement since Federal regulation would bring about through the Interstate Commerce Commission a free flow of shippers' traffic throughout the entire United States unhampered by the detrimental laws of individual States.

There were, broadly speaking, three forms which Federal regulation might take: Coordinated regulation by a single commission, regulation by a number of separate commissions, and self-regulation by code. Commissioner Eastman was confronted with the decision to recommend that which would be best in the public interest. He recommended the form of regulation by a single commission, and I well recall the many personal discussions we had.

It is indeed hard, after so many years, to submit a cohesive recollection of activities entered into by me and the outstanding group of gentlemen enumerated elsewhere in this report. I recall Senator Burton K. Wheeler, at that time chairman of the Senate Interstate Commerce Committee, making a talk on August 15, 1935, and his remark that the Motor Carrier Act is the first step in the right direction of a complete and coordinated program of legislation inspired me to keep forging ahead.

In these recollections I included Mr. Morris Forgash as a member of our original supporting group for Federal regulation. Since Mr.

Forgash was a freight forwarder and local cartage operator during his growing years in New York, and recalling my remarks made during my Baltimore Traffic Club speech, where I openly laid the responsibility for the evils then existing at the doorstep of some freight forwarders, I feel it incumbent upon me to describe the part Mr. Forgash played in aiding and assisting us to bring about passage of the Motor Carrier Act, 1935. I had known Mr. Forgash for a number of years and was well aware of his astuteness and uncanny ability to analyze situations of the kind then before us. He was a well-recognized transportation personality in the United States even at that early date. He realized that it was only a matter of time until motor carriers were brought under Federal regulation, and likewise until freight forwarders would be recognized as an integral part of transportation and become regulated. At the time of our fight for regulation, forwarding companies were used by the railroads to coordinate a rail-truck movement. The forwarder would obtain and consolidate shipments and place them into carloads aboard trains for the longer journey. In this manner, a complete rail-motor truck service was provided. However, Morris Forgash, with his keen mind, already was thinking ahead of the many opportunities for all participants in transportation. He was planning for the future and aware of the delays and costs resulting from the nonregulation of motor carriers in interstate transportation. Without such regulation the development of "piggyback," which has been so revolutionary in its success, would have been seriously impeded. Mr. Forgash is now a national, or should I say international, figure in our transportation industry. His creation of specialized freight containers for the Department of Defense is well known as is his leadership in ship containers, all of which contributed immensely to the increased revenue of railroads and truck and steamship lines. His innovations in this regard not alone for our Government but for the transportation industry in general have created a system involving all forms of transportation which has been and will continue to be of inestimable value.

Another recollection I would enjoy relating involves my own company and my dream to prove to the railroads and other modes of transportation that long-distance trucking could perform through services as promptly as the rails. On Friday the 13th of December 1935, to prove the value of motor truck service between the Atlantic and Pacific coasts, I ordered the Keeshin Transcontinental Freight to run a caravan of tractor trailers loaded with freight to Los Angeles, Calif. The caravan left Chicago at 6:13 a.m. and arrived in Los Angeles at 8:17 p.m. on December 17, 1935. The run was made in 4 days and 14 hours, and the majority of the freight was delivered that same day. Three days later I had the trailers loaded with fruit and they commenced their return journey to Chicago and then to New York. We proved we could compete safely, and we beat the time of all other modes. Every safety precaution was taken and each State law was observed. As a matter of fact, realizing a boyhood dream was becoming a reality, I drove the first unit out of Chicago, then returned to Chicago and chartered a plane, accompanied by D. W. Russell, then vice president, Fargo Division, Dodge Motors, to follow the caravan just to be satisfied and certain that everything went

according to my plans. This eventually, in due time, led to many such carriers entering this phase of long-distance service via motor truck.

Therefore, through passage of the Motor Carrier Act, I enlarged and branched out throughout the United States. Without this act, it is my firm opinion Uncle Sam would be operating our transportation systems, and free enterprise would have taken a turn for the worse.

CLINTON S. REYNOLDS

Clinton Reynolds was engaged in the motor transportation of both passengers and property before the beginning of Federal regulation. He was one of the founders of the American Trucking Association and was among the first to spread the gospel of industry organization and cooperation in the Pacific Northwest.

