103

S. Hrg. 103–884

OVERSIGHT OF THE INTERSTATE COMMERCE COMMISSION

Y 4. C 73/7: S. HRG. 103-884

Oversight of the Interstate Commerc...

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JULY 12, 1994

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

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OVERSIGHT OF THE INTERSTATE COMMERCE COMMISSION

TUESDAY, JULY 12, 1994

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR–253 of the Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Clyde J. Hart, Jr., senior counsel, and William Clyburn, Jr., staff counsel; and Gerri Lynn Hall, minority professional staff member.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. The committee please will come to order.

I am pleased to welcome several distinguished panels and witnesses to the Senate Surface Transportation Subcommittee. Today, the committee will exercise its oversight responsibilities with regard to the Interstate Commerce Commission, to consider the Trucking Regulatory Reform Act, which Senator Packwood and I introduced prior to the July 4 recess, and to review the recent vote by the U.S. Senate to preempt intrastate economic regulations of most trucking firms.

The American transportation system is the envy of the world. It moves goods swiftly and safety across this vast Nation. In a real sense, our great Nation is the United States of Mobility. The ability to move people, goods, and commodities efficiently help make the United States the superpower that it is.

Since 1887, the Interstate Commerce Commission has played an important role in the smooth operations of the American transportation system. It has protected the consumers and competition from being crushed by brute economic power. It has been a fair forum, where transportation disputes are settled and the rules are made. It has been the agency which assures that the interstate motor carriers have insurance and meet safety fitness requirements before beginning their interstate operations. It assures that mergers and the transportation industry serve the public interest, and that the rights of working men and women in the transportation industry are protected.

For rural America, the ICC has been the independent check against the arbitrary loss of rail service. At a recent proceeding in Omaha, the ICC provided a forum to make concerns known about the availability of train cars. And, in this Congress, both Houses

of Congress entrusted the Commission with new responsibilities. Under the North American Free Trade Agreement, the ICC will assure that the commercial drivers from Mexico and Canada meet minimum requirements for safe operation in the United States.

Most recently, under the Negotiated Rates Act enacted last year, this Congress gave the Commission responsibility for resolving undercharge disputes arising from trucking company bankruptcies and from an earlier era of the ICC where, in spite of the warnings from Congress, rules were not fully enforced. I am sad to say, on a recent hot, humid June day, both Houses of Congress took separate actions which, if taken together, could throw the legal framework of the American surface transportation industry into chaos and repeat the mistakes of the undercharge era.

Less than a month ago, the Senate voted to preempt most intrastate trucking regulation on the assumption and assurance that the Interstate Commerce Commission would maintain Federal responsibility for trucking regulation. On the same day, the House of Representatives voted to eliminate funding for that very same Interstate Commerce Commission, without changing any of the laws which the ICC administers.

While I certainly share the goals of regulatory reform and deficit reduction, the two pieces of legislation which I have just referenced, separately approved in both Houses, if pursued, will produce neither regulatory reform nor deficit reduction.

As the author of the Exon-Grassley budget amendment which reduced several spending areas by $13 billion over 5 years below the 1993 plan, I take a backseat to no one in my desire to reduce Federal spending. Prudence, frugality, and fiscal discipline require that Congress make hard choices and take actions which make sense in the long term.

With all due respect to my friends and guests from the House of Representatives, I submit that there is a better way to achieve the goals of efficiency in transportation and Government than the course which has been chosen.

After close consultation with the bipartisan membership of the Interstate Commerce Commission, Senator Packwood and I introduced the Trucking Regulatory Reform Act. This legislation seeks fundamental reform in the functions of the Interstate Commerce Commission, streamlines regulations of the trucking industry, and initiates an orderly process for lasting savings and efficiency while preserving the fair and independent forum of the Interstate Commerce Commission.

It is an approach which will produce real, lasting, and significant budget savings. It is also an approach which will allow Congress to continue to consider interstate regulatory reform in a context which makes sense. There are five basic elements in the Exon-Packwood bill:

One, individual trucking companies would no longer be required to file rates with the ICC;

Two, entry review would be streamlined and limited to insurance and safety matters;

Three, the ICC would be given exemption authority over trucking matters;

Four, the Secretary of Transportation would investigate the feasibility of efficiency of merging the ICC with the Federal Maritime Commission—I like to refer this as a surf and turf option, if you will; and [Laughter.]

Five, the Secretary of Transportation and the ICC would be required to review the operations of the Commission for further efficiency. The legislation is offered in the spirit of bipartisan compromise with the intention of engaging the Congress in a discussion of transportation policy, rather than politics. It carefully builds on the good works of this committee, Congress, and what we did in enacting the Negotiated Rate Act.

The Interstate Commerce Commission is now in capable hands. The critics of the Commission should remember that, due in part to the postelection recess appointment, the President only claimed his majority on the Commission last month. We now have four committed, energetic, hardworking commissioners and their Republican commissioner-designate, who we all believe will be a five-member and carry on the mission of the ICC.

This bipartisan team is anxious to get about the work of assuring that safe, affordable, and fair transportation services are available to all Americans. I urge my colleagues to take a moment, and to avoid a rush to judgment. Listen to the witnesses. Carefully consider the advantages of the independence of the Interstate Commerce Commission, and fully consider the reform agenda that Senator Packwood and I have put forward together.

Let us fix what is broken, not break what works.

I am delighted now to recognize any of my colleagues for any opening statements they may have. And, without objection, at this point all of the printed statements of the witnesses will be introduced into the record in full in the appropriate place. And, without objection, that is so ordered.

We have a very large agenda this morning. As chairman, I will enforce the 5-minute rule. I ask all witnesses to summarize their statements. I also ask members to carefully observe the time lights so that all witnesses can be heard. Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The Surface Transportation Subcommittee will receive testimony toady on the functions of the Interstate Commerce Commission, the manner and effectiveness in which the ICC handles those functions, and the provisions of S. 2275, the Trucking Industry Regulatory Reform Act of 1994.

This oversight hearing is especially important because the House of Representatives has voted recently to eliminate the ICC's funding for the next fiscal year. But that same vote left the ICC's regulatory functions untouched, without even transferring them to another agency. In my judgment, the ICC still is needed to protect the public interest in transportation. At the least, it appears to me that we shouldn't discuss eliminating the ICC without any study as to which of its functions is necessary to the public, which of its functions, if any, could be transferred to another agency, and whether and when such a transfer should be taken in order to minimize any disruption to the public.

That public includes the small towns and rural areas across the country. The public also includes shippers and consumers unable to afford to protect their rights and left with no recourse without an ICC. That public includes rail carriers anxious to have their cases, mergers, and line sales adjudicated in a fair and expeditious manner. All of these important interests could be jeopardized by rushing the ICC out of existence.

This is not to say that the regulation of the transportation industries cannot be improved. I commend Senator Exon's effort in S. 2275 to remove regulation where it acts as an unnecessary brake on the Nation's transportation system. S. 2275 takes a constructive approach to improving the regulation of the surface transportation industry—doing so without disrupting the industry or leaving significant portions of the public without protection.

I am truly concerned that in the haste to foster "competition," we will act hastily and hurt the public now, cost us more money down the road, and pull down what we have built to date: the No. 1 transportation system in the world. I welcome the witnesses to this hearing and look forward to their views on these issues.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Chairman.

Mrs. Hutchison, any opening statement?

OPENING STATEMENT OF SENATOR HUTCHISON

Senator HUTCHISON. Yes. Thank you, Mr. Chairman. I appreciate your calling this hearing. And I am glad to see there is so much interest.

I want to compliment Congressman Kasich, and welcome Mr. Hefley as well, and say that I think we are trying very hard to do something that is constructive here. And I do think we have got to be more innovative as we look at the needs for agencies that perhaps have changed in their regulatory responsibilities. I realize that there are issues of independence that are very important, and I want to listen to the witnesses today to hear that. But I also think that we have got to be creative and we have got to say, as we would in any business or in our household, when we do not have the revenue to meet our requirements, we have to cut somewhere.

I would like to have the ability to have the responsibilities in the right hands. But I look at the duplication in personnel departments and communications departments that are necessary when you have a separate agency. And I would like for the witnesses to be thinking if you want to keep an ICC function, how do you try to keep from duplicating all of the responsibilities of the administration of an agency, and how do you square that with what we must do in the bigger picture, which is get this deficit down?

I think when we are trying to take responsible steps that those who disagree need to try to help us meet these requirements.

So, I would like to put a cost/benefit analysis in this equation. I am certainly willing to listen to the arguments on both sides. But I think we have got to be serious about reform. I think we have got to do what every business in this country is doing. And that is downsize in a responsible way, and try to eliminate the duplication of efforts.

So, I am certainly glad that we are going to have the good testimony today, and I look forward to hearing from our Congressmen, and then from the members of the ICC, the DOT, and the industry affected.

Thank you.

And thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Hutchison. Senator Packwood.

OPENING STATEMENT OF SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, thank you. I am delighted to join with you in this Exon-Packwood bill. And I will indicate why.

I have been in active elected politics for 30 years now, and I have some axioms that I follow. One, merger for the sake of merger does not result in efficient or reduced expenses. The classic example being the creation 30 or 40 years ago of the Department of Health, Education and Welfare, where we took three different disparate agencies and put them together in one big Department. And it lessened all of them.

We finally took Education out of it. Whether that was wise or not, I am not going to argue. Nothing was gained by the merger.

As a rule of thumb, small is better than big. One of the best agencies in this Government is the United States Trade Representative, who I think has only 160 or 165 employees, and does a significant job.

Next, we ought to be giving an E Award to the ICC, and it should stand for excellence, not execution. Thirty years ago, it had 2,500 employees. Now it has 625. I do not quarrel with the way the ICC does its job. I quarrel with the job we give it to do.

Any one who knows my record knows that I would totally deregulate the trucking industry, other than safety and insurance. I would get rid of the rate bureaus and I would let them have at it. I would totally deregulate the railroads except for modest exceptions. And I would leave with the ICC the functions that are necessary to carry out those objectives.

There is utterly nothing to be gained, and probably a lot to be lost, by not changing the functions to be done, but simply abolishing the ICC and transferring them to the Department of Transportation or elsewhere.

We ought to decide what it is we want the Government to do, not shift the peas around under a shell, from one agency to another, in the hopes that something might better. It will only worsen.

So, I am delighted to join with the chairman in this bill. I think we will pass it. And I would hope that those who say sunset the ICC for the sake of sunset realize that what you might get when the sun comes up the next day is worse than what you had on the previous day.

I thank the Chair.

Senator EXON. Senator Packwood, thank you very much. Senator Burns.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman. Thank you for holding these hearings today.

And I just have a short statement to make and some letters that I want to enter into the record.

[The prepared statement of Senator Burns and the information referred to follow:]

PREPARED STATEMENT OF SENATOR BURNS

Thank you, Mr. Chairman for holding this important hearing. As you know, on June 16th, the House of Representatives agreed to cut off funding for the Interstate Commerce Commission (ICC). However, if our colleagues in the Senate agree with our counterpart's efforts in the House, Montana's farmers and Montana's economy will be hit with one of the most damaging actions by Congress to date.

Historically, the ICC's primary duty has been to provide an impartial process by which surface transportation disputes are reviewed. As a result, the ICC has become a necessary element in ensuring that local communities have a fair opportunity to be heard in these conflicts.

In Montana, this role of the ICC has become uniquely important because 94 percent of the grain movement from the state is handled by a single railroad—a virtual monopoly. As a result, Montana farm producers have the highest freight rates in the nation. Montana is held "captive" to this one shipper and, without an effective ICC, we have no protection from predatory pricing practices.

I have heard from organizations across the United States in opposition to sunsetting the ICC; and, would like to ask that examples of these letters from Montana agricultural groups be submitted for the record. In addition, the railroads have joined these efforts and Montana's primary shipper, Burlington Northern, has voiced its support for continued funding to retain an autonomous ICC.

While the proponents for transferring the duties of the ICC to the Department of Transportation have touted great cost savings, the General Accounting Office (GAO) recently reported that just picking up the existing ICC functions and giving them "as is" to the DOT would produce NO real savings. The GAO reported that reforms in trucking regulation could achieve these same budget-cutting results just more effectively.

As we review the role of the ICC, I ask my colleagues to keep their necessary functions in mind; and, join me in support for continued funding for the Interstate Commerce Commission.

PREPARED STATEMENT OF THE MONTANA WHEAT AND BARLEY COMMITTEE

My name is Terry Whiteside. I am a Transportation and Marketing Consultant with Radermacher, Whiteside and Associates with offices in Billings. I submit this testimony to the U.S. Senate Commerce Committee, Subcommittee on Surface Transportation in its hearing, July 12, 1994 on the funding of the ICC. I submit this testimony today on behalf of our client, the Montana Wheat and Barley Committee.

Our firm has been involved representing the transportation consuming interests in Montana and the Pacific Northwest for over 20 years. We represent and provide transportation counsel to many of the major users of transportation services in Montana.

The House eliminated Interstate Commerce Commission funding as part of the fiscal 1995 transportation appropriations bill.

The Interstate Commerce Commission (ICC) serves a vital and necessary function in regulating surface transportation especially railroad transportation.

The railroads in this country must operate as monopolies or oligopolies in order to have the economies of scale necessary to be profitable. Where there is rail to rail competition, there is minor need for economic regulation, however, there are large parts of the country together with whole industries and markets that are served at the supply or destination end by a single railroad. These consumers need economic regulation to keep the railroad transportation rates reasonable and in-line. If economic regulation is not present in these areas, the railroads will charge whatever higher rates they can in order to make up for where there revenues are reduced due to rail competition.

There is a vast difference between the motor carrier transportation market and the railroad transportation market.

The motor carrier industry is characterized by what is known as a perfect competition market with ease of entry and exit, relatively small capital investment to enter and exit, ubiquitous supply of units (companies) and right-of-way provided by the public. These kinds of industries can survive with a great number of companies

competing in the marketplace and thus do not require intense economic regulation to protect the public interest.

The railroad industry is characterized by what is known as a monopoly or oligopoly. A limited number of units (companies), large capital investment to enter the market, and right-of-way provided by the company. These kinds of industries, e.g. power companies, telephone companies, etc. required limited competition in order to provide a return and profit and thus require some form of economic regulation to protect the public interest.

In short, economic regulation is required to protect the railroad shipping public interest.

Shifting the regulatory powers to the Department of Transportation, moves the regulatory functions from the Legislative Branch to the Executive Branch. Such a move will greatly intensify the politicization of transportation economic regulation and take Congressional control away from Congress.

IS THIS JUST A MONTANA ISSUE—NO

The reality for all states who burn Powder River Basin coal is that loss of the Interstate Commerce Commission will result in higher and perhaps substantially higher rail freight rates on coal to their power plants. When the price of coal at mine-mouth runs $3.00-$6.00 per ton and the price of rail transportation can run $30+ per ton, it is obvious that all constituents/consumers of Montana/Wyoming Powder River Basin coal including consumers throughout the Midwest and Plains states should be even more frightened of the irresponsible House action eliminating the ICC than people of Montana. Reason they have more to lose. *Where does Montana/Wyoming (Powder River Basin) coal get utilized: South Dakota, Nebraska, Oklahoma, Texas, Missouri, Arkansas, Tennessee, Georgia, Florida, Illinois, Wisconsin, Ohio, Louisiana, Oregon, Utah, and Iowa.* All of these states would be faced with radically higher freight rates on coal if economic regulation by the Interstate Commerce Commission is terminated.

MONTANA'S PRIMARY TRANSPORTATION IS A SINGLE RAILROAD

Montana's primary transportation movements are bulk materials requiring movement to domestic and foreign destinations. Therefore, the State's economic survival depends on having access to good affordable rail transportation and attendant facilities so that its shippers can deliver a competitively priced product, which in turn depends on having essential transportation facilities adequately available to consolidate shipments into trainload quantities.

Montana is a base industry state. In the 1800's its chief industries were mining, lumber and agriculture; today and the future, Montana's chief industries will be the same three industries, with perhaps the addition of tourism. Today we have one major railroad, the Burlington Northern operating as a monopoly in the transportation of bulk commodities.

Congress started economic regulation of the railroads with the passage of the Act to Regulate Commerce, approved on February 4, 1887 and formed the Interstate Commerce Commission to oversee economic regulation of railroads. *Its basic purpose was to correct railroad abuses of its monopoly power.* It sought to *prevent unjust and unreasonable rates, to secure equality of rates and practices to all, to require publication of tariffs, and to forbid rebates, preferences, and all other forms of undue discrimination.* That need to protect rail consumers, with the deregulation efforts that occurred in the early 1980's, exists as much today as it did in 1887.

OUTLINE OF INDUSTRY IN MONTANA

The wheat industry in Montana is characterized by an export-dominant rail movement.

The barley industry in Montana is characterized by both an export and domestic market dominated by rail.

The lumber industry in Montana is characterized by both an export and domestic market dominated by rail.

The coal industry in Montana is characterized by domestic rail movement.

MONTANA IS AN EXPORT STATE

The predominance of Montana's economy and its products are basic commodities of bulk which come from the mine, lumber or agriculture. In order for these commodities to have value in the market place, they must be moved great distances. Those markets exist outside of Montana and thus require rail transportation to reach markets of value.

Montana is a landlocked state, with no direct access to water borne transportation. Other than rail, Montana products must travel by motor carrier which for most bulk commodities is prohibitively expensive and not practical for the tonnage involved.

In fact, in 1990, 96 percent of our wheat moved west and over 60 percent of Montana wheat was exported at the coast through Portland (in excess of 64,000,000 bushels) with over 97 percent moving via rail (BN).

In wheat and barley marketing, the farm producer bears the transportation costs of moving the wheat or barley to market.

MONTANA WHEAT RATES HAVE BEEN JUDGED "MARKET DOMINANT"

Montana rail rates on wheat to the PNW, in the McCarty Farms case ICC Docket No. 40169, was judged by the Interstate Commerce Commission to be subject to its market dominance rules and that body found that the Burlington Northern Railroad had market dominance. This is the only all-state rate structure in the Union to be classified as rates that met their market dominance determination.

MONTANA RAIL TRANSPORTATION IS PREDOMINATED BY ONE CARRIER

Montana's rail infrastructure is controlled by the Burlington Northern Railroad. That railroad and its off-shoot, Montana Rail Link, control over 96 percent of all rail miles, over 95 percent of all grain elevator and terminal sites and move 98+ percent of all wheat movements from the state. It should be noted that MRL cannot reach any market for Montana grain without BN participation; thus BN controls rail rates in nearly all movements from Montana eastbound or westbound. The BN charges more from Montana points today (where it has no competition) to Portland than it does from Nebraska points (where it does have competition) to Portland even though the Nebraska points are 25-40 percent greater distance! That is with economic regulatory forces in place! Annually the Montana producers move about 100 million+ bushel production that is handled by rail from Montana.

The importance of the Interstate Commerce Commission to regulate the BN in Montana grain marketing cannot be over-emphasized. Montana grain producers do not have alternatives to shipping via the BN to market their grain. Without regulation, the BN will be free to set rates at the level that will potentially cripple the farm unit in Montana.

MANY ORGANIZATIONS RECOGNIZED THE MANDATORY NEED TO KEEP THE ICC

Many organizations have come out in support of the continued ICC support including: Transportation Trades Department of the AFL-CIO; The National Small Shippers Traffic Conference; Health and Personal Care Distribution Conference; The National Industrial Transportation League; The Regular Common Carrier Conference; American Trucking Associations; American Association of Railroads; The Teamsters Union; American Corn Millers Federation; American Cotton Shippers Association; American Farm Bureau; American Feed Industry Association; Chicago Board Of Trade; Kansas City Board Of Trade; National Association of Wheat Growers; National Cattlemen's Association; National Corn Growers Association; National Council of Farmers Cooperatives; National Farmers Union; National Grain and Feed Association; National Grain Sorghum Producers Association; National Grange; National Oilseed Processors Association; Terminal Elevator Grain Merchants Association; and Women involved in Farm Economics (WIFE).