It is 30 years since the passage of the Motor Carrier Act of 1935, one of the few really good and permanent results of the late lamented blue eagle, the NRA. It happens that I had something to do with it, in its conception, composition, and passage. My interest arose from my position in the management of both bus and truck companies. These were Tacoma Transit Co., which operated the local system there, North Coast Lines, which I had helped organize in 1925 and which ran from Portland, Oreg., to Vancouver, British Columbia, and Pacific Highway Transport, a common carrier truck service from Portland, Oreg., to the Canadian border with several branches, which I had organized in 1930. These companies were under the regulation of the Washington Public Service Commission and the Oregon Public Service Commissioner, from whom they held certificates of public convenience and necessity. These certificates were not worth much, because neither the commissions nor the courts were able to prevent uncertificated, cut rate, and unregulated competition, especially in the transportation of goods, and because there was no interstate regulation of any kind.

The bus industry was organized through the American Transit Association and the National Association of Motor Bus Operators, but there was no national association of truck operators. In 1931 I heard that Jack Keeshin, owner of the Keeshin Truck Lines of Chicago, was trying to set up a national trucking association and had gotten some operators together for a meeting in Washington. I just walked into that meeting and sat down. Of course, nobody there had ever heard of me and I suppose the same was true of many who were there. At any rate, everybody stared at everybody else as if to say, "What in the world are you doing here?," although, being truck operators, they wouldn't say "the world." Keeshin, who presided, tried to solve this situation by having each introduce himself. Most of the attendants were from the area from Chicago eastward across the northern tier of States and, when I introduced myself, they really did stare. However, we soon became acquainted and I got to like these truckers, rough and ready though many of them were.

The principal speaker at this meeting was Charles E. Cotterill, a New York lawyer specializing in interstate commerce. He emphasized the necessity of regulation, upon which there was general agreement, and that became the prime object of the association which grew out, rather painfully, of the meeting. There were some State associations and it was decided to try to get such associations organized in every

State and to have the national association made up of State associations rather than individuals, which led to the plural name, American Trucking Associations.

All the truck operators of those days had their problems—with equipment, labor, finance, accidents, damages, the existence of different laws among the States, and especially competition, which raged without efficient regulation either of rates or service to such an extent that service suffered. Generally the operators of larger companies tried to do a good job under the regulation of State public service commissions where such commissions had authority over the carriage of goods, but their lot was made difficult by the so-called wildcat operators. Many of these had little or no knowledge of costs and therefore went broke. But as fast as one did, another took his place. These were the days of the great depression and many ambitious men were out of work. It was easy to get into the business with little or no capital because the truck manufacturers and sales agents were willing to sell equipment new or repossessed from bankrupts, with little downpayments. This situation, I fear, compelled some certificated operators to do things not strictly ethical. The result was that everybody was suspicious of everybody else, and justly so. We used to have meetings, when we could get the operators to talk to each other, to try to settle on some schedules of rates. Sometimes at the end of such a meeting, there would be a race for the telephone by operators to determine which would actually be first to break the agreement reached. Nor were the manufacturers, wholesalers, and jobbers guiltless. Shippers, too, were having a tough time making ends meet and did not hesitate to patronize the trucker who offered the lowest rate, even though they knew the trucker could not live on the rate offered. In many cases these truck rates made the difference between a profit and a loss. And an awfully good way to get rid of defective goods was to ship by an inexperienced and unwary trucker and then claim damage in transit created the defect.

The difficulties described above did not apply as heavily to the bus business. That business is not so readily subject to wildcat competition, it requires much larger amounts of capital to start, and it deals with the mass of people. Its competition in the early thirties was only the railroads and the fast growing automobile. Nevertheless, the bus industry, through its national organization, already well established, was desirous of national regulation.

American Trucking Associations at that first meeting divided the country up among such individuals as were there and willing to work, the task being to contact State associations in the assigned territory where there were any and the more important operators in the States where there were none. I took the west coast plus Montana, Utah, and Idaho. There was the beginning of an association in Oregon, where Leland James was getting Consolidated Freight Lines underway. James was most cooperative, as were others. There was a well-established association in California, whose secretary was Roy Thompson, of San Francisco. Other officers were Jack Spaenhower, Mel Savage, and Ben Morris. I contacted Thompson and was invited to a meeting of their board of directors. This group had been having trouble with the Southern Pacific Railway, which was already heavily engaged in the trucking business as an adjunct

to rail operations. They were suspicious of railroads in general and the Southern Pacific in particular and some among them had an idea that I had railroad connections. Therefore, I didn't get very far at first, perhaps because I made a mistake.

At the same time as this I was trying to organize a company to be owned by the transit systems on the coast to handle advertising in and on the streetcars, the Barron Collier organization, which had done this on a national scale, having gotten into financial difficulties. I wanted to see an official of the Southern Pacific, which was operating streetcars in southern California, about this project. The mistake I made was in going directly from the board meeting of truck people to the office of the Southern Pacific official. I think somebody followed me. At any rate, it took a long time to live down the railroad taint.

We did get representation in Idaho, Montana, and Utah.

Meanwhile, Keeshin, Ted Rogers, and others had been working in other parts of the country and we had been corresponding. When the next meeting was called, there was a pretty good attendance from many sections. California was represented, after all. By then the manufacturers had become interested and Pike Johnson and John Lawrence, both of importance in organizations supported by the manufacturers, largely General Motors and Fruehauf, were there. Many of the truckers looked upon the manufacturers as suspiciously as they did the railroads. On the other hand, many owed the manufacturers money. The result was a split, not as to the objective, regulation, but as to personnel. Some followed Keeshin, Rogers, and myself, and others Johnson and Lawrence. Perhaps the saving grace was that everybody had respect for and confidence in Pike Johnson. The representatives from the Far Northwest (Washington, Oregon, Idaho, Montana, and Utah) became a cohesive unit and as such exercised more influence than their importance would justify. The meeting was devoted to the details of organization—drawing a constitution and bylaws, election of a board of directors and officers, and a statement of principles and objectives.

Finally, matters were pretty well resolved by the election of Ted Rogers as president and John Lawrence as secretary. As I recall it, I was a vice president. Ted Rogers was president for 25 years. Rogers was a dynamic speaker, a forceful person, a great organizer, and a man of unimpeachable integrity. He earned and deserved the respect and trust of the trucking industry and, in deed, of all elements of transportation. John Lawrence, likewise, has wisely and efficiently served the industry from 1932 until now. To the leadership of these two men must go more than anyone else much of the credit for the conception of the Motor Carrier Act.

American Trucking Associations proceeded to carry out the purposes set forth in its original statements: the upgrading of management, equipment standards of policy and conduct, support of State regulation, and promotion of interstate regulation. At first the going was difficult. The association depended upon local State associations for financial support. They, in turn, depended upon local members for dues. And everybody was still having a tough time in the depression. Also, it was difficult to get Congress to listen, especially with the obstruction of the railroads and the seeming lack of enthusiasm on the part of the Interstate Commerce Commission.

As to the last, the industry was divided. Many felt that since the Interstate Commerce Commission was charged with railroad regulation, which it had been carrying on for so many years, to put themselves under the ICC would be equivalent to sticking their heads into the lion's mouth. Charley Cotterill and I had a lot more confidence than that in the ICC, perhaps because we knew more about that body than most of the truckers did. Furthermore, I felt strongly about the proliferation of commissions. The argument about whether to promote ICC regulation or regulation under a new motor carrier commission continued for some time.

And then came the National Recovery Administration, the NRA, the blue eagle. The theory of this act sounded good. Since one of the troubles in the great depression was cutthroat competition and questionable business practices brought about by desperation, the thing to do was to have each industry adopt a code of morals if you will. The code, when approved by an administration appointed by the President and agreed to by the majority of the members of each industry, would be enforced upon all the members by the Government. This would be a sort of a self-imposed regulation in every industry in the country. The theory up to that time had been that regulation of the kind proposed should be applied only to public utilities—i.e., necessary public services which are most efficiently and cheaply operated as monopolies or quasi-monopolies—and that such public utilities in exchange for such monopolies would submit to regulation of rates and services by a public body. Many truckers felt that, while the results of the act would be in restraint of free competition and, therefore, un-American, nevertheless here was an opportunity to get regulation self-imposed and Government enforced.