A NEW ROUND OF RAILROAD MERGERS IS STARTING AND THE ICC IS NEEDED TO REGULATE AND PROTECT THE PUBLIC INTEREST

The announcement last week of the Burlington Northern and the Santa Fe wanting to merge, gives even more need for continuance of the ICC. The ICC is the only agency in the massive federal bureaucracy that has the expertise to evaluate and adjudicate this largest merger in railroad history.

THE POTENTIAL COST TO MONTANA FARM PRODUCERS IN INCREASED TRANSPORTATION COSTS WITHOUT AN ICC IS STAGGERING

The potential cost to Montana farm producers will be more than the cost of the whole operation of the Interstate Commerce Commission ($45 Million/year). Montana farm producers pay over $100 million in rail freight charges each year. It is estimated that if the BN had no economic regulation to keep rates down in Montana, and rates could rise from 25-40 percent higher, reflecting increased transportation costs to Montana farm producers of $25-40 Million per year.

If we look at the potential increased costs associated with a deregulated coal hauling railroad the estimates could be as high as $100-$500 million/year in increased freight costs all passed on to the consumers of electricity. Other national issues that affect Montana farm producers pale in comparison.

Summary—the House has voted to eliminate the Interstate Commerce Commission to save an estimated $45 million/year of federal expenditures. Railroads operate as monopolies and are not like the trucking industry. Such action will potentially cost consumers $500+ million in increased freight charges!

We need your help to correct this most irresponsible action by the House. We need, this nation needs, a viable and vigorous ICC. Please recognize this action by the House was short-sighted and will cost the transportation users and ultimately the consumers far more than the cost savings of doing away with the ICC.

We are all for Congress cutting its spending, but it must be done responsibly. This proposed cut by the House was not responsible.

Thank you for the opportunity to testify before the subcommittee.

LETTER FROM W. NORMAN SULLIVAN, PRESIDENT, MONTANA FARMERS UNION

JUNE 6, 1994.

The Honorable CONRAD BURNS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BURNS: We are advised that an unusual joint committee hearing on the future of the Interstate Commerce Commission will be taking place next week. It appears that the impetus behind this hearing are two forces: 1) those that are philosophically against having an ICC at all because they want to see further deregulation or 2) they are in the business of cutting out and getting rid of all government agencies.

The ICC is the only regulatory body we have to keep a lid on the monopolistic practices of the Burlington Northern which has a monopoly over Montana grain movements. We suffer from the highest freight rates in the nation and without an effective ICC, we have no protection from predatory pricing practices. It would be analogous to doing away with state regulation of gas, utility or telephone companies. The results would be catastrophic. Please be advised that the most important factor to maintaining some semblance of affordable rail transportation rates is the maintenance of an effective, strong pro-regulation Interstate Commerce Commission. Please do not underestimate the importance of your participation in this issue to all Montana farm producers.

Sincerely,

W. NORMAN SULLIVAN,
President.

LETTER FROM JIM CHRISTIANSON, EXECUTIVE VICE PRESIDENT, MONTANA WHEAT AND BARLEY COMMITTEE

JUNE 6, 1994.

The Honorable CONRAD BURNS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BURNS: We are advised that Congress is holding hearings on the future of the Interstate Commerce Commission (ICC) based upon a General Accounting Office report.

We, as representatives of grain producers, want to emphasize the importance of maintaining a strong ICC as a regulatory agency of the Congress. The ICC is the only regulatory force to protect farm producers.

Montana's primary transportation requirements are movement of bulk materials (grain and coal) to domestic and foreign destinations. Therefore, the State's economic survival depends on having access to good, affordable rail transporation and attendant facilities so that its shippers can deliver a competitively priced product, which in turn depends on having essential transportation facilities adequately available to consolidate shipments into trainload quantities.

The Burlington Northern has a virtual monopoly over this bulk movement of goods and controls over 94 percent of the grain movement from the state. Montana farm producers have the highest freight rates in the nation and annually pay a $100 million freight bill to the railroad. There are two factors that provide a constraint

on the price of this movement: 1) the truck/barge movement of grain down the Columbia/Snake River system to Portland (limited impact) and 2) the Interstate Commerce Commission.

During the 1980's there was a concerted movement to deregulate all transportation industries in the U.S. In 1980, Congress passed the Staggers Rail Act which gave the railroads more pricing freedoms to compete with trucks. However, Congress set up safeguards in this new legislation to protect those shippers that were "captive" to "market dominant" rail pricing. Montana is the only state so far that has been found by the ICC to be "captive" and the Burlington Northern Railroad to be a "market dominant" railroad. We need ICC protection to keep rail rates reasonable in this state.

Many people do not understand that all transportation industries are not the same. Railroads are monopolies and, like power and gas companies, require economic regulation for protection of the shipping public from predatory pricing. Trucking companies are more like the airlines and, because of their ease of entry and exit into the business and, therefore, many more competitors within the industry, do not require the same degree of economic regulation that monopolies do.

History teaches us that without economic regulatory oversight of the railroad industry, the railroad has and will abuse its power and public trust.

These are good and sound reasons to continue and foster economic regulation of the railroads by the ICC, especially in those parts of the country where the railroads operate as a virtual monopoly.

Sincerely,

JIM CHRISTIANSON,
Executive Vice President.

LETTER FROM MARY W. NIELSEN, WOMEN INVOLVED IN FARM ECONOMICS TRANSPORTATION COMMITTEE

The Honorable SENATOR BURNS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BURNS: It is my understanding that the Senate Subcommittee on Surface Transportation is considering the proposal to sunset the Interstate Commerce Commission at 10 a.m. Tuesday, July 12.

Recently, the Commission has shown more interest in hearing the problems of agriculture that result from rail car shortages.

That, and the fact that the General Accounting Office study has shown that transferring their regulatory responsibilities to other agencies may not achieve the desired effects, lead us to ask that you please urge Senator Exon and other members of that committee to veto the proposal to eliminate the ICC.

WIFE has long had a policy of support for the agency and have urged Congress to ensure that the ICC adhere to the concepts for which it was originally formed.

We ask that the committee be guided by the statement of the NG&FA and the list of cosponsors, of which WIFE was one, in addition to the GAO report.

Sincerely,

MARY W. NIELSEN
WIFE Transportation Committee.

Senator BURNS. I guess I approach this ICC situation from just a little bit different standpoint than, say, the others on this committee this morning. I happen to believe that just the complete demise of the ICC would be very bad for my State of Montana. Historically, the ICC's primary duty has been to provide an impartial process by which surface transportation disputes are reviewed, and the results are handed down. The ICC has become a necessary element in ensuring that local communities have a fair opportunity to be heard in some of these conflicts.

In Montana, the role of the ICC has become uniquely important because 94 percent of the grain movement from my State is handled by a single railroad—a virtual monopoly. We are a captive shipper. As a result, Montana farm producers have the highest freight rates in the Nation. In fact, if you look at freight rates, you

can ship corn from eastern Nebraska to Portland cheaper than you can ship wheat from Great Falls to Portland, which is almost one-half the distance.

And without an effective ICC, we have no protection from predatory pricing in these kinds of activities. And I have heard from several organizations across the United States in opposition to sunsetting the ICC.

I would like to ask that these examples and letters from Montana agricultural producers, those people who represent the Montana Farmers Union and the Montana Wheat and Barley Committee, that those letters be entered into the record. And also the letter from WIFE, Women Involved in Farm Economics, and all these people who have very active interests in shipping rates, that their letters be included. Because, as most of us are in agriculture producing States, and the chairman is very much aware of this, with the great agricultural production that his State has, that we are exporting States. And we have to have some way to deal with some unique problems when you are a captive shipper.

I think there has been new life breathed into the ICC because of the announced merger of the Burlington Northern and the Santa Fe. I think that will also have an effect on what we do with the ICC in the upcoming months in that respect.

I thank the chairman for this hearing. I am very interested in hearing from the witnesses and what they have to say.

I would like to associate myself with Senator Packwood of Oregon when he says that when we transfer the duties from one department of an independent agency into an already—what I consider—a bloated bureaucracy, I do not think we have saved very much money.

In fact, I think the ICC has been lean and mean, and gotten down to where they can operate, and they do it very effectively. But just transferring those over into a bureaucracy that is allowed to grow does not accomplish, I think, what the purpose of the ICC and the intent of this Congress is.

I thank the chairman and I thank the witnesses for coming this morning. I appreciate it very much.

Thank you.

Senator EXON. Senator Burns, thank you very much.

I would like to ask unanimous consent at this time to include in the record after my opening remarks a letter addressed to me of June 28, from 18 various organizations, some of the same organizations which Senator Burns just referenced. And also, without objection, the letters offered by Senator Burns are made a part of the record.

[The information referred to follows:]

LETTER FROM 18 AGRICULTURAL AND AGRIBUSINESS ORGANIZATIONS

JUNE 28, 1994.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR MR. CHAIRMAN: The undersigned agricultural and agribusiness organizations urge you and your colleagues to reject efforts to eliminate funding for the Interstate Commerce Commission as part of the fiscal 1995 transportation appropriations bill.

The Interstate Commerce Commission serves a necessary function in regulating interstate surface transportation including rail transportation. This Nation's agricultural production and marketing system is heavily dependent on rail transportation to move bulk agricultural commodities, fertilizer and agricultural products to domestic users and export points. While the Staggers Rail Act of 1980 did substantially deregulate certain aspects of rail transportation, Congress also vested the ICC with the responsibility to ensure competitive, efficient, and equitable rail transportation for shippers and communities dependent on rail service. Among the ICC's fundamental duties is ensuring that the statutory common carrier obligations of rail companies to all rail users are met.

It is inappropriate to fundamentally alter the manner of regulating this Nation's rail transportation without a careful study of the impacts. Eliminating funding for the ICC at this time and transferring its functions to the DOT has not been subject to a single congressional hearing in the Senate. Indeed, on June 9—at the only hearing held in the House on this issue—the U.S. General Accounting Office testified that "[t]ransferring * * * [ICC] functions * * * to the Department of Transportation and/or the Department of Justice would likely result in minimal budget savings, since neither agency is currently positioned to handle the ICC's functions."

Notwithstanding the vote of the House of Representatives to eliminate funding for the ICC, no steps have been taken to ensure that shippers' rights would be adequately protected—a fundamental issue which should be addressed prior to moving forward. The DOT is engaged primarily in regulating safety matters and is *not* equipped to handle the economic regulation matters on which the ICC has substantial experience and expertise.

Consequently, we urge you to reject any efforts to delete appropriations for the ICC. Those interested in eliminating the ICC should proceed forward through the authorizing committees where budget saving estimates, competitive concerns, shippers' rights, Government efficiency, and other factors can be fully considered and debated prior to implementing major changes in surface transportation regulation.

Very sincerely,

American Corn Millers Federation, American Cotton Shippers Association, American Farm Bureau Federation, American Feed Industry Association, Association for Branch Line Equality, Chicago Board of Trade, Kansas City Board of Trade, National Association of Wheat Growers, National Cattlemen's Association, National Corn Growers Association, National Council of Farmer Cooperatives, National Farmers Union, National Grain and Feed Association, National Grain Sorghum Producers Association, National Grange, National Oilseed Processors Association, Terminal Elevator Grain Merchants Association, and Women Involved in Farm Economics.

Senator EXON. Senator Danforth.

OPENING STATEMENT OF SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much. I think Senator Packwood has really put the question to us when he asked us to consider not who is doing the work, but what work is being done. And when we think of the ICC, that is a real stumper.

I suppose that the goal of the legislation that has been introduced—and it is a laudable goal—is to figure out even less for the ICC to do than it is doing now. But I would raise the question that, if we are thinking up even less for the ICC to do, why should we keep the ICC around to do whatever is left?

When the role of an agency is trivial, which is the case today, and when that role is reduced to something that is less than trivial, then the question is, well, why have the agency?

So, I applaud the efforts of our colleagues in the House who have zeroed out the funding for the ICC. I cannot figure out what it is that the ICC is supposed to be.

You can think back in the past to the old days, say 50 years ago—longer, 60, 70 years ago—the golden era of the ICC, when the railroad magnates would appear at Union Station in their private railroad cars and enter their chauffeur-driven Pierce Arrows with

their gold-topped walking sticks and go over to the ICC, into that grand hearing room for the hearings. It is a magnificent building. It really is a magnificent building. And maybe that is the justification for continuing the ICC. [Laughter.]

When you think about it, there is a role for history in this country. I had the experience last summer of visiting for the first time Newport, RI. If anybody has not done it, you really should. Because there are these grand mansions from the 19th century, and all the great houses of all the very, very wealthy people of that age. The houses are still there. The families are not in them any more, but what they are is museums. There are little booths out in front where people sell tickets. Then you can go in and you can get a guided tour.

The ICC is right there on the mall. It is right where the tourists come. [Laughter.]

And it would be possible to set up a little booth and to sell tickets. [Laughter.]

People could come in and they could see a monument to government. I mean, the ICC could be viewed as a monument to government—not government at work, but just government. And we could have five commissioners sitting there not doing things. [Laughter.]

We could have staffs giving them pieces of paper—maybe blank pieces of paper. But it would be nice. And it would be something that tourists might enjoy. Tourists can get in here, too, but, as you can see, it is crowded in here, and it might not be comfortable. So, it could be more comfortable in the ICC.

Mr. Chairman, this is a step in eliminating certain duties of an agency. But this agency has become like a bar of soap. It just gets thinner and thinner and thinner. And eventually the time comes when you wonder why not just toss it out.

We talk about reinventing government and inventing government and reforming government and redoing government and setting up commissions—always, of course, more commissions and more agencies—to decide what we should or should not be doing. Cannot we sometime just throw something out? Just throw something out or, if we are not going to throw it out, turn it into a museum of what government used to be?

Senator EXON. Senator Danforth, thank you very much.

I want to welcome our first panel now, a very distinguished panel, indeed. I would hope that the House Members who have been kind enough to come over this morning and give us their counsel on these issues would appreciate the fact that the chairman could have introduced Senator Danforth earlier, but I wanted to save him to make you feel most welcome here today. [Laughter.]

Mr. KASICH. I hope he will lean to his left a little bit on Conrad while he is at it. [Laughter.]

Senator EXON. I hope not, but at least that point will be made.

Seriously, we are very appreciative of the fact that Congressman Kasich and Congressman Hefley have come over here today. And I recognize you at this time.

STATEMENT OF HON. JOHN R. KASICH, U.S. REPRESENTATIVE FROM OHIO

Mr. KASICH. Thank you, Mr. Chairman.

Mr. Chairman, I expected to come over here to the Senate to a sleepy little hearing this morning. And would it not be interesting to have some political scientist go through this room and figure out why, rather than having a sleepy little hearing this morning on an agency that was created in the 1800's, designed essentially in the beginning to regulate railroads and ice wagons, why we do not have enough room in this hearing room to accommodate everybody that has an interest?

As you know, on June 16, the House voted 234 to 192 to abolish funding for the ICC as part of a two-step process toward eliminating the agency and transferring its remaining functions to DOT. And I say to the Senators, the first step was when we introduced our legislation that transferred the ICC's functions to the Department of Transportation, which we introduced last September. I repeat, the first step was the introduction of legislation that transfer the functions. That was done last September.

The second step, which was taken only after the House authorizing committees refused to examine the ICC's role until 1 week before the House considered the transportation appropriation bill, was our amendment to eliminate the Agency's funding.

Our assumption was that if our amendment was adopted, Congress would be forced to consider the legislation that they had refused to consider, really, for the last several years—to abolish the Commission and transfer the ICC's function.

Aside from any budgetary savings, we think abolishing the ICC makes good policy sense. All over the United States, when I was home in Columbus, OH, this last week, people are fed up with Government. They want to streamline Government and they want to make it more responsive. Our proposal does exactly what the reinventing government movement was all about.

In fact, this debate should provide a classic study for future doctoral students in how the Government works and the prospects for change in this Congress. I think if there is some man or woman out there trying to figure out how to get a Ph.D. in government, they ought to look at who is piling up on one side and who is piling up on the other side on this issue.

Our legislation is not intended to address which ICC functions should be retained. That was never our purpose. It simply focuses on moving these functions into the Department of Transportation. The Transportation Secretary would be tasked with completing a cost/benefit analysis of the remaining functions, and the administration would make recommendations to Congress about which functions to keep.

It was not just zeroing it out. It was to say you folks out here in the administration, you figure out which of these functions makes sense. If you think some make sense, we will keep them. If you think others do not make sense, we will get rid of them.

And, frankly, part of the chairman's bill does make sense. We ought to eliminate the filed rate doctrine; it makes no sense. It is an intimidating factor to people who want to get into the trucking industry, who may be interested in creating a small business and, of course, generating jobs.

Some claim the agency has already reinvented itself and is a model for the Nation. That is simply not true.

The number of employees have dropped. But the staffing decline is not because of new found efficiencies. It is because the reductions occurred because of all the deregulatory actions that occurred in the 1980's, with deregulation of the trucking industry, the household goods industry, with some moves to deregulate the railroad industry. The fact that we decided that we did not need to regulate busses any longer. The fact that if you want to hire a trucker, you just call up and say, What does it cost?

That is the way that most consumers shop in America. They do not have to have a list on the board at the Greyhound station about what all the fares are. They go and they ask the question: What does it cost? Just like when I went to Montana. I wanted to go into a national park. I said, What does it cost? I try to figure out whether I can afford it or not.

The core issue of the ICC debate is this: Proponents of transferring the ICC's function recognize the changes that already have occurred, and we want to complete the process. There has been a lot of deregulation and we want to finish it.

Opponents are committed to protecting a relic of the 19th century, regardless of today's realities. Their reaction is symptomatic of the status quo that plagues the Congress of the United States. Over the past 10 years, major deregulation has occurred, slicing the responsibilities of the Commission to mere vestiges of what they once were. With further deregulation, much of the ICC's reason for being would vanish.

I would argue that now is the time for bold action regarding the ICC's existence. Now is the time to send it over to DOT.

Congressman Barney Frank asked during the House debate on our appropriations amendment, If we were creating a government from scratch, would we create an ICC? His answer, of course, was no.

This is the same question that this panel should also consider.

An example of how the ICC's functions have degenerated is the so-called candy cane rate case. As reported in the Wall Street Journal, the ICC spent 3 years trying to determine whether candy canes should be shipped as candy under a general candy rate, or whether they required a separate classification because they took up more space than other candies.

In the interim, the shipper and carrier have worked out this complex public policy issue on their own. The ICC has yet to rule on this matter.

On the House floor, we heard about the fact that the transfer would threaten the independence of the Agency's decisionmaking. One opponent of our plan even compared the Transportation Department to the Governments of Russia and South America. As one that wants to reinvent government, I even believe that the Department of Transportation functions better than Russia and governments in South America. I think that it makes good sense that we transfer.

What opponents truly fear is the loss of comfortable relationships developed with the Commission's regulators; plus, that our proposal would take away some folks' power over transportation policy.

Now, they say the ICC performs quasijudicial functions and that we cannot have this free from outside interference if it is in the DOT. That argument is truly a straw man. Cabinet departments perform all kinds of in-house functions. We have civil penalty judges. We have administrative law judges. Rail mergers could be reviewed by DOT, which has personnel with antitrust experience.

The main point is that rail mergers do not justify the existence of a separate ICC.

Under our transfer plan, as I pointed out earlier, the Secretary along with the President would try to figure out which of the ICC responsibilities out to be retained, and how they ought to be put into the Department of Transportation, under the employee ceilings.

DOT has the same duty as the ICC currently when it comes before Congress to respond to questions and provide information sought by committees or individual Members of Congress. So, they have to be as responsive as the ICC has to be to Congress.

Regarding openness, the ICC held only 10 voting conferences in 1993, covering about 30 proceedings. During that time, the agency handled by notation voting, outside public view, more than 300 other matters.

Do you know what else we did? We transferred the Civil Aeronautics Board into the Department of Transportation. When we debated the transferring of the Civil Aeronautics Board into the Department of Transportation, guess what? We had parallel arguments about how we would have a disaster in America if the transfer occurred.

Well, we did transfer the Civil Aeronautics Board, and the Republic has not collapsed. And I think the All Star Game will still go on tonight.

The Congressional Budget Office estimates that transferring the ICC to DOT, Senator Hutchison, would save $15 to $45 million in the first year. In subsequent years, the annual savings would probably be between $30 and $50 million.

Now, the opponents say that the General Accounting Office does not make this estimate. Well, Bill Clinton, President Clinton, said at his State of the Union that the Congressional Budget Office is the Bible for budget estimates, not the General Accounting Office. We have agreed with that.

In conclusion, let me suggest this. Most of the functions of the ICC have withered away. Are there some legitimate rail functions out there?

Yes, there are.

What are we suggesting?

We are suggesting letting the President and the Secretary of the Department of Transportation recommend which functions to keep? They will send the bill up to the Congress and then we will pass legislation to retrain or abolish functions. We will transfer the employees under the Department of Transportation, like we did with the Civil Aeronautics Board.

How do we save money?

We force them to hire these people under the employee ceilings of the Department of Transportation. They have 68,000 people over

there. They have an attrition rate for in excess of the 600 people, if you wanted to transfer everybody over there.

Do you know what the deal is?

The deal is any time anybody suggests real change in this city, there are a host of people who stand up and say, "Not now; this is not the time. We cannot do it. It does not make any sense."

Senator Danforth has a commission going right now to reform entitlements. Could you imagine what the hearing would be like if we moved beyond the word "entitlements," which all sounds pretty good—entitlement reform—and we started talking about entitlements involving agriculture and Medicare and military retirement. You could not get a room. You would have to rent the train station over here in order to get everybody in the building.

This is an opportunity to streamline the Government and strike a blow for change in this town. We should not let the special interests dominate the proceedings up here. We should just be tough minded and make a down payment on what the American people want.

When they read these articles about candy cane shippers in the Wall Street Journal, they just shake their heads and say, "Boy, term limit sounds pretty good to me." Let us give them some of what they want. And that is real change and truly reinventing the Government of the United States.

Thank you, Mr. Chairman.

[The joint prepared statement of Mr. Kasich, Mr. Hefley, and Mr. Condit follows:]

JOINT PREPARED STATEMENT OF REPRESENTATIVES JOHN R. KASICH, JOEL HEFLEY, AND GARY A. CONDIT

Mr. Chairman and Members of the Subcommittee, thank you for giving us the opportunity today to discuss why the time has come to eliminate the Interstate Commerce Commission and transfer its functions to the Department of Transportation.

We note, at the outset, how much activity can be produced when real change is at hand. The possibility that the ICC could actually be abolished has touched off a flurry of lobbying by the agency's officials and supporters seeking to protect the commission's existence. Those who strive to maintain the status quo have gotten busy.

REINVENTING GOVERNMENT

As you know, on June 16 the House voted 234-192 to abolish funding for the ICC as part of a several-step process toward eliminating the agency and transferring its remaining functions to the Department of Transportation. The first step was legislation we introduced last year authorizing the transfer and describing how it would be achieved. Under this measure, the ICC's functions were to be transferred to the DOT, and the transportation secretary then would recommend which of the agency's regulations should be eliminated and which should be kept.

The second step occurred last month, when the House passed our amendment to the Transportation Appropriations bill to eliminate Fiscal Year 1995 funding for the ICC. Our assumption was that, when our amendment was adopted, Congress would be forced to undertake the authorizing legislation (such as H.R. 3127 and S. 1248) completing the transfer of functions to the Department of Transportation.

Aside from any budgetary savings, we think abolishing the ICC makes good policy sense. All over the United States people want to streamline government and make it more responsive. Even your legislation, Mr. Chairman [Senator Exon's Trucking Regulatory Reform Act, S. 2275] would reduce the ICC's functions by a third. Our proposal goes further—by eliminating the ICC itself—in striving for what the Reinventing Government movement was all about. This debate, in fact, would make a good case study for a doctoral candidate's dissertation in how government really works, and the prospects for change in this Congress.

Our legislation is not intended to address which ICC functions should be retained; it simply focuses on moving those functions to the DOT. Then the transportation secretary would be tasked with completing a cost-benefit analysis of the remaining functions, and the Administration would make recommendations to Congress about which functions to keep. Congress would make the final decisions.

Some claim that the agency has already reinvented itself and is a model for the nation. This is simply untrue. Yes, the number of employees at the ICC has decreased from 1,946 in 1980 to 619 today. But the staffing decline is not because of new found efficiencies. Instead, the reductions occurred because of major deregulatory actions by Congress that significantly reduced the ICC's responsibilities.

THE CENTRAL ISSUE

The core issue of the ICC debate is this: Proponents of transferring the ICC's functions recognize the changes that already have occurred and simply want to complete the process of change. Opponents are committed to protecting a relic of the 19th century regardless of today's realities. Unfortunately, their actions to protect the status quo are symptomatic of all those who seek to prevent change. Over the past ten years, major deregulation has occurred—slicing the responsibilities of the commission to mere vestiges of what they once were. These deregulatory steps included the following:

- The Staggers Act of 1980, which deregulated the railroads;
- The Motor Carrier Act of 1980, which deregulated the trucking industry;
- The Household Goods Transportation Act of 1980, which deregulated the moving industry;
- The Bus Regulation Reform Act of 1982, which deregulated the busing industry.

We would note that deregulation has been rated a success. Only yesterday [July 11, 1994], an article in The Washington Post cited the boom in the freight rail industry and gave a large part of the credit to the Staggers Act. As the article put it: "The Staggers Act of 1980, which deregulated railroading, freed the industry to compete and forced old-time railroad attitudes to change. The newly freed railroads dramatically cut back excess track and labor while investing in more efficient equipment and systems. Today, on less than 113,000 miles of route, about half the mileage of 50 years ago, major railroads haul 30 percent more tonnage than at the height of the World War II buildup. In Gibbon [Nebraska], 222.5 million gross tons of freight rolled by last year, 320 percent more than in wartime 1944."

With the trend of deregulation, much of the ICC's raison d'etre has vanished. Why not go even further and send the remaining functions to the DOT? As Congressman Barney Frank asked during the House debate on our appropriations amendment, if we were creating a government from scratch, would we create an ICC? His answer was "no." So is ours.

An example of how the ICC's functions have degenerated is the so-called "candy cane" rate case. As reported in The Wall Street Journal, the ICC spent three years trying to determine whether candy canes should be shipped as candy—under a general candy rate—or whether they required a separate classification because they took up more space than other candies. In the interim, the shipper and carrier have worked out this complex public policy issue on their own. The ICC has yet to rule on the matter.

Another responsibility of the ICC is implementing the Negotiated Rates Act of 1993, which addressed what we refer to as the "undercharge crisis." After these cases are resolved, however, there will be no more work in this area for the ICC. In any event, the law expires in two years. Meanwhile, the resolution of this issue, and the employees who are in charge of the process, could easily be moved over to DOT. When the cases have been resolved, the employees can be more efficiently used for other purposes within the Transportation Department.

Carriers must satisfy safety requirements enforced by both the DOT and the ICC, as well as ICC insurance requirements. Why should two federal agencies handle basically the same responsibility? There is no reason why all safety and insurance responsibilities for motor carriers cannot be handled by DOT. Safety compliance and enforcement would be simpler, more efficient, and quicker if it were performed by one agency.

As far as the rail functions of the ICC are concerned, we maintain they could easily be turned over to the Federal Railroad Administration in the DOT. Today, the ICC still oversees the abandonment of rail lines, but in the past two years the agency has denied only one mile a year of abandonments. We are away that the ICC places conditions on many of the abandonments it accepts, and that it resolves other proposed abandonments outside the formal process. But our point is not that the

ICC does nothing. What we are saying is that what the ICC does can be done by the Department of Transportation just as well, and for less money.

DEBATE OVER THE ICC'S INDEPENDENCE AND OPENNESS

On the House floor in June, we heard repeatedly that the transfer we propose threatens the "independence" and openness of the ICC. One opponent of our plan even compared the Transportation Department to the governments of Russia or South America. We have more confidence that the DOT can function better than that. What opponents truly fear is losing their comfortable relationship—and the influence they carry—with regulators.

The ICC performs quasi-judicial functions and should operate free of outside interference. But the argument that these functions require a structurally independent agency is a straw man. The IRS, the Social Security Administration, and the Board of Veterans Appeals, and the Department of Transportation adjudicate hundreds if not thousands of cases, claims, and other matters. Indeed, DOT handles the remaining economic regulatory functions in the aviation area. Most Cabinet Departments have authority to conduct civil penalty adjudications in-house and many Departments utilize administrative law judges to conduct hearings and render initial decisions. The application of the Administrative Procedure Act, which applies to all administrative agencies alike, ensures the impartiality of these proceedings. Rail mergers could be reviewed by DOT, which has personnel with antitrust experience. But even if this function were handled by the Department of Justice, as some have suggested, the main point is that rail mergers do not justify the existence of a separate ICC.

Under our transfer plan, the president and the transportation secretary would have responsibility for the transportation policy of the nation. Congress has vested the secretary with the responsibility for all federal transportation policy, and economic regulation of surface transportation should be no exception. The secretary, like the commission, would be obliged to apply the laws that Congress has enacted and the interpretations of those laws made by the federal courts. The secretary, like the commissioners, would be subject to prohibitions against receiving any ex parte communications. Is a Cabinet officer to be trusted less than a commissioner?

Nor would there be any loss of responsiveness if the ICC's functions were handled by the DOT. Nothing prevents Members of Congress from writing, contacting, or seeking to participate in DOT proceedings. DOT has the same duty as the ICC currently does to come before Congress to respond to questions and provide information sought by the committees or individual Members of Congress.

Regarding "openness," the ICC held only 10 voting conferences in 1993—covering about 30 proceedings. During that time, the agency handled by "notation voting" (outside public view) more than 300 other matters.

Many of these arguments, incidentally, were used to oppose incorporating the Civil Aeronautics Board's functions into the DOT. But that transfer has occurred, and the republic has not collapsed.

We are confident the employees of the Transportation Department can handle the remaining functions of the ICC. We propose moving the functions to DOT and allowing six months for a cost-benefit study, to be completed by the secretary, examining which of the ICC's functions should stay and which should go. The secretary would then offer recommendations to the Congress, and Congress would make the final determinations.

BUDGETARY SAVINGS

The Congressional Budget Office estimates that transferring the ICC to DOT would save $15 million to $45 million the first year. In subsequent years, the annual savings would probably be between $30 million and $50 million.

In the House, we sought to smooth the transition by offering a second amendment—which the House also approved—providing DOT with an additional $26 million to cover severance costs and funds for the higher salaries of ICC employees that may transfer into DOT. Although opponents like to cite the General Accounting Office's claim that our proposal would produce minimal savings, let us point out that the GAO did not look at our specific proposal. Furthermore, keep in mind that the Congressional Budget Office is the official scorekeeper for Congress.

Under our plan, savings would result from the reduction of 600 employees of the Executive Branch. Whether those personnel come from the ICC or the DOT is a matter to be determined by the Transportation Secretary and Congress. It should be a manageable number in a department of 68,000 people. In any event, on the House floor we submitted a second appropriations amendment—which was adopted by the House—granting the DOT $26.3 million for transfer funding, of which $15

million would cover necessary severance costs. We note that a substantial number of the employees released would represent duplications once the consolidation of the workforce was completed.

One concern that has arisen about our proposal is whether the ICC commissioners would receive their base salaries through the end of their tenures. The argument is that the commissioners' positions are protected by law through the end of their tenures. According to the Congressional Research Service, the Constitution and case law give Congress the authority to create the bureaucratic infrastructure of the Executive Branch and to determine the nature, scope, power, and duties of the offices so created. If Congress were to abolish the ICC, the commissioners would lose their positions, and therefore their salaries, because the positions would no longer exist. If, however, Congress abolishes the ICC and then re-establishes a similar agency with new commissioners, this action would be seen as an effort to remove particular individuals from their jobs, and would therefore be unconstitutional. As long as Congress is not exercising its legislative authority with the intent of removing the commissioners of the ICC, Congress may abolish the agency, and therefore the commissioners' positions, without violating the Constitution and without having to pay their salaries through the end of their tenures.

Critics also have contended that we would actually achieve no savings through our proposal because the language of our second amendment did not specifically state that the money was for the severance of ICC employees. But again, this question arises because of House rules prohibiting legislating in an appropriations bill. We were barred from offering language that would describe specifically how DOT should use the additional funds we furnished. This issue can be resolved through authorizing legislation, and that is how we have envisioned the process. Equally important, such clarification could be provided in committee report language. In addition, CBO says we still achieve a savings of $30 million to $50 million each year after the first year of enactment of our plan.

CONCLUSION

We have a historic opportunity to choose between change and the status quo. Opponents of change consistently resort to tired, worn-out excuses about why this or that particular change can't be made. There is always a convenient way to rationalize sticking with the status quo. But if Congress really wants change, no problem is insurmountable.

We note, for example, our critics' frequent refrain that we have "put the cart before the horse" by pursuing this appropriations change before action on authorizing legislation has been completed. A year ago, that argument might have seemed reasonable. But not any more. We introduced our legislation to transfer the ICC's functions to the DOT last September and over the past year, the authorizers never held hearings and never pursued the question of the ICC's functions. A week before the House vote on our appropriations language, a hearing was held.

As a result, our appropriations amendment has started the process and forced the authorizers to examine the ICC functions and the reason for its existence outside of any Cabinet agency—the very examination called for in authorizing legislation we introduced nearly a year ago. For critics to claim our approach was chaotic simply reveals their misunderstanding of the appropriations process.

We have reintroduced the needed authorizing legislation. But we recognize that the committees of jurisdiction may wish to make changes in that proposal. Therefore, we have indicated our willingness to work with the committees to develop the best possible transfer of ICC functions. (Our letters to committee leaders expressing our support are attached to this testimony.)

What we do not accept is that this proposal, having received an endorsement from the House, should be allowed to simply languish. Given the inertia of the authorizing committees during the past year, it seemed reasonable to force the issue as we did. We hope the Senate will view the process in the same way.

Senator EXON. Congressman Hefley.

STATEMENT OF HON. JOEL HEFLEY, U.S. REPRESENTATIVE FROM COLORADO

Mr. HEFLEY. Thank you, Mr. Chairman. Let me say at the outset I support yours and Senator Packwood's bill. I think it is a good idea, and I think it makes our case even stronger, as Senator Danforth explained a year ago.

First of all, I want you to know that Mr. Kasich and I are not doing this in a capricious kind of way, something that just popped into our heads one day during the appropriations process. We have been working at this for years.

I have had a bill introduced to do away with the ICC for the 8 years I have been in Congress. When I came to Congress I was very concerned, as I know all of you sitting around the table are, about the spending level of Government, and I began to introduce amendments to cut the honey bee subsidies and all kinds of little things. I began to realize that we are not going to solve this problem by nibbling around the edges. That is not the way the problem of the spending of this country is going to be fixed.

We have to get rid of some whole departments, some whole functions that Government does, and say, "Well, we do not need to do that anymore." And the ICC became one of those functions that I have been working to try to get rid of.

A year ago we introduced this amendment in the appropriation process, we won. We won the issue a year ago when the 15 minutes were up. But they kept the clock open long enough that enough arms were twisted and we lost.

And afterward I went over to this leading opponent and I said, "You know, you beat us today but we are going to get the ICC. We may not get them this year, but we are going to get them next year because they have very little legitimate function anymore, and we are going to get them."

And he looked at the ceiling a long time and he said, "Well, you are probably right, the time has probably come." And I said, "Why can we not sit down, then?" Why can we not sit down together and work out a logical way to keep the functions, as Conrad was talking about, that may need to be kept and do away with those that we do not need.

And he said, "OK, we will sit down and I will get my staff to work with your staff, and we will sit down and do it." Nothing happened in a year.

So, we came back a year later, and John has told you the vote on the House floor. And this is not merger, Senator Packwood, for merger's sake. This is not merger for merger's sake. As John has explained very well, most of the functions of the ICC, the remaining functions, would probably be done away with. There would be a logical process to deciding which functions should be kept and which are simply not necessary anymore.

And, Conrad, I share your concerns—I mean, we are from the same part of the country. I share with you some of the same kinds of concerns. Some of those functions may need to be kept, and they could be kept.

But let me tell you, folks, there is always reason to keep everything that is in Government today. We can always come up with reasons. I like a part of it or you like a part of it, and there just seems to be no possible way we can ever really do away with any segment of Government.

Mr. Chairman, supporters of the Interstate Commerce Commission argue that we need an independent commission to protect consumers and communities from excessive shipping costs and abandonment.

In response, let me quote to you from the Audacity magazine article on Malcolm McLean. He is the man who invented those intermodal containers that you see on trains and trucks and ships. This guy is a real live, self-made man. He had a high school education. He works his way up by hauling dirt to the point where he is actually raising the standard of living in the world. It is a story of triumph over adversity.

Unfortunately, one of the adversaries to his efforts was the Interstate Commerce Commission. Listen to this quote. "His moves alarm railroaders who complain to the Interstate Commerce Commission. And the ICC responded by telling him he must choose between trucks and ships."

Here is a man poised to revolutionize an entire industry and the ICC worked to stop him. That in a nutshell is the problem, or one of the problems, of the ICC.

The ICC does not protect consumers. It protects industries. It does not lower transportation costs, it raises them, and it does not protect communities from abandonment, it speeds the process up.

Consider the abandonment issue. According to the rhetoric, dozens of communities, whole regions of the country, would be abandoned by rail carriers if it was not for the ICC. I would suggest that abandoned rail lines may have been a problem when Congress was busy regulating our rail industry into oblivion, but since the 1980 Staggers Act contested abandonments have become an exception rather than a rule.

Look at the numbers. Formal abandonment filings averaged 155 requests affecting over 3,000 miles of track per year in the 1970's. In contrast, in the last 4 years formal filings have averaged 16 per year affecting only 500 miles.

What is more revealing is the number of formal abandonment requests the ICC denies. Throughout the 1970's and eighties, the ICC only denied a few applications each year. The number has declined in the 1990's to average just one per year.

Enforcing existing rail regulations is important. Given this reduced workload, however, the DOT could do this job just as well.

Rate filing for truckers is the other contentious issue. And again I applaud you for introducing legislation which we support to do away with this issue.

Contrary to what some have said, the reform is in line with an effort to abolish the ICC. Eliminating one-third to one-half of the ICC's existing duties undermines the need for an independent ICC.

As I already pointed out, the remaining rail regulation duties have been diminished enough through deregulation and better economic performance. What remains could easily be handled somewhere else.

And the bottom line is this. If the ICC had lived up to its rhetoric, it would not have been defanged back in 1980. If it were performing important work today the chairman would not have just introduced legislation to eliminate one-half of its remaining duties. And if the ICC were really vital to protecting our constituents, the House would not have voted last month to eliminate the ICC.

By transferring the ICC to the DOT or whatever functions need to remain—they are not just taking the whole thing and transferring, but whatever needs to remain—we can reinvent Government.

The House has acted and we are counting on the Senate to help us do away with this relic of the past.

Thank you, Mr. Chairman.

Senator EXON. Congressman Hefley and Congressman Kasich, thank you very much. In the interest of saving time, I would like to request at this time to be inserted into the record, at the request of Chairman Dingell and Chairman Minetta, correspondence that both of them had on this subject with Mr. Kasich on July 11. I think this correspondence addresses some of the concerns that have been raised by our two distinguished guests from the House of Representatives.

[The information referred to follows:]

LETTER FROM JOHN D. DINGELL, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES

JULY 11, 1994.