The association immediately got busy. Committees were appointed, attorneys employed—notably Ed Brashears of Washington—and a great deal of activity began. The interest of many members of the industry who had not up to that time been active was attracted. A code was drawn upon which the majority of the truckers could agree; at least it was unanimously approved by the large and generally representative board. This code was pretty close to the rules and regulations we thought should be promulgated by the ICC or an independent motor carrier commission.

The members of the ATA board of directors undertook the job of explaining the NRA and the code to the industry. Since that board was drawn from all sections of the country, this was logical and in the long run helpful. Series of meetings were held. These included truckers who were not association members but rather "wildcatters" operating only single trucks or very small fleets. Many of these did not like the situation because the code contained prohibitions against their practices. I remember explaining the thing to an audience of a hundred or so in Tacoma and thought I had made it clear when a big and mean-looking individual got up and said, "I have decided not to join," and he walked out, followed by a few others.

Under the NRA each industry had a code authority which had authority to interpret and enforce the code. I served on the trucking code authority and also the taxicab authority, although the latter never amounted to much. The trucking people were kept busy and the experience gained was of value after the Motor Carrier Act was passed. We thought we were getting on pretty well.

And then came the Supreme Court's decision in the "sick chicken" case, declaring the whole NRA unconstitutional. That left only one course of action, interstate regulation under congressional action.

The trucking code authority did not disband as did the authorities for most industries, but instead became a legislative committee actively seeking regulation. Within the industry opposition to regulation was far less than before the NRA, but the argument as to whether to try for regulation under the ICC or under a new commission still continued. Many were afraid of the ICC and none had talked about the matter to any of the Commissioners. At a legislative committee meeting I suggested that we go and see the ICC informally, a suggestion which resulted in Ed Brashears and myself being appointed to do that. The same day we met with two of the ICC members. We found that they were not orges but instead thorough gentlemen, of necessity interested in our problem. I judged that the Commissioners had been discussing the same matters we had and that there was a question in their minds, too, about whether regulation of such bitter competitors as the railroads and the truckers under the same commission would work. We told them that we thought it would work better than under two commissions and explained why.

This first talk was followed by several others in which the whole Commission and several leading truckers participated. Finally we all agreed to forget a motor regulatory commission and to put ourselves into the hands of the ICC who in turn agreed to help us write the act, to support us in getting it passed, and to do their best with their new job if they got it, although they realized that it was not going to be easy.

It was in these meetings that I met the late Joseph B. Eastman, the ICC Chairman and Federal Coordinator of Transportation at the time, and the person most responsible, in my opinion, for the Motor Carrier Act of 1935. Mr. Eastman was a great man. No one knew more about transportation regulation than he and everybody had complete confidence in his integrity. Beyond that I found him kindly, understanding, and tolerant. He even came to understand quite thoroughly the truckers, no mean feat in those days.

Under the agreement with the ICC, an act was drawn, a process in which the NRA Code was most helpful. As I recall it, the ICC staff man who did the most work on it was John Rogers, who became head of the Motor Vehicle Division of the ICC. Of course, the bus people were brought in and they were helpful.

The bill was introduced, and then began the lobbying. Actually, lobbying for interstate regulation of buses and trucks was enjoyable. In the first place, we believed in what we were trying to sell; in the second place, our case was well prepared, especially in the light of our self-inflicted regulation under the code; in the third place, most men in Congress had had experience with State regulation; and lastly, Senators and Representatives seemed to have time and patience to listen courteously, not always the case with State legislators in sessions limited by law as to time.

I have forgotten how many I saw, but I do remember the only one I could not sell, James Wadsworth, at that time a Representative from Texas. He had been a Senator from New York. I became very fond of Jimmy, but he really believed that regulation of the trucking industry was un-American because it would restrict competition.