The Honorable JOHN R. KASICH
U.S. House of Representatives,
Washington, DC 20515

DEAR JOHN: I am writing in response to your June 22 letter, written together with the cosponsors of your amendments to the transportation appropriations bill to: (1) eliminate appropriations for the Interstate Commerce Commission (ICC) for fiscal year 1995, and (2) appropriate $18 million for the Department of Transportation, primarily for severance pay to ICC employees.

Under rule X of the House of Representatives, the Committee on Energy and Commerce has exclusive jurisdiction of railroads and rail labor and thus has jurisdiction of the ICC's rail functions. The committee has exercised its legislative and oversight jurisdiction of the ICC's rail activities in numerous instances over the years.

While I have been an extremely vocal critic of the ICC's decisions from time to time, I do not share the view that the agency should be abolished or that its independent authority should be transferred to another entity. As the recent report by the General Accounting Office (GAO) clearly indicates, the statutory functions of the ICC relating to rail issues are important to the public interest, to sound national transportation policy, to railroads (including Amtrak) and their employees, and to shippers, communities, State and local governments, and other varied interests throughout the country. While the Staggers Act, which was considered and adopted by the Committee on Energy and Commerce after lengthy and careful consideration, deregulated many aspects of the rail industry, the law retained many important regulatory and adjudicatory functions of the ICC of rail transactions and activities. Summarily abolishing the agency that has sole authority to perform these essential functions—as the amendments adopted by the House would do—would be detrimental to numerous public and private interests and would violate public confidence in the manner in which governmental deliberations that affect a broad spectrum of interests are made.

Despite my personal views on the subject, I am certainly mindful of the results of the recent House proceedings. However, I am not clear as to what the votes really mean. During floor debate, proponents of the amendment clearly stated that some, if not all, of the ICC's statutory responsibilities are important and should be retained, notwithstanding the clear effect of the amendments. For example, you stated that, "[t]he only real activity that goes on in the Interstate Commerce Commission anymore essentially has to do with railroads * * * [comprising] about 37 percent of the operations." Later, you added that, "[w]e are going to be able to maintain the essential functions of this operation * * *" Mr. Condit went even further by stating:

> * * * we are not going to weaken the regulations or the standards. We are not going to weaken those at all. Most of them have been eliminated, but the ones that have not been eliminated, that have not been eliminated (sic), will be carried out by the Department of Transportation.

These and other statements are at odds with the actual provisions adopted by the House in that they assume a transfer and preservation of some or all of the ICC's statutory responsibilities. As Rep. Oxley, the ranking Republican of the Subcommittee on Transportation and Hazardous Materials, stated:

> If this amendment succeeds, only two results are assured: One, the immediate termination of many ICC employees, and, two, the effective impounding of any

> remaining ICC funds without DOT being able to use them. That is due to the fact that even if DOT has plenty of money in its account after this amendment, DOT still will not have any legal authority to spend those funds on ICC functions. Only an authorization statute can do that.

As Mr. Oxley concluded, "* * * this amendment produces no real economy—just organizational chaos."

Your letter states that the recent proceedings represent only the first step in a two-step process and that you are willing to be "partners" in fashioning "a reasoned and orderly transfer of the ICC's functions." I appreciate your candor in conceding that the amendments offered and adopted in the appropriations bill will not result in a reasoned and orderly transfer of the ICC's functions. As you know, the amendments would produce highly undesirable and wasteful results.

In view of the House votes and in order to avoid the adverse effects of allowing your amendments to be enacted, I am willing to do what I can to fashion legislation that would produce a reasoned and orderly transfer of the ICC's functions. However, I believe there are several considerations that must be taken into account prior to proceeding.

First, I will not acquiesce or participate in a process that involves legislating in an appropriations bill. If you insist on a strategy that violates the Rules of the House, I trust you will understand my unalterable opposition to any such approach.

Second, I cannot speak in any manner for the Public Works Committee regarding these matters. Any "reasoned and orderly" consideration of these issues under the rules clearly requires agreement and action by our sister committee respecting such ICC authorities that are within its jurisdiction.

Third, I do not support using such transfer legislation to effect substantive changes in railroad law or regulation. Any authorizing legislation to be considered should achieve any transfer of authority without diminishing the ability to perform current rail functions. I also believe that the independent nature of the ICC is extremely important and believe any transfer of authority to another entity should allow for continuation of processes that preserve such independence.

I believe that any reasoned and deliberative legislative approach to these issues in our committee likely will require more time than is available during the remainder of this Congress. While I understand your desire to resolve these matters expeditiously, I cannot in good faith assure you that our committee or subcommittee, not to mention the Public Works Committee, the House, the Senate, and its Commerce Committee, will be able to consider and process appropriate legislation given other priorities during an election year. A possible approach to demonstrate my commitment to moving forward might be a written request to the ICC, the Department of Transportation, and the Office of Management and Budget (consistent with provisions of your bill, H.R. 3127) to report to the committee within a reasonable period of time on how to accomplish any orderly transition. I suspect that continuation of the ICC's appropriation for another fiscal year would be necessary under this scenario, but if we are working together toward a common goal, I hope this will not pose any problem. The alternative is a level of chaos that will pose serious problems for all of us.

Sincerely,

JOHN D. DINGELL,
Chairman.

LETTER FROM REPRESENTATIVES KASICH, HEFLEY, CONDIT, DELAY, COX, AND KENNEDY

JUNE 22, 1994.

The Honorable NORMAN Y. MINETTA,
The Honorable JOHN D. DINGELL,
The Honorable AL SWIFT,
The Honorable NICK J. RAHALL II,
U.S. House of Representatives,
Washington, D.C. 20515

DEAR MR. CHAIRMAN: Last week the House voted to pass our bipartisan amendment to the Transportation Appropriations bill eliminating funding for the Interstate Commerce Commission. As you know, this amendment was just the first step in a two-step process to transfer the agency's functions to the Department of Transportation. The second step involves legislation implementing the transfer and authorizing the Secretary of Transportation to spend appropriated dollars for severance and other transition costs. Because the Public Works and Transportation Com-

mittee has jurisdiction over the ICC, we are writing to express our willingness to be partners with you in fashioning a reasoned and orderly transfer of the ICC's functions.

By its vote last week, the House demonstrated its resolve to terminate one agency of the federal bureaucracy. It is imperative that the will of the House be realized. Although we recognize the complexities of such a transfer, we believe that by working together we can overcome whatever obstacles may arise. As you may know, Mr. Kasich has introduced H.R. 3127, which would complete the process that the House set in motion last week. We hope you will consider this legislation as you seek the best method of achieving the transfer.

If we can be of assistance in any way, please contact us. Our staff members are available at any time. They are the following: for Mr. Kasich, Marie Wheat; for Mr. Hefley, Brian Reardon; for Mr. Condit, Steve Jones; for Mr. DeLay, Glen LeMunyon; for Mr. Cox, Ben Cohen; and for Mr. Kennedy, Phillippe Houdard.

Thank you for your cooperation. We look forward to hearing from you in the near future.

Sincerely,

JOHN R. KASICH,
House of Representatives.
JOEL HEFLEY,
House of Representatives.
GARY CONDIT,
House of Representatives.
TOM DELAY,
House of Representatives.
CHRIS COX,
House of Representatives.
JOE KENNEDY,
House of Representatives.

LETTER FROM NORMAN Y. MINETTA, CHAIRMAN, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, HOUSE OF REPRESENTATIVES

JULY 11, 1994.

The Honorable JOHN R. KASICH
U.S. House of Representatives,
Washington, DC 20515

DEAR JOHN: This is in response to your letter of June 22, in which you were joined by five of our colleagues, urging me to consider legislation to complete the process begun by your amendment to the transportation appropriations bill to eliminate funding for the Interstate Commerce Commission (ICC).

Your letter describes your amendment as "just the first step in a two-step process to transfer the agency's functions to the Department of Transportation." Unfortunately, you took the second step first—you left all the regulatory requirements in law but eliminated the regulatory agency charged with administering those requirements. There is no doubt that if your amendment were enacted and no other changes in law were made, we would have chaos which would not serve the interests of anyone.

For example, last November we enacted H.R. 2121, the Negotiated Rates Act of 1993, which was subsequently signed by President Clinton as Public Law 103–180. That law resolved major difficulties shippers all over the country were having with conflicting court interpretations and consequences of past regulatory requirements. The importance of untangling the regulatory thicket so many shippers found themselves in would be hard to overstate. Key parts of that bill accomplished that untangling by assigning responsibilities for such matters as rate reasonableness disputes and allegations regarding contract versus common carriage to the ICC. Indeed, you and four of the five others who signed your letter, referenced above, felt so strongly regarding this matter, that you, along with an overwhelming majority of the Congress, voted for assigning that responsibility to the ICC. Shippers are relying on those provisions to relieve them of a severe regulatory burden. If there were now to be no ICC, those features of the Negotiated Rates Act would become worthless.

An even more far-reaching concern is that the requirement to file rates and to charge only those filed rates would remain in statute, while the only agency empowered to receive those rate filings would disappear. This could be interpreted as requiring common carriers to charge only those rates they had on file before the ICC closed its doors. The creation of such a degree of regulatory inflexibility goes far be-

yond what existed even in the pre-1980 heyday of total economic regulation of the trucking industry.

In short, you may have believed your amendment struck a blow for deregulation and for less intrusion by Government into the marketplace, but in fact your amendment by itself would achieve the opposite result.

For that reason no involved party, whatever their views on the question of deregulation or regulatory reform, and whether they be truckers or shippers, supports the idea that your amendment should stand as is.

I take your letter as acknowledgement that you now agree with that view as well, and I appreciate that acknowledgement. You are quite right that the adoption of your amendment creates a situation that badly needs fixing.

It may be that the Senate can improve on the House-passed transportation appropriation bill with regard to the ICC. I certainly hope so. In any event, there may well be a need for further corrections to be made by the authorizing committees, Public Works and Transportation with respect to motor carrier issues and Energy and Commerce with respect to rail issues.

I am therefore directing my staff to begin discussions with your staff, with our subcommittee staff, and with the Energy and Commerce Committee staff, in the hope that we can all work toward a reasonable resolution of this problem. Please feel free to contact me or Subcommittee Chairman Rahall at any time on this matter. Identical letters have been sent to each of our colleagues who cosigned your letter.

Sincerely yours,

NORMAN Y. MINETTA,
Chairman.

Senator EXON. Certainly, in my opinion, my constituents do not agree with the feelings expressed by the Members of the House here this morning or the vote in the House of Representatives which I had referenced in my earlier statements.

These are days when the popular thing to do is to go back home and tell the people, boy, am I going to eliminate Government. If you really want to be popular, I would suggest maybe you introduce legislation in the House of Representatives to do away with the biggest and most wasteful part of Government all together, the House of Representatives and the U.S. Senate [laughter], and leave the Interstate Commerce Commission to do its work.

Mr. HEFLEY. Mr. Chairman, is that in the form of a motion? [Laughter.]

Senator BURNS. I second that. [Laughter.]

Senator EXON. I am very fearful of what will come out of the House of Representatives as a result of my suggestion in jest. [Laughter.]

Senator EXON. I simply would rebut the excellent presentations made by our guests from the House of Representatives by once again referencing constituents of mine in Nebraska who do not agree with the position taken by the House of Representatives.

In addition to that, I would say that those who are regulated, the trucking industry and the railroad industry, will come forth today and tell us why it would be very unwise to follow what the House expressed in that overwhelming vote cast so that people can take it back home and say, "What a great soldier I am because I am cutting down Government."

In addition to my constituents I referenced earlier, I would like to read—not the letters, but just the list of organizations that have contacted us that think that vote was a mistake, and who basically are supporting the more modest action taken by this subcommittee.

The list of those backing our position and those who are not in favor of eliminating the ICC reads like a who's who in the transportation industry:

In addition to the administration, the following companies and associations are among those supporting an independent Interstate Commerce Commission, who oppose zero funding the ICC and transferring its functions to the Department of Transportation.

As of July 13, 1994:

American Bus Association; American Corn Millers Federation; American Cotton Shippers Association; American Farm Bureau Federation; American Feed Industry Association; American Insurance Association; American Movers Conference; American Public Power Association; American Short Line Railroad Association; American Trucking Associations; Arizona Electric Power Cooperative (Benson, AZ); Arizona Public Service; Association for Branch Line Equality; Association of American Railroads; Association of Transportation Practitioners; Atchison, Topeka and Santa Fe Railway; Athearn Transportation Consultants (Oakland, CA); Brotherhood of Maintenance of Way Employees; Burlington Northern Railroad Co.; Capital Trailways (Montgomery, AL); Central Analysis Bureau (New York, NY); Cajun Electric Power Cooperative (Baton Rouge, LA); Chicago Board of Trade; Chicago and Northwestern Transportation Co.; Consolidated Freightways; Consolidated Rail Corp.; Consumers United for Rail Equity; Coors Brewing Co.; CSX Transportation; Denver & Rio Grande Western Railroad; E.I. DuPont de Nemours and Co.; Edison Electric Institute; Freight Traffic Services; Greenbrier Development Corp.; Health and Personal Care Distribution Conference; Houston Lighting & Power Co.; Illinois Central Railroad; International Brotherhood of Teamsters; Kansas City Board of Trade; Kansas City Power & Light Co.; Kansas City Southern Railway; Labor Strategies (Madison, WI); Midwest Power (Sioux City, IA); Minnesota Power (Duluth, MN); Minnesota Transportation Services Association; National Association of Wheat Growers; National Association of the Regulatory Utility Commissioners; National Cattlemen's Association; National Coal Association; National Corn Growers Association; National Council of Farmer Cooperatives; National Farmer's Union; National Grain and Feed Association; National Grain Sorghum Producers Association; National Grange; National Motor Freight Traffic Association; National Oilseed Processors Association; National Rural Electric Cooperative Association; National Small Shipment Traffic Conference; Nebraska Public Power District; Norfolk Southern Corp.; Omaha Public Power District; OmniTRAX (Denver, CO); Owner Operators of America; PacifiCorp; Pennsylvania Power & Light Co.; Rail-to-Trails Conservancy; Railway Labor Executives' Association; Railway Progress Institute; Regional Railroads of America; Regular Common Carrier Conference; Roadway Services; Rubber Manufacturers Association; Soo Line Railroad; South Mississippi Electric Power Association; Southern Pacific Transportation Co.; Southern Transportation League; Terminal Elevator Grain Merchants Association; Transportation Brokers Conference of America; Transportation Claims and Prevention Council; Transportation Lawyers Association; Transportation Trades Department, AFL–CIO; TUCO, Inc. (Amarillo, TX); Union Pacific Railroad Co.; United Transportation Union; Unitrain, Inc. (West Des Moines IA); Western Coal Traffic League; Western Coal Transportation Association; Wheeling & Lake Erie Railway (Brewster, OH); and Women Involved in Farm Economics.

So, there are some groups which have given this long and careful consideration and do not concur with the statements you have just made.

Mr. KASICH. Mr. Chairman, could I respond to that?

Senator EXON. Certainly.

Mr. KASICH. I think that is a great list and I want to get a copy of it, and I would like to list it out on a big board. Do you know what is interesting that is not in that list? Taxpayers. Those are all special interest groups that have an interest here, and I think in many cases they have a very legitimate interest.

I would not question the fact that they prefer the status quo. They are comfortable with the status quo. It makes sense to them.

We were considering the President's tax bill the weekend before we considered it, and I happened to fly through Chicago and I got one of those outrageous $5 pieces of pizza, and I was leaning up against a wall. And there was a lady there with a rag. She reminded me of my mother.

She went from table to table, she lifted off the trays, she wiped the table. And I went over to her and I said, "Ma'am, this is a pret-

ty tough job." She said, "Yes, I get up early in the morning and I ride in here. I am trying to put one of my kids through school and that is why I am working at this airport."

Now I thought about asking her what she thought about Washington and the Government and the pending tax increase, and I thought she might throw a tray at me.

I would say to you, Senator, that if you put the ICC on a national ballot and asked the American people whether they thought it should be retained or not, it would lose 90 to 10. We would get rid of the ICC.

Senator EXON. What about Members of Congress, the U.S. Senate and House of Representatives? Do you think they would fail also?

Mr. KASICH. Let me respond in this way. First of all, the term limits movement is real, and I have not been a supporter of it but it is a real movement born out of the frustration of the fact that people are not getting what they want, and that it is special interest groups that dominate this town and determine the outcome.

And I will tell you, the fact that we have 30,000 staff people working up on Capitol Hill that could fill my entire home town if we evacuated it enrages people. Of course they are fed up with us.

But the reason that they are fed up with us is because they are convinced that we cannot do the business for the people who do not have a lobbyist in this town.

And I am not suggesting that a truck driver out in Columbus, OH, would not go with the American Trucking Association. But I will tell you what. If I sat down with that truck driver out there in Columbus, OH, with their lobbyist and I explained to him what the ICC did, or I sat down with a small businessman or woman in my district who wanted to create a trucking company and tell them they would have to hire a lawyer to make filings in order to drive a truck from my house to the next door neighbor's house, they would not be with the lobbyist either.

Look, all we are suggesting is—we do not do away with the rail functions. There are some legitimate ones. I have talked to some of the railroad people. Part of what they are worried about is if you send this thing over to the Department of Transportation we will never get a decision. That begs the question about whether the Department of Transportation can function.

The ICC is what I am after now. But, frankly, I think there are full Departments that ought to be eliminated in this town. Those people who work for the Federal Maritime Commission and all these other agencies should get a little nervous because we are looking at them as well. The time has come to chop the size of this Federal Government. It is not functioning very well.

I know we are going to lose this vote in the Senate. We will lose this vote this time. But do you know what? We won in the House this year. We will win in the House the next time. And one day we will win in the Senate. But it will have taken us 5, 6, 7, or 8 years to save $150 million, with the national debt approaching $6 trillion.

See, it is not just an issue of money with me on this ICC. It is an issue on the culture of this town where people jump up and for a variety of very legitimate reasons say, "We cannot have change,

let us keep things exactly as they are." And I think we ought to be different than that. And I think we will be different than that. I hope so.

Senator EXON. I simply would say I hope also, Congressman Kasich, that you are not including those of us who do not agree with you and your position as being in the pocket of lobbyists.

Certainly as Governor of my State before I came here, and now here in the U.S. Senate, I try to do the best job I can to represent my constituents. It so happens that if you list all of those names I read off as really being special interest groups, then I take issue with you on that.

Congressman KASICH. Senator, it is not my intent to say that.

Senator EXON. We must move on now.

Congressman KASICH. I want to be clear on the record that I am not suggesting that anybody is in anybody's pocket. What I am suggesting is that when the special interest groups, which I said have a legitimate point of view, descend upon our offices and they make their legitimate arguments, there is nobody out here to argue for the people paying the bill. And that is why we do not get any change from the status quo.

In no way, shape, or form is anybody, especially you, Senator—I have great respect for you. I worked with you on cutting $26 billion from the budget. And do you remember how the special interest groups beat down that motion to cut $26 billion?

All I am suggesting is those issues are legitimate, but somebody has got to speak up for change. That is all I am suggesting. Of course they have a legitimate point of view and no one is in anybody's pocket because they disagree with me.

I just think that it is time to shrink the Government and I think we can do it in a logical way. And I think most of these groups would support exactly what we are proposing if we could give them some comfort that the Department of Transportation would make a timely decision, that some of these judicial decisions—maybe they should be put in the Department of Justice, I do not know, but I think they fear the devil they do not know and would rather stay with the devil they know because they are more comfortable with it.

I do not want to see the railroad in Montana take advantage of people out there. I just think there is a better way to protect the folks in Montana who are captive shippers rather than having a separate ICC with a congressional office, and external relations, and inspector general, and library. These things could all be eliminated is all I am suggesting.

Senator EXON. I would simply say once again to you, Congressman Kasich, we have worked together on many things. We have been at issue on many, many things. It is my view and the view of many people, who are neither subjected to the rulings of the ICC or know little about it, who happen to feel it would be wrong to take the crash approach you and the House of Representatives are taking on this issue.

And those whom you said you cannot ever get to change, I would submit, are endorsing the Exon amendment cosponsored by my good friend from Oregon. We are moving forward.

Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman. I want to thank the Congressman for waking up this sleepy little hearing and ask you a question because you have been looking at this for a long time.

Have you ever studied whether you could take the economic regulatory agencies for transportation and merge those? I would assume that would be maybe the old CAB, the Federal Maritime Commission, and then the Surface Transportation Economic Agency.

The one argument that I think has merit is the independence of the Agencies when you are doing the economic regulation. But I also look at this $45 million budget of the ICC annually, and you look at the overlapping cost, the administrative cost of running an agency, and I just wonder if perhaps we could relegate the safety regulations to the Department of Transportation and separate the economic regulations into one independent agency. And in deference to my colleague, Senator Danforth, make that the ICC in that beautiful building. Have you looked at that?

Mr. KASICH. I know Congressman Hefley wants to reply, but let me just briefly say we do not have the perfect way to do this, Senator. I mean, I think you could make a legitimate argument that maybe some of these judicial functions or these issues of antitrust maybe should be put into the Department of Justice. We have not suggested that we have the perfect way to reinvent it. And let me tell you the people at the Maritime Commission now are starting to worry because they have now heard you mention the name.

I think it does make some sense to look at any unique way of doing this. I would not object to legislation that would charge the President and the budget director or whatever with coming with recommendations rather than to the Department of Transportation.

I think the way we have proposed it makes a lot of sense but we do not have all the answers on this. But what we do have the answer for is that to let this thing sit by itself and continue on really makes no sense in its current form. The beauty of our recommendation at the Department of Transportation is we make the bureaucracy in a way work against itself.

Since we say that they can keep whatever functions that they want that we pass, if they transfer the employees of the Department of Transportation, they have to put them under the employment ceiling. That is why we get the savings.

Now, Secretary Peña may say, "Well, wait a minute. I do not need 600 people from the Interstate Commerce Commission. I only need 150 people from the Interstate Commerce Commission because, frankly, we do not need to do all of these functions out here."

You see, that was the beauty of the transfer under the employment ceiling. As long as we shrink the total number of positions and eliminate that bureaucracy, it would not matter to me how we did it, and we are flexible on that.

What I fear is that we will lose in the Senate. And we, of course, have no allies in the conference committee except for a couple who will be like Senator Danforth and kind of whistle in the wind.

We just have to keep fighting this year after year after year. We are constructive on our side. Let us try to work it out now and

make everybody comfortable. Let us not just keep fighting and fighting and fighting until we get a result that no one is happy with.

Mr. HEFLEY. Senator, that is one of the suggestions that was made in the GAO report that studied this, and they suggested that there might be such a merger. But as John said we are not even pretending to try to come up with all of the answers.

I think our analysis that the ICC needs to go is nothing new. Now, some of the functions of that Agency are needed. What do we do with them? Where do we put them? We ought to sit down and work it out.

You know, I guess what I would like to see us do this year is at least get a commitment from the Senate that gets us on the road to doing that. We do not have to do this this year all at once, but at least get us on the road to doing it—an admission that the status quo is just simply not working, that we do not need it, and we need to move on to a different way of doing business.

Senator HUTCHISON. Well, let me just say that I applaud what you are doing, especially where we can consolidate. I am persuaded by the independence argument because many times companies feel that politics might come into an economic regulatory decision.

I would like for us to look at whether transportation safety functions should be moved entirely to the Department of Transportation, but maybe take streamlined economic regulatory functions from the air industry, the air, maritime, and surface, and make one independent agency.

And, frankly, I would put the antitrust and all of the functions into that, and take it out of possibly the Justice Department. That would have to be looked at. I do not know if that would be too monumental a recommendation.

But I think we ought to be looking at an innovative way to do the job in the fairest possible way and the simplest possible way to eliminate the needless regulation, paper shuffling, and permitting, but consolidate safety in one agency and economic regulation in another.

Mr. KASICH. Senator, if I could respond to this issue of independence because I do not share this concern about not being able to make independent decisions within a Department. You have the IRS, the Social Security Administration, the Board of Veterans' Appeals. They are involved in deciding with quasijudicial functions thousands of cases where they have to be independent.

I mean, if the Veterans' Administration says something, the appeals route is within the VA. But remember the Civil Aeronautics Board? The Civil Aeronautics Board was independent and it was merged into the Department of Transportation, and they have not had any problems. My understanding is they have not had problems within the Department of Transportation. Now, I am not an expert on the Civil Aeronautics Board.

Senator HUTCHISON. Congress Kasich, there are a lot of complaints with regard to aviation regulation about the Department of Transportation. We do not have to go into that. But I think that an independent agency that is committed to transportation and economic regulation has some merit.

Mr. KASICH. Well, the safety function you talk about is already done by the Department of Transportation.

Senator EXON. The chairman would like to interject here. We have been with this interesting panel for an hour and 10 minutes now. We have a long, long agenda ahead of us.

Senator Hutchison, your time is up. Senator Packwood.

Senator PACKWOOD. I have only one question and I will ask it of both of you. If the ICC was abolished and its functions were moved, whether that is DOT or Justice or divided up appropriately, but no duties were eliminated, is it your presumption they would be done cheaper by the move?

Mr. KASICH. Senator, I believe that there would be functions that in fact would be eliminated. Part of our legislation says that the Secretary of Transportation and the President will recommend to the Congress those functions that ought to be retained and those functions that ought to be eliminated.

Senator PACKWOOD. But why can we not do that and just tell the ICC these are eliminated?

Mr. KASICH. Well, because you have a separate bureaucracy. The question is, Do you need a separate building? Do you need all of these posts, all of these offices within the Interstate Commerce Commission? And would it be more effective to shrink the total number of employees?

Now, first of all, I do not think you necessarily have to fire people. There is an attrition rate within the Department of Transportation of 3,000 per year.

Now, some of these functions will clearly be eliminated. You want to eliminate some of them. I applaud you on that. I would presume—maybe it is dangerous to presume but I would presume some of these functions would be eliminated when people realize they have to absorb folks under a ceiling level. I do not think you will get the change unless you eliminate it.

Mr. HEFLEY. Senator, even the GAO study said there would be minimal savings if you did not change any of the functions, but that is not the idea. I mean, as you said earlier, merger for merger's sake does not make any sense.

Unless you are going to look at this thing and see what really does not need to be done today anymore then there is no point in doing it.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator EXON. Senator Burns.

Senator BURNS. John, No. 1, I think you ought to raise your level of dedication to this a little bit. [Laughter.]

I just want to just make a statement, and the majority of what you say I would completely agree with. I have one reservation however, and I think it was touched on by Senator Hutchison from Texas.

We live in a State where we have all kinds of bureaucracies, plus we live in a public lands State. And we see how the bureaucracy is working now, and I will tell you that there is an arrogance in the bureaucracies right now that is—and if you say that the FAA is working splendidly and without problems I would take exception to that, and we are always going to run into those little things like that.

So, I guess when we start talking about an item that is as huge for my State—and I will tell you, special interests, I agree with that. But I have also learned in this town that special interests are those people who support my opponent, so to speak. [Laughter.]

You know, we have got to be pragmatic about it and say whenever I start talking about moving my crop, my paycheck, that I have some real reservations. And I voted once to do away with the ICC. I really did that. And if we could redefine and work maybe through this thing and work for the day it could phase out, that would be fine and dandy with me.

But right now as it is proposed, and what you are proposing could be as far as a State of a captive shipper, it could be a draconian measure. But I am wiling to listen and the biggest share of my gut tells me that you are right.

Mr. KASICH. Well, Senator, the biggest question is will your people from Montana be able to come to Washington and have a meeting with bureaucrats at the ICC and find them more responsive than bureaucrats within the Department of Transportation?

Senator BURNS. I would hate to make that judgment call.

Mr. KASICH. Well, if we do not know how we can make it then I would opt for the change, and what I would suggest is that you could put requirements in there that say that the Department of Transportation must decide certain issues within a certain period of time. I mean, you could write all kinds of requirements in there.

My problem is we have had a bill in the House to change this whole thing—well, he has been on it for longer than me. I have been working on it for 2 or 3 years. We do not have any hearings on these bills. There is no interest in any change.

Now, if this body would say, well, there are some things I think we can do and our goal expiration date of getting rid of the ICC is in a year or two, that would be fine with me. I talked to President Ford yesterday and he knew about this fight. And he said, "Well, do you think you have a chance to win this?" And I said, "Well, probably not but we will keep at it." We will keep at it, we will keep at it. If we had an expiration date for some of the bureaucracy, then that would be fine with me.

So, Senator, if you become the voice for saying let us really do something meaty I am willing to be a full supporter of that. But I am not willing to be a full supporter of any program that is going to keep this thing going for another 50 years.

Mr. HEFLEY. Conrad, you have legitimate concerns and I share some of those concerns. But I think there are ways to accommodate your concerns and accommodate our desire to reinvent Government, if you will, by doing this.

Senator BURNS. Well, I have not closed shop, so I am ready to talk.

Senator EXON. Thank you, Senator Burns. Senator Danforth.

Senator DANFORTH. Well, you have made it clear that you do not want to speak about specific functions, but there are a few functions that are retained to the ICC by Chairman Exon's bill, and I would just like to ask you about a couple of them.

The first is the business of certificates, operating certificates, basically licenses to do business for people in the motor carrier business. Now as I understand the situation, certain motor carriers

have to get licensed by DOT. Then they have to apply and get licensed at the same time by the Interstate Commerce Commission.

Do you know of any reason why there should be duplicative licensing between DOT and ICC? Is any public purpose served by having to apply for two different licenses and having two different organizations license a motor carrier?

Mr. KASICH. Well clearly, Senator, the ICC—in the safety issue they do not have anything to do with safety. The Department of Transportation does all of the safety. Of course, there is no reason to have two bureaucracies bring up paperwork and costs for people.

Mr. HEFLEY. I agree. There is no logical reason I can imagine, Senator.

Senator DANFORTH. Another proposed retained purpose would be rail mergers, to approve of rail mergers. Now, I think it is fair to say that in the various other sectors of the economy within the jurisdiction of this committee the regulatory agency does not approve of mergers. I mean, for example, when there are airline mergers you do not have to apply to the FAA. Airline mergers are approved by the Justice Department.

In communications, the FCC would not, I do not think, approve mergers of communications companies. Maybe somebody could correct me on that. The Department of Justice would.

Do you understand any reason why railroads should be different from other industries? Is there any reason why in addition to the Department of Justice there should be an Interstate Commerce Commission approval of rail mergers?

Mr. KASICH. I do not know.

Mr. HEFLEY. Again, there ought to be one place where you do this if it was necessary to do, but you should not have to do it more than one place.

Senator DANFORTH. I am not going to be able to stay through the whole hearing, but maybe some other witnesses would be able to answer those questions. Why are railroads different? And in having to have another agency approve a merger why are they different from, say, airlines?

And second, why the two licenses? It is my understanding that in fact the two license problems creates some safety problems, and that one of the safety problems is the DOT, which does have the ability to do safety inspections if it does not know of all of these trucking companies that have been licensed by the ICC.

So, my guess is that it is counterproductive; that it not only does not serve the purposes of safety but it works against the purposes of safety to have the two licenses.

But I would ask of any witnesses who would care to tell us if there are any conceivable reasons for the continuing jurisdiction of the ICC over rail mergers and over the licensing of motor carriers.

I want to thank both witnesses for their stalwart effort on behalf of this legislation, and to say to them that it does not surprise me that all of these organizations named by the chairman are against abolishing the ICC. Who would come forward and say I want to abolish something that has at least some possibility of getting in your hair? Who would do that?

How many people, Congressman Kasich, in this room—and it is terrific turnout. As you said, it is just absolutely amazing. On our Entitlement Commission we do not get anything like this.

How many people in this room would you guess would agree with you and Congressman Hefley and me in abolishing the ICC, in this room of, I do not know, there are probably maybe 150 or so people packed around the walls and standing in the aisles? How many of these people would you guess would agree with abolishing the ICC?

Mr. KASICH. I am counting them. There is an intern in here somewhere. Probably about five. Oh, I am sorry, six.

Senator DANFORTH. We have given them something to do today; have we not?

Mr. KASICH. That is what I always try to remind them of. Thank goodness people like me are around.

I wanted to say one other thing. I did not mean to imply somehow that I am happy with the FAA. I have a bill that is going to privatize the operation of the FAA and leave the safety functions in the hands of the Government.

Do you know what the committee chairman has told me? You will never, ever, ever, ever, ever have a hearing on this. This is exactly what we heard on this ICC. Imagine, we had a hearing with the Joint Committee of Energy and Commerce and Public Works 1 week before the vote. That was consideration of our proposal.

And I know that sometimes maybe I am a little strong on some of this stuff. Well, if you are not you lose.

Senator DANFORTH. Well, you lose anyhow. [Laughter.]

Mr. KASICH. Not always. If I thought we were always going to lose, I would not do it. We win some.

Senator DANFORTH. But let me ask you, in the annals of Government can you think of anything we have ever abolished? I mean, are there any agencies that we just abolished? It would be an interesting exercise, out of the thousands of agencies that exist, to come up with anything that we have abolished.

Mr. HEFLEY. Senator, we are well on our way to abolishing the Defense Department, but other than that I do not see much else.

Let me just say that—you know, when I first entered government in the State legislature, one of the greatest shocks to me was—as I was campaigning to do away with regulation and so forth, was the list of names like Senator Exon read, of people who would pour into the State legislature to say, "Oh, no, no, no, no, do not do away with that," because they wanted to be protected from competition. They did not want to do away with government so they could compete more; they wanted to be protected from competition. I think that is what we get into any time you try to abolish anything, and that is why it does not happen hardly ever in Government.

Senator EXON. Your time is up, Senator.

Senator Lott.

Senator LOTT. Thank you, Mr. Chairman, and I know you do have a lot of other witnesses to go so I will try to be brief. But first I want to thank these two witnesses for the great job they have done. They are a breath of fresh air, and we need this type of enthusiastic testimony more in the Senate, in my opinion. Whether they agree with you or not, you certainly have done a real good job here today.

Let me just ask you a couple of questions right now. In Chairman Exon's bill, along with Senator Packwood, there is a provision in S. 2275 that would direct the Secretary of DOT to report on the feasibility of merging ICC and the Federal Maritime Commission. You have touched on that possibility or of doing something with the Federal Maritime Commission. What would be your thinking about that idea?

Mr. KASICH. Well, if you take a look at all the independent agencies of the Federal Government, Senator Lott, you could make a good case that a number of things ought to be put together and shrunk. I mean, you could make an argument on the Maritime Commission, you could make an argument on NOAA for that matter. I had better be careful here. That is right, I forgot, NOAA gets down in Mississippi every once and a while. [Laughter.]

Anyway, this is the problem with it. Our feeling is that there are just too many old relics of the Federal Government sitting out there. And, you know, it is funny, when you talk to people who used to work in them or know about them—take the Commerce Department. They will tell you that the Commerce Department is the attic for political junkies in this town. They used to put everybody that was in political service in the Commerce Department. I think a lot of the functions of the Commerce Department can be separated out.

The Senator mentioned the trade function. I think the U.S. Trade Rep is a good office, but why do we have all these separate trade negotiators, all these issues, different bureaucracies. Consolidate them, shrink them, make them more efficient, make them more responsive, put time limits on them. I do not have all these answers, Senator, but I will tell you what, I think the system is broken and I think it needs to be fixed and I do not think I make an error by moving too aggressively in this town.

And so what I am suggesting to you is we do not need to combine and get all those interest groups worked up; we just need to move ICC into DOT and shrink that bureaucracy.

Senator LOTT. I believe the CBO indicated, according to our information here, that your bill could ultimately save at least as much as $45 million annually. Is that your estimate, as best you can determine?

Mr. KASICH. In our first year, we have severance pay for folks, and that eats away at the savings—but then in the outyears the savings are at least $45 million per year. However, we may not even need severance pay because they have got employment attrition in the Department of Transportation. Think about this; 68,000 people operate within the Department of Transportation. That is more than most people who live in cities in Montana.

And they have a high attrition rate of 3,000—some of them are airline people, admittedly. But they could absorb these ICC folks. They would hire the same kind of experts they need to continue to do the functions that are legitimate, and you put a little firewall in there between the Department and this quasijudicial agency, and you have got it done.

Senator LOTT. Well, with regard to the railroads, I know they do have some sort of review of mergers and elimination of trackage, but, as a matter of fact, is that not really just more of a process,

a procedure that is gone through and that rarely does the ICC step in and stop them or control them?

Mr. KASICH. Well, on abandonments, pre- and post-Staggers Act, 1987—denied abandonments in 1987, two; three in 1988; two in 1989; one in 1990; zero in 1991; two in 1992; and one in 1993. Now, some of these things I guess get worked out informally, but is there any reason why they could not get them informally worked out somewhere else without this separate building?

Mr. HEFLEY. And, Trent, let me respond to your initial question.

Senator LOTT. Sure.

Mr. HEFLEY. Which I think is a good one, about the merger. Yes, I think we ought to look at a merger if we determine that either one or both of those are needed at all. If we determine they are needed as agencies, as independent agencies, then I think we ought to look at the merger. But I think the first question is are they needed at all?

Senator LOTT. On trucking, I just called a small trucker—that is where I went when I left the room—in my State of Mississippi. And I said tell me about the ICC. Do they really do any good, do they harass you, do they do much of anything? And he said, "Well, as a matter of fact, after we go through the paperwork process of getting authority, basically we do not hear from them much anymore. The ones that hassle us now are people with the Department of Transportation." So, basically he is saying that other than just the formal process you go through in getting the authority, he does not hear from them anyway.

Mr. KASICH. Well, think about the person that might want to have a small business. You know, there are a lot of people that try to go into small business and as soon as they see the blizzard of paperwork and the need to hire accountants and lawyers in order to be in business—and Senator Packwood, with his, I would say, very distinguished work on the Finance Committee and with tax laws and everything else, knows the difficulty that people have getting into business today.

And when you tell somebody down in Pascagoula, MS, that they have got to make this filing with these folks in Washington and they may have to have a lawyer, that becomes a very difficult thing for them to work through, and maybe they just say maybe I ought not to create this small business. Those regulations should be gone. We should make it easy for people to create jobs. We are talking about taking people off welfare and giving them a job; we had better have an environment where we are creating them. And I think this regulation gets in the way.

One other area, transportation of household goods. That means if I am going to move from Westerville, OH to Gahanna, OH, and I want to hire a moving company, I somehow should rely on the Federal Government to tell me what the best rate is to move my furniture. I mean, I think in the 1990's that I can figure out who I want to move my furniture without having to go to the Federal Government to figure out who it is that is doing the moving. But, yet, that is still retained even under this bill, which I do not understand. Maybe there is a good reason for it, but I do not understand it.

Senator LOTT. Thank you both.

Thank you, Mr. Chairman.

Senator EXON. Thank you. I wish to thank this panel very much and you are excused.

I would call now for a brief statement from and questions for Al Swift, who is the chairman of the Hazardous Materials Subcommittee of the House of Representatives. Al, would you come forth at this time.

I would say to you, Senator Lott, with regard to the last question you just asked, if you would take a look at the Exon-Packwood bill, I think that you would see that we go a long way to alleviate and eliminate the concern which you expressed.

Mr. Swift, thank you very much for being here. I hope you realize that although we are extremely pressed for time, it is very important that you testify as one who has been involved in this issue for a long, long time. Please proceed in any fashion you see fit, Representative Swift.

STATEMENT OF HON. AL SWIFT, U.S. REPRESENTATIVE FROM WASHINGTON

Mr. SWIFT. Mr. Chairman, thank you very much, and, by contrast, I will be brief. [Laughter.]

First of all, there is much less here than meets the eye. It has been said that you could save $150 million over 5 years if you just simply eliminate the appropriation for the ICC and let, somehow, nature take its course. The House Public Works Committee, in conjunction with the House Energy and Commerce Committee on which I serve, held a joint hearing recently, and in that hearing the GAO reported an extensive study that it has made of the ICC and, inferentially, of this proposal.