He thought that what we called "wildcatting" was desirable. And he maintained that trucking was not such an essential public service as the ordinary public utility. Fortunately, from the standpoint of the Motor Carrier Act, not many agreed. When the bill came up for debate, Mr. Wadsworth made a motion to postpone or table. When that was put to a rising vote, he was seated in the front row. He was the only one who rose. There was some laughter and he turned, looked, and joined heartily in the laughter. This was followed quickly by passage of the Motor Carrier Act of 1935.

The ICC had known for some time that passage was probable and had been preparing to go to work. Under John Rogers, the Motor Carrier Division was established and began to function. Rules and regulations were prepared, work was begun on a standard accounting system, and divisional offices established. Mr. Eastman thought that I had ambitions toward a job and offered me an important one, but I had far too heavy obligations toward stockholders and others who had financed enterprises in which I was interested. I was able to recommend some who became employees of the Division. I remember especially Frank Landsburgh, divisional director in the Portland office for many years, who had been secretary of the Washington State Association. And Frank Pierce, divisional director in the Chicago office, who had been a public utilities commissioner in Washington State.

At first, the machinery squeaked. We all knew it would. The standard accounting system was too complicated, especially for the small operator. The permit system took a long time to install. Some of the rules and regulations, especially those taken from the railroad book, just wouldn't work for buses and trucks. Some special situations, such as heavy log hauling in the West, or explosives in the East, were not handled as well as they could have been. For a long time it was difficult to distinguish between public carriers, private carriers, and contract carriers. But these things have been handled by the ICC as they arose and have been ironed out. As Joe Eastman said to us, "You may think that the ICC is old, hidebound, and railroad oriented. Maybe it is, but not to the extent that it cannot undertake a new job. The Commission will be impartial, tolerant to a degree, and anxious to serve the industries and the public. We will make mistakes. If you will point them out, they will be corrected. We will have poor judgment at times. You can take us to court. We may be deceived. If so, it is your fault. But we will never quit trying to serve you and the public to the best of our human capacity." Joe was always right.

The Motor Carrier Act has, in my opinion, been highly successful from the standpoint of the whole transportation system of this country. It enabled the regulatory bodies and the industries themselves to bring order out of chaos, it has made possible heavy investments in equipment, which in turn has encouraged manufacturers to do research and improve equipment, it has made it possible to distribute goods (and people) more efficiently than ever, and it has made transportation costs lower than they otherwise would be. All these results have contributed toward large and reasonably profitable motor carrier operations; but more importantly, it has given the consumer, the public, far better service at reasonable charges than could have been furnished in any other way.

DON B. SMITH

Don B. Smith, of Detroit, is vice president of Kramer-Consolidated Freight Lines, Inc., a motor carrier of general freight with extensive operations in the Midwestern and Middle Atlantic States.

When I think about the chaotic condition of the highway transport industry during the 10 years prior to the passage of the act in 1935 it is almost unbelievable the lack of responsibility that existed at that time.

Of all the men coming out of service after the end of World War I, I doubt that there was a group of rugged individualists larger than those that started operating motor trucks for hire over the highways between our towns and cities. With meager capital and little experience in the many responsibilities and liabilities of a common carrier industry it is really surprising that they were able to carry on in many cases to a very successful future.

There were no laws or uniformity regarding the financial responsibility of the carriers to the shippers with reference to claims for loss and damage or any other type of unity covering terms of freight bills and other paperwork in the business.

Shippers never knew from day to day what transportation costs were being paid by their competitors in the same markets because rates were only under the hats of the truck operators and frequently fluctuated overnight in sizable amounts.

Federal regulations were most distasteful in the minds of most early operators but they soon learned that the existence of their very jobs depended on more stability in the industry. In Michigan in the late 1920's the Common Motor Carrier Act had been passed by the legislature which was helping solve many of the intrastate problems. It was therefore possible to get together a group of operators who went to Washington frequently over a period of years and met with other operators from all parts of the country and with their Senators and Representatives to find a solution for their problems.

While the Motor Carrier Act of 1935 was far from perfect, the very fact that it has accomplished in a large measure the desires of its sponsors is a high tribute to the quality of the legislators who drafted this piece of legislation.

I think that the Interstate Commerce Commission has done a terrific job with a most intricate problem. At the inception of the act safety was not a prime consideration and in fact was very little discussed in the many meetings. However, under the guidance of the safety rules and regulations of the Interstate Commerce Commission great strides have been made over the years in the selection and training and the quality of the truckdrivers which has been a most important result of the act which was barely thought of in the beginning.

WALTER R. McFARLAND

Walter R. McFarland is able to look back upon the Motor Carrier Act from the viewpoint of one who was a railroad lawyer for over 35 years. After 10 years' service with the Interstate Commerce Commission he joined the Burlington Lines as an attorney in 1922, retiring in 1958.

Before the Motor Carrier Act was passed in 1935, an association of motor carrier associations known as American Trucking Associations became the dominant influence in the trucking industry. It was a strong, militant and ably staffed association, organized to administer and apply a "code" for motor carriers under the ill-fated National Recovery Act. It is my understanding that, although ATA ultimately supported the enactment of the Motor Carrier Act, it struggled up to the end to have the trucking industry self-regulated by ATA under a "code." At the hearings on the principal bills to provide for motor carrier regulation in January and February 1934, before the House Committee on Interstate and Foreign Commerce, Hon. Sam Rayburn (chairman) presiding, the principal representatives of ATA were its attorney, Harold S. Shertz, and a member of the Pennsylvania Motor Truck Association, Judson C. Welliver. Mr. Shertz indicated repeatedly his thought that the ICC was not equipped to regulate the trucking industry, and that it should be self-regulated under a "code."

The Commission made great efforts to carry out its duties under the Motor Carrier Act in what it conceived to be the will of Congress. It assigned some of its members to a "division" created to deal with motor carrier matters. Mr. John L. Rogers (appointed a Commissioner about 2 years later) was made the head of a new Bureau of Motor Carriers. He worked literally day and night at the outset to organize his Bureau, and, I think, did a remarkable job in this regard. On the most vital issue, that is, whether or not motor carriers could be regulated, the Commission showed that they can be. This does not mean, of course, that I agree with everything that the Commission has done or is doing; but obviously this is not the time or the place to discuss particular decisions or policies.

Superficially, it would seem that the railroads were very shortsighted in not entering the trucking business in a substantial way in the early days, when they were being urged to do so, and when it could have been in season to acquire "grandfather rights" and thus be free from the crippling conditions which customarily have been attached to certificates issued to railroad-controlled highway carriers. What the effect would have been is speculative. I think that undoubtedly any substantial participation by the railroads would have brought about Federal regulation before 1935, and probably a more orderly development would have occurred. Whether, as some think, the railroads would have tried to use truck subsidiaries or affiliates to choke off truck transportation might have depended upon individual railroads, but it would have been too much like strangling one's own children, and, in any event, the demand for truck service was so great and the ease of entry into the business without any capital so tempting, that

I do not believe it could have been done. However, circumstances conspired against large-scale entry by railroads into the trucking field in the early days. At the outset, the trucks were small and inefficient and most highways simply atrocious. Most persons (including me) regarded trucks as simply substitutes for the familiar horse-drawn wagon.

During the period 1925–30 I think a good many railroad officers became convinced, as I was, that certain traffic, where speed and convenience were highly important, would move by truck, the only question being whose trucks would handle it; and would have liked to see the railroads enter the field in an extensive way. If we had been directly responsible for seeing that funds were available to meet the payrolls, pay interest and taxes, maintain the property in safe condition, and provide the service to fulfill the railroads' statutory obligations, quite likely we would have been as cautious as were those who were immediately responsible for such things and who probably were in better position than we to see that the depression was growing worse and was likely to endure for a long time.

Without entering upon a long discussion of their affairs, it may be pointed out that for the 5 years 1926–30, class I railways' total operating revenue averaged over $6 billion, and fell to a little over $3 billion in the years 1932, 1933, and 1934; that the fixed and contingent charges remained approximately the same in the various years; and that the railroads had deficits in net income in each of the years 1932, 1933, and 1934. The year 1935 was bad, but the railroads as a whole (as distinguished from individual roads) narrowly missed a deficit in net income. This was not a good background for entering the trucking business, particularly as this was a period in which it was especially unruly and wild.