It says you are not going to make those savings. The rebuttal has been, well, it is not GAO, it is CBO that is the official rater of these kinds of things, so dismiss the GAO. But CBO says that the numbers it gives you depends on how you ask the question, and if you asked the question the way Mr. Kasich did you can get those numbers. If you understand what you are doing and if you follow the logic of the GAO, CBO agrees with GAO that there are no significant savings.

What is the logic of the GAO? Aside from the fact that it looks somewhat jaundiced at the idea of putting the cart before the horse, eliminating the appropriation in the hope that something will get done to the statutory authority of the agency, and if you assume also that the ICC possesses legal authority that no administrative agency has—if you dismiss those two as concerns, then the GAO says that the ICC possesses expertise that does not exist anywhere else. It would either have to be transferred or it would have to be created, both of which absorb much of the savings that are otherwise touted. In short, if you do this right both GAO and CBO say there are no significant savings.

Many of the functions of the ICC are adjudicatory. That is the reason they are placed in an independent agency, as opposed to—and I heard some reference to just build a firewall and get on with it. Well, those of us who serve on authorizing agencies know that it is easy to suggest you build a firewall. We have been trying to

do that on communications and on a number of other issues, and it is not an easy matter.

Essentially, CBO—and we have talked with them, and I would really urge the members of your committee to talk with them as well, says that even though—and I say this—even though Kasich will not work, they say that you could save those dollars if you tried it that way. But if you do it the right way, you will not save any money.

Finally, the GAO suggested there are some savings by eliminating some functions, that I believe that proposal comports with what is in the Exon-Packwood bill. Those are some savings which GAO says you can achieve, and it seems to me that that moves in a much more rational direction of trying to bring efficiency to Government rather than just simply try to lop the whole arm off in the hope that you get some savings. The choice, it seems to me, is simply whether you will have savings at any cost—think about that, savings at any cost—or whether you are going to go in the direction that I think the Exon-Packwood bill does, which is to thoughtfully seek out procedures that will make savings.

And the final point I would make, Senator, is that it seems ironic to me that as we all struggle to try and find ways to make Government more efficient, that we have found ourselves picking on an agency which has already eliminated 70 percent of its former functions. It becomes a kind of a reverse argument where they say, "Well, there is only 30 percent left, so abolish that too."

The fact is over the last years we have carefully gone about deregulating and, in the process, have shrunk this agency. And you would almost come to the conclusion, it seems to me logically, that it is somebody else's time to give at the office, not to come back and use the fact that this agency is reduced by 70 percent as some kind of a perverse logic that suggests that it should be eliminated altogether.

I would be happy to answer any questions.

Senator EXON. Congressman Swift, thank you very much. I just wanted to say that over the years we have worked very closely with you, Chairman Dingell, and Congressman Minetta. These people are the three who generally come to mind for those of us who are very much concerned about this whole issue of consumer protection, which is the bottom line as far as this Senator is concerned.

In the interests of saving time, I have just one question. Senator Danforth raised the issue of mergers. I simply would point out that mergers also take place in the Hollings-Danforth telecommunications bill. Actually that bill expands the Federal Communication Commission's jurisdiction over telecommunications mergers. Do other regulatory agencies have jurisdiction over more than one merger?

Mr. SWIFT. Well, you are certainly correct that the FCC has always has jurisdiction over mergers, not only in that bill that the Senator is coauthor of but in other bills. And the Federal Trade Commission has joint jurisdiction with the Justice Department on certain kinds of mergers under the Clayton Act. So, yes, other agencies do have authority to do that.

Senator EXON. Thank you. I have no further questions.

Senator Hutchison.

Senator HUTCHISON. No questions, Mr. Chairman.
Senator EXON. Senator Packwood.
Senator PACKWOOD. No questions, Mr. Chairman.
Senator EXON. Senator Lott.

Senator LOTT. Just one question. Well, first of all, I am glad to have you here, Congressman Swift. Just one question. You indicated that maybe, based on the GAO report in your own analysis, that there are some functions at the ICC that could be altered or even eliminated. Can you cite a couple of examples?

Mr. SWIFT. I believe if you take a look at the bill that Senator Exon and Senator Packwood have before you, you will find reflected there the primary recommendation made by the GAO. Now, that does not fall in the jurisdiction of my committee; that falls in the jurisdiction of public works. And I have not studied that, I am not expert and I am not, therefore, advocating one way or the other; I think you would have to talk to others in the House. But the GAO report parallels what I understand to be the approach of the Exon-Packwood bill.

Senator LOTT. Thank you, Mr. Chairman.
Senator EXON. Thank you very much.

Mr. Chairman, thank you very much for being here. We appreciate very much your taking the time and waiting to testify. I think your testimony has been very important, and you are excused.

I now will call on panel No. 1, with apologies from the Chair for the delay. Panel No. 1 is made up of Frank Kruesi, the Assistant Secretary of Domestic Transportation, U.S. Department of Transportation; the Honorable Gail C. McDonald, Chairman of the Interstate Commerce Commission; the Honorable Karen Borlaug Phillips, Vice Chairman, Interstate Commerce Commission; the Honorable J.J. Simmons III, Commissioner, Interstate Commerce Commission; the Honorable Linda Morgan, Commissioner, Interstate Commerce Commission; and Kenneth M. Mead, Director of Transportation Issues, Resources and Community and Economic Development Division of the General Accounting Office.

As you take your places, I would remind you that the written statements which you have submitted have already been incorporated into the record. And, Mr. Kruesi, we will begin with you.

STATEMENT OF FRANK KRUESI, ASSISTANT SECRETARY FOR DOMESTIC TRANSPORTATION, DEPARTMENT OF TRANSPORTATION

Mr. KRUESI. Thank you, Mr. Chairman. You did much better on my name than most people on the second attempt, and I appreciate that.

Good morning Mr. Chairman and members of the committee. I welcome this opportunity to appear before your subcommittee this morning to discuss the regulatory jurisdiction and activities of the Interstate Commerce Commission and proposals that would affect the agency's future course.

The ICC has a long and distinguished history as the economic regulator of our Nation's for-hire surface transportation carriers engaged in interstate commerce or the domestic portions of foreign commerce. Although the Department of Transportation believes that some of the Commission's activities no longer serve a useful

economic or public policy purpose, we also believe that as long as the ICC's statutory mandates remain, its fundamental regulatory functions should be continued as an independent agency, rather than be absorbed within DOT.

S. 2275 provides a good opportunity to advance our joint efforts to streamline Government, and we commend you, Mr. Chairman, for the creative approach you have put forward. S. 2275 takes immediate action to eliminate unnecessary regulation and also provides a process for the orderly consideration of what more should be done in the future. We strongly endorse your bill.

With regard to the railroad industry, we believe that current rail economic regulation works very well. The Staggers Rail Act of 1980, developed in this subcommittee, was an exceptionally fine piece of legislation that carefully balanced the interests of rail carriers and shippers and, as implemented by the ICC, seems to have satisfied most of them.

While the rail industry is largely deregulated in terms of ton-miles carried, the ICC provides essential oversight in the area of captive shipper protection, and it does it well. Not only are most railroads more financially sound today, but railroad rates are lower than they were before the Staggers Act for all major commodity groups, clearly an impressive, important legislative initiative.

With regard to the trucking industry, the reforms of the Motor Carrier Act of 1980, coupled with their aggressive implementation by the ICC in the early 1980's, has been remarkably successful in creating a more competitive trucking industry. There have been substantial and widespread benefits to the economy without jeopardizing small community service or highway safety.

The House recently voted, for the fiscal year 1995 DOT and related agencies appropriation bill, to delete funding for the ICC for fiscal year 1995, as all of us in this room are well aware. Although the House did not include language to transfer ICC functions to DOT, we understand that such transfer is the intent of the proponents of the amendment, which was reinforced in testimony today, and would have to be done by subsequent authorizing legislation.

We oppose the approach taken by the House in sunsetting the ICC. We think the ICC continues to perform a valuable public service, particularly in the railroad industry. We suggest that Congress should consider needed reforms first, with an opportunity for all interested and eligible parties to debate the issues before getting rid of the ICC by simply zeroing out its funding. S. 2275 which you, Mr. Chairman, and Senator Packwood recently introduced, provides us with that opportunity.

The administration supports S. 2275 as a means to accomplish needed reform in a systematic way. It would eliminate now those ICC motor carrier functions which most parties agree are unnecessary and expensive, and would provide an orderly process for identifying and evaluating any additional requirements that may be unnecessarily burdensome. S. 2275 would eliminate ICC regulation of motor carrier tariffs, including those for collectively set rates, and entry, other than those for household good carriers.

There is a fairly broad consensus that these requirements impose a costly and unnecessary burden on both shippers and motor car-

riers. The shipper undercharge crisis is a prime example. Last year's legislative response to that crisis, the Negotiated Rates Act of 1993, provided only a temporary solution. Eliminating tariff filings and enforcement, as S. 2275 would do, would provide a permanent solution to the undercharge problem.

Motor carrier entry requirements are also expensive and outdated. The ICC receives thousands of applications a year for authority to operate an interstate trucking business. These applications are rarely opposed and rarely denied. S. 2275 wisely eliminates the entry requirements except for a showing of insurance and safety fitness. This latter overlaps those of the DOT.

The ICC relies on our safety fitness determinations, and both ICC and DOT staffs monitor insurance compliance, working very closely together. DOT monitors all 280,000 interstate motor carriers, while the ICC covers only the 62,000 carriers it regulates. One of the issues we might consider in the future, perhaps in the context of the study S. 2275 would require, is to consolidate those functions, thereby eliminating extra paperwork, reducing opportunities for mistakes, and providing one-stop shopping for carriers. Other unnecessary motor carrier regulatory requirements might also exist, but more analysis and review is required before taking precipitous action.

Currently, the ICC has the authority in the rail area to exempt portions of its jurisdiction from regulatory oversight where competitive conditions permit and where such oversight is unnecessary. This has been very successful. S. 2275 would extend the ICC's exemption authority to motor carriers where, if implemented aggressively by the Commission, it could lead to similar efficiencies.

In sum, S. 2275 would take action now to reduce unnecessary Government spending and employment and goes farther in laying out an orderly process to review and consolidate Agency functions. This is fully consistent with the purpose of the President's and Vice President's National Performance Review. We look forward to working with you and your committee and with the Congress to develop a charter for the future economic regulation of our surface transportation industries.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Kruesi follows:]

PREPARED STATEMENT OF FRANK E. KRUESI

Good morning, Mr. Chairman and Members of the Committee.

I welcome this opportunity to appear before your Subcommittee this morning to discuss the regulatory jurisdiction and activities of the Interstate Commerce Commission (ICC), and proposals that would affect that agency's future course. The ICC has a long and distinguished history as the economic regulator of our nation's for-hire surface transportation carriers engaged in interstate commerce or the domestic portions of foreign commerce. Over time, its regulatory scope has expanded and contracted depending on changes in its statutory mandates and the commercial conditions of our rail, truck, bus, and water carrier industries. The ICC itself has changed along with its mandates, downsizing its resources by two-thirds.

While the Department believes that some of the Commission's activities no longer serve a useful economic or public policy purpose, the Department also believes that as long as the ICC's statutory mandates remain, its functions should be continued as an independent agency rather than be absorbed within DOT. Mr. Chairman, your bill, S. 2275, provides an good opportunity to advance our joint efforts to streamline government. We commend you, Mr. Chairman, for the creative approach you have put forward. S. 2275 takes immediate action to eliminate unnecessary regulation

and also provides a process for the orderly consideration of what more should be done in the future. We strongly endorse your bill.

First, I would like to briefly outline how DOT and the ICC work together, and offer some brief observations on how well the ICC has performed in implementing the Interstate Commerce Act and the regulatory reform statutes of the last eighteen years. Then I will discuss both the recent action by the House of Representatives to sunset the ICC and your bill, Mr. Chairman, S. 2275, that you offer as an alternative to the House action. As you know, the goal of the National Performance Review is to get a government that works better and costs less. A more efficient government benefits all taxpayers. We have an opportunity to further that goal by evaluating an agency that was established over 100 years ago in light of today's marketplace. While the NPR focused on efficiencies to be gained from streamlining and reforming Executive Branch functions, it is consistent with that effort to extend such a review to independent government agencies such as the ICC.

FUNCTIONS OF THE ICC

The two main areas in which DOT works most closely with the ICC are, first, through formal ICC regulatory proceedings, and, second, in determinations of the safety fitness of motor carriers. With regard to the latter, under current practice, if a mbtor carrier applicant is seeking interstate operating authority from the ICC, the ICC checks electronically to make sure DOT has not given the carrier an unsatisfactory safety rating, in which case the ICC would not award the authority. The ICC then informs DOT that the authority has been granted, so we can be certain the carrier is on our list for an on-site review to ensure the carrier is complying with Federal safety requirements.

In addition, both agencies are careful to maintain identical levels of financial responsibility (insurance) requirements. While the ICC polices its insurance requirements somewhat differently than we do, we believe the working relationship has been good, and that the system of shared responsibilities, while somewhat duplicative, is working well. To put this into context, I should note here that of the 280,000 interstate motor carriers in the U.S., all of which are subject to DOT federal safety standards, the ICC regulates approximately 62,000 carriers. I will have more to say about these responsibilities later in my testimony when I discuss possible areas for reform.

With regard to the railroad industry, we believe that current economic regulation of market dominant rail carriers works very well. The Staggers Rail Act of 1980 was an exceptionally fine piece of legislation. It carefully balanced the interests of rail carriers and shippers and, as implemented by the ICC, seems to have satisfied most of them. While the railroad industry is largely deregulated in terms of ton-miles carried, the ICC provides essential oversight in the area of captive shipper protection.

The Department participated in numerous ICC rulemakings in the years during which the Staggers Act was first implemented and has stayed active as important issues have arisen before the Commission. For example, we were heavily involved in CSX Corporation—Control—American Commercial Line Inc. the first post-reform case of a Class I railroad's acquisition of a major water carrier. More recently, there have been relatively few occasions that have required our participation, with the most notable exceptions being the Commission's reduction of regulation of car hire compensation and some relatively minor exemptions from ICC regulation. Overall, there have been few disagreements between our two agencies on issues of importance in rail regulatory policy.

In addition, there remain very few areas where there are strong disagreements among carriers or shippers over ICC rail regulatory policy. There were concerted attempts in the mid 1980's to roll back or "fine tune" some of the Staggers Act provisions as they applied to coal shipments, and to make a few adjustments concerning agricultural contract confidentiality provisions and an ICC export coal decision, but these matters appear to be settled now.

Not only are most railroads more financially sound today, but rail rates are lower than they were before the Staggers Act for all major commodity groups. In addition, intermodal operations have increased dramatically since the ICC exempted "piggyback" traffic from regulation in the early 1980's. This development has allowed freight to move efficiently from one mode to another (e.g. highway to rail), helped to reduce the burden on congested highways and, in the bargain, reduced energy consumption and air pollution. Shippers seem very pleased with the improved service. Moreover, since the Staggers Act rail accidents have fallen by about two-thirds. The improved financial condition of the industry contributed to this improvement.

With regard to the intercity bus industry, the Bus Regulatory Reform Act of 1982 has helped change the economic conditions of the industry. The principal reforms

of the Act concerned eased entry control, fare-setting by individual carriers rather than industry-wide, and ICC preemption of state regulatory decisions on entry, fares and service abandonments when those decisions adversely affect interstate carriers. We believe the ICC has continued to implement the Act as Congress intended. Large numbers of new carriers have entered the industry, although most of them are charter and tour carriers, as opposed to regular route carriers.

The main areas of concern are: the financial health of the industry, including that of Greyhound, which is by far the largest carrier; the large number of service abandonments, especially in rural areas not served by Amtrak or air carriers; and the continuing competitive issues between Greyhound and the independent carriers with which it both cooperates and competes. We believe, however, that these concerns are primarily the result of economic and demographic factors affecting the industry, rather than any regulatory policies or decisions by the ICC. We have not had any substantial areas of disagreement with the ICC over its conduct of bus regulatory policy in recent years. In fact, we generally agree with the Commission's views on handling carrier disputes, recognizing that it has to use its regulatory powers very carefully in cases where one carrier's aggressive business practices can appear to another carrier as anti-competitive. Unfortunately, the demand for the intercity bus service has been in decline for several decades and, in spite of the best intentions of the proponents o the 1982 Act, it has not been the invigorating force that had been hoped. Competing for riders against the airlines and Amtrak for a traveling public that has more registered vehicles than licensed drivers, is a difficult task.

The ICC performed a study of the intercity bus industry in 1993, and its bottomline concerning the complaints by independent carriers against Greyhound was to recommend no action be taken, but to monitor developments with the possibility of regulatory action in future, should there be an adverse change in circumstances. DOT agrees with that conclusion. Moreover, the antitrust laws provide an additional measure of assurance that any competitive problems in the industry can be remedied.

Finally, with regard to the trucking industry, the reforms of the Motor Carrier Act of 1980, coupled with their aggressive implementation by the ICC in the early 1980's, have been remarkably successful in creating a much more competitive trucking industry. Over 30,000 new carriers entered the industry, making rate levels more competitive. Of these new entrants, about 2,000 are women- and minority-owned carriers that had been effectively "frozen out" of the industry under the old entry controls. It also has been estimated that shippers and consumers have saved at least $15 to $20 billion per year from lower shipping costs. Even larger savings continue to accrue to businesses and their customers from the "just-in-time" inventory and manufacturing systems that were made possible by regulatory reform of the air cargo, trucking, and railroad industries. Employment in the trucking services industry has increased by about 675,000 jobs, including about 591,000 new truck driver jobs, even after netting out the thousands of jobs that have been lost due to bankruptcies. Finally, evidence shows that the implemented reforms have produced these benefits without jeopardizing either small community trucking service or highway safety. The fatal accident rate for medium and heavy trucks fell to 2.5 per 100 million miles of travel in 1992 (the latest available data) from 4.6 in 1980.

The ICC's implementation of these trucking reforms has been very successful. However, adjustment to these new rules has been difficult at times. A notable example is the so-called shipper undercharge problem. We were pleased that an equitable legislative solution was worked out among all parties through legislation produced by this Subcommittee. One of the major trucking functions that the Commission must perform for the next several years is the implementation of the Negotiated Rates Act of 1993. Hopefully that new law will put an end to much of the protracted litigation over these claims.

LEGISLATIVE CHANGES FOR THE ICC

The future of the ICC was cast into doubt recently when the House voted on the FY95 DOT and related agencies appropriations bill to delete funding for the ICC for fiscal year 1995. While the House did not include language to transfer ICC functions to DOT, we understand that such transfer is the intent of the proponents of the amendment and would have to be done by subsequent authorizing legislation. The proponents refer to legislation before this Committee, S. 1248 and a companion bill in the House, H.R. 3127, that would sunset the ICC, transfer all of the ICC's functions to DOT and then require us to perform a six-month study in order to recommend to Congress what former ICC functions should remain and which should be eliminated.

We oppose the approach taken by the House in eliminating the ICC by deleting its funding at this time. We believe that the ICC continues to perform a valuable public service, particularly in the railroad area. We believe it is essential to. maintain an independent forum such as the ICC, to address these issues and adjudicate disputes. Some shippers are served by only one railroad, and cannot rely on competition from other modes to carry raw materials or products. The ICC helps ensure that railroad rates and services for so-called captive shippers are reasonable. Significantly, as an independent agency the ICC has the ability to decide cases where the United States has a pecuniary or conflicting interest.

However, we also believe that improvements are needed, especially where outmoded and unnecessary regulations are a costly burden to the motor carrier industry. For example, the GAO says "with respect to motor carriers, ICC continues to issue operating certificates and receive tariffs. However, since few rate proposals or entry petitions are challenged today, these activities are largely a formality." Congress should consider those reforms first, with an opportunity for all interested parties to debate the issues, before getting rid of the ICC by simply zeroing out its funding.