The very factors which prevented the entry of railroads into highway transportation on a large scale tended to promote trucking. The rigidity of laws and requirements governing railroad operation tended to prevent, or reduce, opportunities for cutting or eliminating expenses by closing portions of the plant, as could be done to a substantial extent by other industries. On the other hand, the depression resulted in great unemployment; and many of the unemployed became truckers on a small scale. All that was needed was a down-payment on an old truck. Theirs was a type of competition which, as to price, could not be met by any common carrier with published rates, as they could change their rates by the hour or minute, cutting their quotations just enough to get the business in each separate transaction.

It seems to me that, with reasonably intelligent treatment by Congress and the regulatory authorities, which I believe will be applied to the various problems, there is a very good future for all agencies of transportation. This country is growing rapidly so far as its economy is concerned. This growth is not confined to an increase in population, but a progressively better education population, with access to numerous newspapers, magazines, radio and television, and increased opportunity for traveling, seeing different parts of our country, and otherwise having an opportunity to see how others live, exchange views, etc., means an intensified desire for many of the new products and devices which are being produced in volume and must have a widespread market. A good deal of this will require increased transportation of various kinds.

ARTHUR M. HILL

Mr. Hill recently retired as president of the National Association of Motor Bus Owners, an organization of intercity bus companies which he helped to form in 1926 and which he still serves as chairman of the board. Having organized Atlantic Greyhound Lines, he was one of the founders of the Greyhound bus system, of which he was a director for many years. He served as special assistant to the Secretary of the Navy during World War II, as Chairman of the National Security Resources Board, and on the National Security Council.

Passage of the Motor Carrier Act of 1935 represented a truly significant turning point in the nearly half century spanned to date by the development of the intercity-bus industry. Recognition of this now historical fact at the outset by the young and rapidly developing industry may be found in the following paragraph, which opened my report to the Ninth Annual Meeting of the National Association of Motor Bus Owners, held in New Orleans in October of 1935.

> I feel very conscious in addressing this meeting that our industry has passed its most significant milestone since this association was organized in 1926. We are today standing upon the threshold of an important new era in the history of the motorbus industry—the era of Federal regulation.

The intercity-bus industry felt the need for Federal regulation long before 1935. In 1925, interstate motor carriers were freed from a large proportion of State regulation, a development which not only provided broad avenues for industry growth and integration on a national scale, but also opened the way for cutthroat, often irresponsible competition, frequently making it difficult or impossible for responsible operators to provide reliable service. This problem, as viewed at the time by the industry, was described as follows in my 1935 annual report.

> As we look back today, we can realize that the present size and character of the motorbus industry is largely due to the *Buck* and *Bush* decisions in 1925, which placed interstate operations beyond regulation except for the ordinary police powers of the various States. The resulting rapid development of long-distance buslines, the coordination of service between interstate lines and local lines, and the final welding together of systems would have been impossible had it not been for those Supreme Court decisions. That growth and development of course was not without the growing pains incident to any pioneering enterprise, and it naturally resulted in bitter experiences for many individuals who tried their hand at the game and fell by the wayside. It brought many speculators into the field, and after 2 years of depression in 1933, this industry was, for its own good, a willing subject for some type of regulation.

Many persons familiar with bus operations had concluded at an early stage that Federal regulation of motor-carrier passenger operations represented a relatively simple task, at least as compared with the more complex problem of truck regulation. The truth of this conclusion was felt by many in the industry as effectively demonstrated by the generally very satisfactory results obtained under the Code of Fair Competition which was provided for the motorbus industry during the period of the National Recovery Act. The code, during its period of effectiveness in 1934 and early 1935, provided for the registration of routes, filing of tariffs, and the maintenance of certain trade practices; it was drafted and administered by a code authority, composed of members of the industry, whose findings were almost universally accepted and respected in the industry.

As a result of the widely recognized necessity for Federal regulation of interstate bus operations and the probable comparative simplicity of such regulation, it is not surprising that the industry, through its association, was an extremely active proponent of such legislation during most of the years following the organization of the association in 1926. Some of the work and energy of the many people in the industry devoted to this objective also were reflected in my remarks to the 1935 annual meeting.