S. 2275, which you, Mr. Chairman, and Senator Packwood, recently introduced, provides us with that opportunity. The Administration supports S. 2275 as a means to accomplish needed reform in a systematic way. It provides a two-pronged approach: first, it would eliminate those ICC motor carrier functions which most parties agree are unnecessary and expensive; and, second, it would provide an orderly process for identifying, evaluating, and eliminating any additional requirements that may be unnecessary.

More specifically, S. 2275 would eliminate ICC regulation of motor carrier tariffs (including those for collectively set rates) and entry, other than those for household goods carriers. There is a fairly broad consensus that these entry and tariff requirements no longer serve the public interest but instead impose a costly and unnecessary burden on both shippers and motor carriers. The shipper undercharge crisis is a prime example of a system gone wrong. Last year's legislative response to that crisis, the Negotiated Rates Act of 1993, provided only a two year temporary solution. Eliminating tariff filing and enforcement, as S. 2275 would do, would provide a permanent solution to the undercharge problem. Shippers and carriers would be able conduct their business dealings on the basis of accepted commercial practices, not archaic government regulation. It also will reduce costs for carriers and shippers who now must employ people just to monitor the millions of tariffs filed each year. Those people could be used in a more productive way.

Motor carrier entry requirements are also expensive and outdated. The ICC receives thousands of applications a year for authority to operate an interstate trucking business. These applications are rarely opposed and rarely denied, except on grounds of safety fitness. S. 2275 wisely eliminates the entry requirements except for a showing of insurance and safety fitness. The remaining entry requirements for insurance and safety appear to overlap in part DOT's motor carrier reviews for safety and insurance. As we described earlier in our testimony, the ICC relies on our safety fitness determinations and both our staffs monitor insurance compliance. DOT monitors all interstate motor carriers, while the ICC covers only a segment of the industry. One of the issues we might consider in the future, perhaps in the context of the study, is to consolidate these functions, thereby eliminating extra paperwork, reducing opportunities for mistakes, and providing "one-stop shopping" for carriers.

There may well be other unnecessary motor carrier regulatory requirements that the ICC currently performs that could also be eliminated. However, more analysis and review of the ICC's authority is required. Currently, the ICC has the authority in the rail area to exempt portions of its jurisdiction from regulatory oversight where competitive conditions permit and such oversight is unnecessary. This has been very successful. The ICC has used this authority to exempt rail piggyback traffic, movements of agricultural produce, and boxcar traffic. S. 2275 would extend the ICC's exemption authority to its motor carrier jurisdiction, where, if implemented aggressively by the Commission, it could lead to similar efficiencies.

The bill also directs DOT to study the feasibility of merging the ICC and the Federal Maritime Commission (FMC). We are pleased that this study will enable us to examine not only the ICC's functions but also those of the FMC to identify areas of overlapping jurisdiction and consider organizational approaches that would streamline regulation and reduce costs to both the government and the regulated industries. The bill would require a second study to examine the ICC's functions more specifically to make recommendations to Congress concerning what changes could be made to enhance competition, safety and efficiency in the motor carrier in-

dustry and to enhance efficiency in government. We believe this is an important component of S. 2275 and we expect to actively participate in that study.

The debate over the future course of trucking regulation will continue for some time, spurred on by conditions in a very competitive intermodal transportation marketplace. The most recent example of this, as you know, is legislation produced by this Committee and recently passed by the Senate, section 211 of S. 1491, which would preempt States from regulating the trucking services provided by an intermodal all-cargo air carrier. The Administration supports section 211 as a step toward greater efficiency in intermodal transportation which should result in significant savings for U.S. businesses.

In sum, S. 2275 would take action now to reduce unnecessary government spending and employment and goes further by laying out an orderly process to review ICC functions and consolidation of agency functions. This is fully consistent with the purpose of the President's and Vice President's National Performance Review. We look forward to working with the Committee to develop a charter for the future economic regulation of our surface transportation industries.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions you and Members of the Committee may have.

Senator EXON. Mr. Kruesi, thank you very much, and thank you for staying within our timeframe. We really appreciate that and I am sure the people who follow will join me in applauding you for that. [Laughter.]

Chairman McDonald, welcome back.

STATEMENT OF HON. GAIL C. McDONALD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY HENRI RUSH, GENERAL COUNSEL, INTERSTATE COMMERCE COMMISSION

Chairman MCDONALD. Thank you. Good morning, Chairman Exon, and members of the subcommittee. With me this morning are my colleagues. Let me introduce them in the order they will speak later. Vice Chairman Karen Phillips, Commissioner J.J. Simmons, Commissioner Linda Morgan—these people do not need to be introduced to you—and our general counsel, Henri Rush.

I would like to briefly discuss this morning the effect of the House action to eliminate the Commission's funding. Currently approximately 650 cases are pending before us. Union Pacific Railroad's application to acquire control of the Chicago & Northwestern is one such case. Last week, the Burlington Northern and the Atchison, Topeka, and Santa Fe filed their notice of intent to merge.

We have before us the question of the compensation which Amtrak should pay Conrail for use of their tracks—21 rail line construction proposals are before the Commission; 18 proposed shortline sales; and 65 proposed abandonments are pending. Rulemakings implementing the Negotiated Rates Act of 1993 are in process, and over 300 undercharge cases are being prepared.

Each month we grant approximately 1,300 applications for authority to operate as a motor carrier or broker. Our compliance and enforcement staff handles over 200 household goods consumer complaints. That same staff handles owner-operator disputes with motor carriers and works closely with the insurance industry to pursue the approximately 3,000 motor carriers that fail to renew their insurance coverage each month.

Assuming transfer legislation were enacted by the House and Senate by October 1, the Commission's pending docket would transfer to the Department of Transportation, but with no structure in place to process pending cases. It is anyone's guess when

the work would eventually be processed. For the foreseeable future, parties with matters pending before the Commission would be unable to move forward with their various important business transactions. Implementation of the Negotiated Rates Act would be frozen as well. The undercharge crisis would persist, rather than move toward resolution.

It seems to me that the ICC's building is not the reason for keeping our agency; that the Interstate Commerce Act—ICA—is, because ICA continues to require Government approval before railroads and motor carriers can pursue various actions. If no Government entity is available to scrutinize these proposals, these industries, and important industries they are, are caught, unable to conduct any transaction that requires our approval. Equally important—and I think you have recognized it here today—is the independent forum that we provide will be lost for quickly adjudicating disputes.

If Congress continues to believe that the public interest requires some Government oversight of rail and motor carriers, the question is where should that function be performed most efficiently and effectively. I would submit that the independence of the ICC, as well as its staff's interdisciplinary expertise and small size, offer distinct benefits. If a determination is made that less oversight of the motor carrier industry is necessary, perhaps in the manner proposed in S. 2275, I would simply caution that an immediate major reduction in motor carrier staff-years could significantly affect our ability to process the pending undercharge cases and to complete the implementation of the NRA.

Yesterday, the Washington Post ran an article describing the strong health of the rail industry. The article demonstrated the importance of finding the most appropriate level of regulation for industries which Government plans to regulate. With the Staggers Act, I believe that Congress struck a successful balance in the rail industry between market forces and Government oversight.

It is critically important that the Congress and our Commission continue to pursue the most appropriate level of oversight of the motor carrier industry as well. Senator Exon and Senator Packwood's proposal provides an excellent opportunity to reassess the best level of regulation for today's dynamic motor carrier industry. I strongly endorse this legislative proposal and look forward to working with you on perfecting it.

I now give the microphone to Vice Chairman Karen Phillips.

[The prepared statement of Chairman McDonald follows:]

Prepared Statement of Gail C. McDonald

Chairman Exon and distinguished Members of the Subcommittee, I am Gail C. McDonald, Chairman of the Interstate Commerce Commission Thank you for this opportunity to appear here today before this hearing to discuss with you the mission and function of the ICC and to answer your inquiries regarding those areas of mutual interest and concern. This hearing comes at a critical time given the June 16 vote in the House of Representatives to eliminate all funding for the Interstate Commerce Commission.

The Interstate Commerce Commission is an independent regulatory agency that has seen tremendous change over the past 15 years. While the regulatory reforms of the 1980s transformed the rail and motor carrier industries and, consequently, the Commission's regulatory and oversight responsibilities, I and my fellow Commissioners believe that the ICC still has an important role to play in the regulation of our surface transportation industries. In eliminating burdensome regulatory re-

quirements, the Congress dictated a major policy shift to a market-oriented system; it also, however, clearly endorsed the need to promote the public's interest in adequate surface transportation at reasonable prices and charged the ICC with carrying out these responsibilities. Chairman Exon, we, as an arm of the United States Congress, accept this role freely and take our mandate very seriously. Chairman Exon, before discussing the particular responsibilities and work conducted by the ICC, I'd like to focus on the genius of the independent desinu of the Commission.

The Interstate Commerce Commission is the Nation's first independent regulatory agency, created in 1887 and made an independent arm of the Congress two years later. The ICC's independence has been preserved since that time.

Under the Interstate Commerce Act, the ICC regulates surface transportation, including rail, domestic water, motor (passenger and freight, including household goods) and certain pipeline transportation, as well as the operations of transportation brokers and household goods freight forwarders. The agency's regulatory functions include licensing of carriers and services, review and approval of carrier mergers or other consolidations, service abandonments or license revocations and assurance that rates and services are adequate, fair, and reasonable.

What most distinguishes the ICC's mandate and mission as an independent regulatory agency from that of the government's executive agencies is the Commission's adjudication of disputes between conflicting interest groups. These include carriers, their employees, shippers, state governments, and the federal government in its capacity as a shipper. Even the regulations the ICC promulgates are designed to facilitate that important dispute resolution mission.

An appreciation of the quasi-judicial nature of the Commission's work is crucial to understanding the importance of the agency's independence. For example, rail line abandonment and construction cases require the ICC to weigh the competing needs of individual railroads, shippers, state and local concerns, and the national interest in an adequate and competitive nationwide rail network. Such cases can be highly controversial and the subject of intense parochial interests.

The Commission also judges the reasonableness of shipper and local community offers for financial assistance to continue otherwise unprofitable rail service, as well as the environmental impacts of an abandonment or construction project. These can be difficult decisions. As one judge put it with respect to railroad abandonment cases:

> The Commission must make an apples-and-oranges comparison: the community's needs and the railroad's balance sheet cannot be measured by a common standard. * * * Regardless of how fully the facts and principles are explained * * * the needs of the community will always be less tangible than the financial condition of the railroad. * * *

Such decisions are best delegated to an expert collegial body that will be less subject to pressures from any quarter.

Additionally, an independent agency serves as an arm of Congress in performing expressly delegated quasi-legislative functions. The Commerce Clause of the Constitution gives Congress, not the Executive Branch, the power "to regulate Commerce * * * among the several states." That commerce is transported among the states primarily by the carriers regulated by the Interstate Commerce Act. Thus, the ICC serves as an arm of Congress in carrying out the Legislative Branch functions under the Commerce Clause.

Indeed, Congress has given the ICC unusually broad policy authority to determine when and to what extent railroad transportation should be relieved of regulation. It has authorized the ICC to exempt any rail carriers, transactions or services from virtually all or any part of the Interstate Commerce Act, when certain prerequisite findings are made.

As an independent regulatory agency, the Commission is able to bring to all of its functions the impartiality that it exercises not only in adjudication of disputes among private parties but also in deciding cases in which the United States has a pecuniary or policy interest. It also brings the specialized and focused expertise necessary for the responsible economic oversight of the motor carrier and rail industries. These factors influenced the design of the ICC as an independent agency and demonstrate the continuing importance of the ICC's independence today.

Now, Chairman Exon, allow me to provide you with an overview of the responsibilities and work conducted by the ICC, beginning with our rail functions.

The Staggers Rail Act of 1980 removed cumbersome and antiquated rail regulation at a time when the industry was on the verge of bankruptcy. Congress' decision to lift the burdensome regulation and allow the rail industry to operate in a far less restrictive environment has proven successful as shown by the renewed economic strength of the rail industry. Concurrently, the Congress also built in safeguards to

protect the public interest and entrusted those safeguards to the ICC, which has the necessary mechanism and contmuity to carry out the mandate of the Congress.

While most railroad traffic today is subject to competition from other modes, there are some shippers that remain captive to rail service, 1&, service available from only one railroad. In these situations there is the potential for abuse of that carrier's market power. ICC regulation protects captive shippers from unreasonably high rates. The ICC must balance shippers' and communities' interests with a railroad's need to maintain adequate revenues over a system where a large proportion of its freight is subject to competition from other modes.

The ICC's jurisdiction to regulate railroad rates serves to ensure that prices on traffic without effective competition are not unreasonably high. The agency lacks jurisdiction over pricing of other traffic. Under the Interstate Commerce Act, rail rates that do not exceed the variable cost of providing the service by a specific percentage, and rates on traffic that is subject to market discipline, fall outside the Commission's regulatory purview. As directed by the statute, the ICC has developed uniform national standards for deterrning which rates are subject to its regulatory oversight.

In adjudicating claims that a railroad is charging unreasonably high rates on captive traffic, the ICC has developed Constrained Market Pricing. Our regulatory expertise is needed to devise and apply these fair and uniform national standards that provide relief to the captive shipper, and, at times, address the Staggers Act mandate that the railroads achieve revenue adequacy (i.e., the ability to earn sufficient revenues to assure the continuation of a sound and efficient rail system). The Commission is working to develop a method for determining maximum reasonable rates for small shipments, most recently by sponsoring meetings on proposed methodologies developed by the Association of American Railroads, as well as Commission staff.[1]

The competing concerns of undue market power and an efficient rail network are also present in the consolidation of the rail industry. In the past two decades, the industry has reduced in size from approximately 20 to 10 class I railroads today. These 10 carry the bulk of rail freight. Pressures continue to make rail transportation service even more efficient. Thus, there remains the possibility of further mergers. The consequent potential for adverse monopoly effects of rail acquisition and pricing require continuing ICC oversight.

The law requires that the ICC review rail mergers m advance to ensure that the public will continue to receive adequate transportation services. For a railroad consolidation to gain approval from the ICC, it must offer substantial public benefits that are greater than any anticompetitive effects resulting from the transaction.[2] In appropriate cases, the Commission imposes access conditions (often negotiated by the parties involved) to ensure that adequate services are maintained and competition continues. When a proposed transaction is not consistent with the public interest, the Commission rejects the proposal.[3] The result of Commission regulation has been a strong network of railroads linking the nation and providing dependable, competitive service at fair prices to shippers.

I cannot emphasize enough that, without this crucial ICC review and oversight, rail mergers would be subject to antitrust review and possible challenges at both the state and federal levels. Under the current process, the ICC is able to consider in a single proceeding not only the antitrust implications of a proposed transaction, but the concerns of states, the federal agencies charged with antitrust enforcement, and all other affected parties, as well. The process is efficient. It permits the ICC to issue a final decision that both balances the competing issues at stake, and exempts the parties from any further application of the antitrust laws or state law to their implementation of the approved transaction. Without this process, rail carriers would be subject to multiple state and local legislatures and regulatory bodies that could effectively block a transaction. The ICC will soon be asked to initiate this process with respect to the newly proposed merger of the Burlington Northern, Inc., and Santa Fe Pacific Corporation. These parties filed with the ICC on Friday, July 8, 1994, a notice of intent to file a formal application seeking approval of this transaction.

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[1] See, Rate Guidelines—Non-Coal Proceedings, Ex Parte No. 347 (Sub-No. 2).

[2] Currently, the ICC is considering the Union Pacific's application to acquire control of the Chicago & North Western Transportation Company in Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R.—Control—Chicago & North Western Holdings Corp. & Chicago & North Western Transportation Co., Finance Docket No. 32133.

[3] For example, the Commission refused to approve the proposed merger of The Atchison Topeka and Santa Fe with the Southern Pacific in Santa Fe Southern Pacific Corp.—Control—SPT 2 I.C.C.2d 709 (1986).

The ICC also conducts a prior review of agreements between carriers for the transfer, lease, or use of rail lines. Such agreements also raise the specter of local interference with the national rail system, absent ICC review, as the lines involved often are located within one state. The ICC also resolves disputes between carriers over leases and trackage use arrangements, including both operational and compensation issues. The Commission is not merely an arbiter between parties in these disputes, but protects the public's interest in a well-functioning, competitive national rail system.

As our nation's rail industry has been in the process of restructuring in recent years, ICC policies have encouraged the formation of hundreds of short-line railroads. These small railroads provide connections to less-populated and rural areas which are nonetheless very important to our nation and its economy. Rather than being abandoned, these branch lines continue to contribute to the overall health of our nation and, at the same time, have enabled the larger railroads to become more efficient.

Rail car supply has been and continues to be an important area requiring constant ICC oversight and response when circumstances warrant. Issues of rail car allocation during periods of shortages, the utilization of rail- vs. shipper-owned cars during periods of car surplus, and the reasonableness of railroad car supply practices all require ICC action The Commission serves as an important facilitator between the wide range of competing interests—farmers, consumers and railroads, ports and rail car manufacturers, and states.[4]

Another area of great importance to local and regional economies is the ICC's responsibility involving service orders. In emergency situations, such as when a railroad becomes insolvent and is unable to continue operations, or when a flood or other natural disaster damages a railroad's line and it cannot restore service immediately itself, the ICC steps in to ensure contmued rail service. In cases of potential total loss of rail service to shippers on affected lines, the Commission can order a second carrier to operate over the tracks of the distressed carrier or permit transportation of the traffic of the distressed carrier over the lines of other carriers. The agency's directed service order benefits the affected shippers and communities, railroad employees, the owners and creditors of the carrier, and connecting railroads. The Commission also serves to assist the parties in developing longer-term solutions to the situation.

The ICC's review of proposals to abandon rail lines is an important safeguard to ensure that the nation does not lose necessary functioning rail lines, on the one hand, and that continuing service over unprofitable lines does not detract from the railroads' ability to continue to provide service on the other. The Commission weighs the financial interests of the individual railroad, the service and development needs of local shippers and communities, and the public interest in maintaining a healthy, adequate interstate rail network The agency maintains uniform national costing standards so that no railroad, shipper or state is held to a different standard than another. In addition, as required by the National Environmental Policy Act, the Commission conducts an environmental review of proposed abandonments and often imposes conditions to mitigate their environmental impacts. The ICC also oversees labor protective conditions for employees of abandoning railroads.

A program admmistered by the ICC which I consider one of the Congress' most innovative and forward-thinking is the Rails-to-Trails Program, authorized by the National Trails System Act, 16 U.S.C. 1247(d). In enacting that legislation, Congress recognized it is much more difficult and costly to assemble a new rail corridor and construct a new rail line than to preserve existing corridors. In administering the Rails-to-Trails program the ICC can help public and private organizations to preserve and use rail rights-of-way as trails, subject to possible future rail use (which we call rail banking). This provides a cost-effective means of maintaining an important national resource, the nation's rail corridors. Since 1986, over 4,000 miles of rights-of-way throughout the nation have been designated for trail use and preservation.[5] Over 1,000 miles were so desiguated last year alone.[6] There are also two lines that have already been restored to active rail service after having been approved for abandonment and used on an interim basis as trails.[7]

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[4] The Commission held a conference of interested parties concerning the nation's grain car supply in 1990 and issued a report the following year. Grain Car Supply—Conference of Interested Parties 7 I.C.C.2d 694 (1991). As concerns in this area persist, the Commission held a second conference on the issue in Omaha, Nebraska on April 11, 1994. Ex Parte No. 519.

[5] ICC 93. Interstate Commerce Commission 1993 Annual Report at 112.

[6] Id.