> In looking back over the past 9 years of effort on our part to secure regulation, the hundreds of meetings, conferences, appearances in Washington before Congress and other bodies, it is hard to realize that what we sought so long has finally become an accomplished fact.

At the same time, many were of the opinion that it would have been highly desirable to regulate motor-carrier passenger operations separately and apart from trucks. This view had its basis in the profoundly different objectives and operating characteristics of the two industries and the wide differences in the complexity involved in their regulation. Such factors were reflected in the fact that a substantial proportion of the proposed legislation in this field introduced in the Congress during the years prior to 1935 would have provided for regulation of bus operations without touching the trucking industry. This reservation, however, was not permitted to cloud industry emphasis on the desirability of prompt enactment of a reasonable law, whether or not it provided separately for regulation of passenger carriers.

The stability of the bus industry today and its steadily improving and expanding service represent substantial evidence of the success of the Motor Carrier Act as administered by the Interstate Commerce Commission during the three decades the act has now been on the books. Capable, forward-looking management, freed of the elements of extreme instability often so prevalent prior to 1935, has developed an industry which has satisfactorily weathered trying conditions, has given an excellent account of itself during periods of emergency as well as in normal times, and is continually seeking ways and means for providing better and safer service at the most economical cost to the public. During World War II and again in the Korean situation and other emergencies, the carriers provided greatly expanded volumes of service, both in regular operations to take care of expanding travel requirements in most parts of the country and to fulfill specific requirements for movements of large groups, such as infantry divisions, often

on extremely short notice. During most of a decade or more following World War II, the industry was faced with the problem of adjusting operations to an almost steadily declining volume of travel as the greatly expanded wartime travel ended and the private automobile gradually came back into its own.

With the most painful of such adjustments out of the way, travel volume has been increasing, most particularly in long-haul express-type service on reduced time schedules. Using the new and improved highways wherever possible, such service is operated with through buses so as not to require passengers to change from one bus to another enroute. This commonly necessitates so-called pooled bus service in which individual schedules are operated over certificated routes of two or more carriers, each of which furnishes vehicles for the pool in proportion to its route miles involved on that schedule. Needless to say, cooperation from, and with, the Commission was a necessary element in setting up this type of service.

Commission actions and procedures relative to fare setting are illustrative of a general recognition of special problems, often unique to bus operations. In its *Investigation of Bus Fares* (52 M.C.C. 332), decided December 11, 1950, the Commission approved the industry fare structure, which provides fares based on costs, varying from carrier to carrier and generally lower, per passenger mile, for long journeys than on short trips. In this proceeding, the Commission also recognized the inadequacy of the traditional return-on-investment criterion for fare setting, under which a proposed level of fares is denied if it may be expected to provide net revenue or income greater than a specified percent of investment. Investment required for the typical bus operation is extremely low relative to revenues, with the result that reliance on return on investment may well result in an actual loss instead of a predicted net return. In recognition of this shortcoming, use of the operating ratio (i.e., the ratio between expenses and revenues) has been approved by the Commission for fare setting in the bus industry and is similarly winning increasing approval in the States.

Qualms were voiced in some quarters at the time of the passage of the Motor Carrier Act. These arose from fears that the Commission might be "railroad minded" and that its procedures might become unduly cumbersome. Subsequent events, a few of which I have already noted, have proved these fears generally unfounded. Both the Commission and the National Association of Motor Bus Owners have taken every opportunity to provide for full review by all segments of the industry of any major problems arising in connection with regulation, and effective working relationships have been established between the Commission and the association to provide for a two-way flow of consultation and information. It is not surprising that problems remain; indeed, it would be miraculous if they did not. For instance, and along the lines of the early suggestions for separate regulation of trucks and buses, it has been recommended repeatedly that safety regulations be provided separately for the two types of highway transport. To date, this has not been accomplished except to the extent that the association edits and publishes a special extract version of the Commission's "Motor Carrier Safety Regulations" from which are deleted all provisions applicable exclusively to trucks.

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