[7] In both instances, service was reinstated by an entity other than the original abandoning carrier. The first involved a small part of a former Iowa Southern Railroad Company right-of-

Finally, a cornerstone of the current rail regulatory framework is the ICC's Congressionally-mandated authority to tailor regulation to current needs, by exempting carriers, services, or transactions that do not require regulatory scrutiny, subject to later revocation of the exemption (in whole or in part) if the national transportation policy requires it. Using this authority, both in promulgating rules and adjudicating individual cases, the ICC continually assesses when the marketplace is the best regulator of industry behavior and in those instances exempts carriers from its regulation This constant fine-tuning allows the Commission to be responsive to a dynamic transportation environment.

Chairman Exon, I would now like to discuss with you the ICC's regulatory role in the motor carrier area.

As most of you know, the Motor Carrier Act of 1980 substantially relaxed entry standards for trucking companies, thus providing the public with widely available and fully competitive truck transportation service.

Because of the trucking industry's need to set fair and adequate rates and charges for a wide variety of transportation services (prices can vary sharply by commodity, geographic area and by the level of service), the industry traditionally relied on collective determination of rates, charges, service rules, commodity classifications, and even uniform mileage figures. However, the industry's use of the collective ratemaking process has decreased in recent years. In response to the increased competition within the industry resulting from the Motor Carrier Act of 1980, many more carriers now set their rates independently of one another. Collective action by rate bureaus is permitted subject to ICC approval of the bureau's charter, which may be conditioned by the agency as appropnate to protect competition and to provide for the supervision of operations.

The ICC's supervision of the collective ratemaking process serves as a check on anticompetitive concerns that might otherwise arise out of this process (which, upon Commission approval, is immune from antitrust laws). In approving rate bureau agreements, the agency balances and protects the beneficial aspects of this process to the trucking industry, particularly smaller motor carriers and the shipping public against the effects on competition.

The ICC is also charged with the responsibility of ensuring that a carrier's rates and practices are reasonable and not unduly discriminatory. In furtherance of that objective, common carriers must adhere to the filed rate doctrine and publish their rates in tariffs filed with the ICC. The tariff filings are intended to enable both shippers and competing common carriers to compare the rates, charges and services that are available.

More generally, the agency has enforcement responsibility to guard against secret rebates and illegal kickbacks by all carriers and regulates the credit terms and practices of motor carriers. These areas received further attention from Congress, which imposed additional responsibilities on the Commission in the recently-enacted Negotiated Rates Act of 1993 (Pub. L No. 103-180).

The ICC also is charged with licensing trucking companies to provide contract carriage services that are tailored to meet the distinct need of individual customers or involve dedicating equipment for their use. As a result of the Negotiated Rates Act of 1993, the Commission has auditing responsibilities to ensure that contract carriers adhere to the rates specified in their written contracts. Where a carrier has both common and contract carriage authority, the agency is responsible for determining in which capacity the carrier is operating if a dispute arises.

The ICC also regulates all motor carrier transportation in interstate commerce. This authority protects agamst a patchwork of regulatory restrictions by individual states that would impede interstate commerce. Finally, the ICC authorizes the transfer of intrastate operating licenses between carriers as part of a transfer of an interstate license to avoid the necessity of obtaining multiple state approvals with potentially conflicting results.

At this point, Chairman Exon, I would like to give you and the other Members more insight into the Commission's activities in carrying out the mandates of the Negotiated Rates Act of 1993.

One of the primary functions of the ICC at this time is to resolve the issues associated with the undercharge crisis that has plagued the trucking industry and its shippers for almost a decade. Undercharge claims brought by bankruptcy trustees of defunct trucking companies for past shipments not only have burdened shippers with costly litigation expenses, but also have undermined the public's confidence in

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way in Iowa (350 feet in Council Bluffs of a 645-mile corridor) converted to trail use in Finance Docket No. 31717 (ICC served Dec. 20, 1993). The second involved a 9.1-mile former Norfolk and Western right-of-way in Auglaize County, Ohio. Docket No. AB-290 (Sub-No. 68) (ICC served Oct. 15, 1993) and Finance Docket No. 32294 (ICC served Aug. 20, 1993).

doing business with operating carriers for fear that current dealings will likewise become the basis for future undercharge claims. This lack of confidence in an entire industry's business dealings must be remedied. Continued ICC involvement in that process is required by the Negotiated Rates Act of 1993.

Even if the tariff filing requirements on which these undercharge claims are based were eliminated for the future, existing claims would not necessarily be eliminated. Therefore, the agency's uniform handling of undercharge issues on a nationwide basis is an important continuing function.

Chairman Exon, the ICC is making every effort to work with the industry and affected shippers on this most important issue. We have issued all regulations and initiated all rulemaking proceedings mandated by the Negotiated Rates Act of 1993. Early challenges to the reach of the Negotiated Rates Act of 1993 (NRA), with respect to bankrupt carriers and its Constitutionality have drawn the agency into additional litigation. We have successfully met several of those challenges, however. For example, a California district court judge found that the NRA does not conflict with the Bankruptcy Code, nor does Section 9 of the NRA make the new statute inapplicable to bankrupt carriers.[8] Also, a Tennessee district court judge ruled that the NRA is applicable to bankrupt carriers and does not conflict with the Bankruptcy Code, and ordered referral of issues under sections 2 and 8 of the NRA to the Commission.[9] We also are happy to report that on May 16, 1994, the U.S. Supreme Court in *Security Services, Inc.* v. *KMart Corp.* (U.S.S.C. No. 93-284) affirmed our policy that a motor carrier may not rely on tariff rates that are void for nonparticipation under the Commission's regulations as a basis for recovering undercharges.

In addition, we recently held some 35 NRA briefings throughout the country in an attempt to assist the public in dealing with the undercharge issue and the requirements of the Negotiated Rates Act of 1993.

The ICC remains vigilant in its enforcement of the Household Goods Transportation Act. As you know, household goods movers require closer regulatory supervision than other types of trucking operations because of the greater need for consumer protection. Shippers of household goods often lack the sophistication and market power to bargain effectively with carriers or to adequately protect themselves from abusive practices such as improper weighing, misleading weight estimates, and miSquotation of rates. In 1993, the Commission investigated 2,830 complaints filed against household goods movers.

Therefore, in addition to the normal regulation of trucking companies, the ICC exercises special oversight over household goods movers. The agency prescribes performance standards and holds carriers and agents accountable for the failure to provide the agreed service, including the failure to timely pick up and deliver, and for loss and damage to a shipper's goods. The Commission can discipline unscrupulous agents who falsity documents or charge for accessorial services that were not provided and can bar an agent from the household goods transportation business.

The ICC supervises household goods dispute settlement procedures and may revoke its approval of a carrier's procedures if it falls to satisfy speedy resolution and fairness standards. The Commission can impose civil penalties for violations. In addition, the agency can and frequently does reach administrative settlements in many shipper-carrier disputes without resorting to litigation.

Chairman Exon, the ICC continues to carry out its charge from the Congress under the Bus Regulatory Reform Act of 1982 (Bus Act). The ICC licenses interstate bus operations to ensure that only adequately insured companies are in operation The Commission may suspend a carrier's right to operate where there is an imminent threat to life and property.

Closely tied is the matter of ICC approval of mergers or consolidations of interstate bus companies. When the Commission approved Greyhound Lines' acquisition of Trailways in 1988, the agency expressly retained jurisdiction to address and remedy any competitive concerns that might arise.[10] As part of that continuing oversight the ICC from time to time considers complaints and terminal access requests of regional connecting carriers.

Because stringent intrastate regulation, requiring cross-subsidization of intrastate routes from the fares on interstate routes, can considerably weaken the financial ability of bus carriers to provide interstate service, the Bus Act authorized the ICC

[8] *Gumport* v. *Sterling Press*, No. CV-94-1248-IH (C.D. Cal. March 28, 1994).

[9] *Jones Truck Lines* v. *Aladdin Synergetics, Inc.*, No. 3-93-0442, 1994 U.S. Dist. Lexis 3191 (M.D. Tenn. February 11, 1994).

[10] GLI Acquisition Company—Purchase—Trailways Lines, Inc., 4 I.C.C.2d 591(1988), aff'd by unprinted decision, Docket No. MC-F-10505 (ICC served Oct. 6, 1988); aff'd sub nom. *Peter Pan Bus Lines, Inc., et al.* v. *ICC*, Nos. 88-1566 and 88-1567 (D.C. Cir. May 8, 1989), per curiam.

to preempt state regulation of entry, exit and fares of interstate bus carriers. For example, the ICC can authorize intrastate operations by licensed interstate bus carriers (unless the service would have a significant adverse effect on commuter bus service in the area). The ICC can authorize discontinuance of intrastate bus routes, so that a state cannot burden interstate operations by requiring the continuation of favored operations. The Commission can also preempt intrastate rate decisions that burden or unreasonably discriminate against interstate or foreign commerce.

Chairman Exon, when the Congress passed the North American Free Trade Agreement, it mandated responsibilities for the ICC in the processing of applications of Mexican motor carriers to operate in the United States. The introduction of these carriers into the U.S. will be phased. First, as of January 1, 1994, Mexican charter and tour bus operators were allowed to apply for licenses to transport passengers in cross border operations in the United States. Second, by December 1995, Mexican freight trucking companies may apply to perform cross border operations in the U.S. border states (beyond their operations in existing border state commercial zones). Third, in 1997, Mexican regular-route bus operators may seek authority to conduct cross-border operations into this country. By the year 2000, Mexican freight trucking companies may be licensed to conduct cross-boarder operations. Finally, by the year 2001 the moratorium on Mexican owned or controlled bus company subsidiaries established in the U.S. will be lifted.

The ICC will be heavily and permanently involved in seeing that the licensed Mexican carriers adhere to all of the provisions of the Interstate Commerce Act, including, most importantly, maintenance of adequate insurance. The Commission's monitoring and enforcement activities will be coordinated with other federal agencies (the U.S. Department of Transportation and the Treasury Department) and the safety and enforcement agencies in various states.

Chairman Exon and Members of the Subcommittee, the ICC continues its regulatory responsibilities over pipelines other than oil and gas, which were shifted to the Federal Bnergy Regulatory Commission in 1977. The agency's regulatory responsibilities include the requirement for filing of tariff and oversight of the reasonableness of a carrier's rates and practices.

Finally, although infrequent, the ICC receives pipeline cases from time to time. For example, the agency currently has before it a case involving reasonable access terms for a phosphate slurry pipeline.[11] Similarly, the ICC has jurisdiction over other pipelines used for interstate transportation such as coal slurry pipelines.

Beyond those responsibilities I have described, there are a substantial number of others, which, while they are important, may not be generally well-known In anticipation of this hearing, I asked our Office of the General Counsel to survey the responsibilities with which the Commission is charged under various statutes. The list reflecting that survey is attached.

Chairman Exon, as you can see, the Interstate Commerce Commission continues to be presented with quasi-judicial/quasi-legislative transportation issues requiring it to balance the parochial interests of shippers, communities, carriers, their employees, and states, so as to determine what is in the overall national interest. Over the past century, the Commission's independent regulatory structure has proven itseff to be well adapted to reaching fair results that are fully consistent with Congressional directives and in the overall national interest.

We appreciate your and Senator Packwood's leadership in holding this hearing and in recently introducing trucking reform legislation, S. 2275.

Senator EXON. Chairman McDonald, thank you very much for your statement. We will go to questions after we have finished the rest of the panel statements.

Vice Chairman Phillips, we are pleased to recognize you at this time.

STATEMENT OF HON. KAREN BORLAUG PHILLIPS, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Vice Chairman PHILLIPS. Thank you very much, Mr. Chairman, Senator Packwood, Senator Hutchison. Thank you for the opportunity to appear at this hearing on oversight of the Interstate Com-

[11] *Ashley Creek Phosphate Company* v. *Chevron Pipe Line Company, et al.*, Docket No. 40131 (Sub-No. 1) and *Ashley Creek Phosphate Company* v. *SF Phosphates Limited Company*, Docket No. 40810.

merce Commission. The testimony submitted by the ICC for the record provides a good overview of the agency's current activities. I would therefore like to focus my comments today on the future role of the ICC.

The ICC as an institution has many strengths. Because we are an independent agency, we provide an impartial forum for the economic regulation of the surface transportation industries. Our decisions are based on the facts presented in the record before us and the guidance given to us by Congress in the Interstate Commerce Act. Our decisionmaking process, I believe, is less governed by political factors than is in the case of executive branch agencies. Further, as a bipartisan, 5-member body, the diversity of the Commissioners' views strengthens the decisionmaking process and ensures that all relevant concerns are considered.

As you are aware, the ICC has been the subject of much criticism in recent months. Most recently, the House of Representatives passed an amendment, referred to frequently today, to the fiscal year 1995 DOT appropriations bill that would eliminate all funding for the ICC. In these discussions, however, virtually all of the negative comment about the ICC has focused on our regulation of the trucking industry. Unfortunately, the debate seems to have stopped there. I fear that many may have lost sight of the ICC's responsibilities over the railroad industry, which remain substantial. As the members of this subcommittee are aware, the Staggers Rail Act of 1980 did not deregulate the rail industry. The act rationalized and reduced economic regulation, but the industry is far from deregulated.

Mr. Chairman, the ICC has compiled a record of accomplishment in implementing the Staggers Act. The Staggers Act, combined with additional administrative reforms adopted by the ICC, has strengthened the financial viability of the railroad industry and enhanced the performance of the Nation's transportation system. The ICC's policies also have resulted in the growth of short-line and regional rail carriers, preserving rail service and jobs that otherwise would have been abandoned and lost. As a result, the railroad industry is in much better financial condition than it was just a few years ago, yet competition has been preserved. However, because rail carriers retain market power, at least in some markets, some regulatory oversight is needed. The ICC, I believe, is the agency best equipped to carry out this responsibility.

The same cannot be said for continued economic regulation of the trucking industry. In fact, many of the ICC's motor carrier regulatory responsibilities, as mandated by the Interstate Commerce Act, in my opinion, are unnecessary in today's competitive transportation marketplace.

There is, of course, continued need for meaningful safety regulation over the trucking industry, combined with effective enforcement of insurance requirements. The ICC also has important enforcement responsibilities that result from implementation of the North American Free Trade Agreement. But continued economic regulation of the trucking industry, in my view, serves no useful public purpose.

In light of problems that have resulted from continued economic regulation of the trucking industry, such as the undercharge crisis,

and the experience that we have gained from implementing the Motor Carrier Act of 1980, former ICC Commissioner Ed Emmett and I developed a legislative proposal in 1991 to eliminate needless economic regulation of the trucking industry. Our proposal is pending in Congress as part of H.R. 2860, the Trucking Regulatory Reform Act of 1993, introduced by Congressman Emerson of Missouri. Our proposal embodies modest but meaningful regulatory reform.

The time may have come, however, for Congress to consider a broader initiative. In this vein, I would like to express my strong support of S. 2275, the Trucking Industry Regulatory Reform Act of 1994, which you and Senator Packwood introduced earlier this month. This legislation would streamline the ICC's trucking entry process to emphasis safety and insurance, it would eliminate the filed rate doctrine and tariff filing requirements, and it would extend the ICC's current rail exemption authority to the trucking industry, thus enabling the ICC to undertake additional regulatory reforms through established administrative procedures. The elimination of needless economic regulation of the trucking industry, as provided by S. 2275, would streamline the ICC and enable our agency to focus on our remaining responsibilities.

Mr. Chairman, as Congress continues to consider the ICC's future, I would urge you and members of this subcommittee to examine the agency's role with respect to other regulated transportation industries: interstate bus carriers, household goods movers and freight forwarders, transportation brokers, water carriers, and pipelines that carry nonpetroleum products. If Congress decides to sunset the ICC, it will have to consider whether the ICC's remaining functions should be transferred to another agency or whether existing economic regulations governing these industries should be reformed or eliminated.

In summary, I believe there is little, if any, public policy justification for moving the ICC's current functions to another Government agency. But regardless of whether Congress decides to sunset the ICC, I would urge you to reduce economic regulation of the trucking industry as provided in S. 2275.

Mr. Chairman, thank you for the opportunity to appear before you today, and I would be happy to answer any questions you might have at the appropriate time.

[The prepared statement of Vice Chairman Phillips follows:]

PREPARED STATEMENT OF KAREN BORLAUG PHILLIPS

Thank you for the opportunity to appear at this hearing on oversight of the Interstate Commerce Commission (ICC).

The testimony submitted by the ICC for the record provides a good overview of the agency's current activities. I would, therefore, like to focus my comments on the future of the ICC.

The ICC, as an institution, has many strengths. Because we are an independent agency, we provide an impartial forum for the economic regulation of the surface transportation industries. Our decisions are based on the facts presented in the record before us and the guidance given to us by Congress in the Interstate Commerce Act. Our decisionmaking process, I believe, is less governed by political factors than is the case in Executive Branch agencies. Further, as a bipartisan, five-member body, the diversity of the Commissioners' views strengthens the decision-making process and ensures that all relevant concerns are considered.

The ICC has been the subject of much criticism in recent months, starting with consideration last fall in the House and Senate of the Fiscal Year 1994 Department of Transportation (DOT) appropriations bill to a recent (April 27) article about the

ICC in The Wall Street Journal. Last month, the House of Representatives passed an amendment to the Fiscal Year 1995 DOT appropriations bill that would eliminate all funding for the ICC. In these discussions, however, virtually all the negative comment about the ICC has focused on our regulation of the trucking industry.

Unfortunately, the debate seems to have stopped there. I iear that many may have lost sight of the ICC's responsibilities over the railroad industry, which remain substantial. As the Members of this Subcommittee are aware, the Staggers Rail Act of 1980 did not deregulate the rail industry. The Act rationalized and reduced economic regulation, but the industry is far from deregulated.

Mr. Chairman, the ICC has compiled a record of accomplishment in implementing the Staggers Act. The Staggers Act, combined with additional administrative reforms adopted by the ICC, has strengthened the financial viability of the railroad industry and enhanced the performance of the Nation's transportation system. The ICC's policies also have resulted in the growth of short-line and regional rail carriers, preserving rail service and jobs that otherwise would have been abandoned and lost. As a result, the railroad industry is in much better financial condition than it was just a few years ago, yet competition has been preserved. However, because rail carriers retain market power—at least in some markets—some regulatory oversight is needed. The ICC, I believe, is the agency best equipped to carry out this responsibility.

The same cannot be said for continued economic regulation of the trucking industry. In fact, many of the ICC's motor carrier regulatory responsibilities, as mandated by the Interstate Commerce Act, in my opinion, are unnecessary in today's competitive transportation marketplace. There is, of course, continued need for meaningful safety regulation over the trucking industry, combined with effective enforcement of insurance requirements. The ICC also has important enforcement responsibilities that result from implementation of the North American Free Trade Agreement. But continued economic regulation of the trucking industry, in my view, serves no useful public purpose.

In light of problems that have resulted from continued economic regulation of the trucking industry (such as the undercharge crisis), and the experience we have gained from implementing the Motor Carrier Act of 1980, former ICC Commissioner Ed Emmett and I developed a legislative proposal in 1991 to eliminate needless economic regulation of the trucking industry. Our proposal is pending in Congress as part of H.R. 2860, the "Trucking Regulatory Reform Act of 1993," introduced by Congressman Emerson (R-MO).[1] Our proposal embodies modest, but meaningful, regulatory reform. The time may have come, however, for Congress to consider eliminating economic regulation of the general freight trucking industry while continuing to impose regulations to ensure safe industry operations and adequate insurance coverage. The elimination of needless economic regulation of the trucking industry would streamline the ICC and enable the agency to focus on our remaining responsibilities.

In this vein, I would like to express my support of S. 2275, the "Trucking Industry Regulatory Reform Act of 1994," which you and Senator Packwood introduced earlier this month. This legislation would streamline the ICC's trucking entry process to emphasize safety and insurance; it would eliminate the filed rate doctrine and tariff filing requirements; and it would extend the ICC's current rail exemption authority to the trucking industry, thus enabling the ICC to undertake additional regulatory reforms through established administrative procedures.[2]

I would hasten to add that I recognize that any decision to retain or abolish the filed rate doctrine or other economic regulations affecting the trucking industry rightfully belongs to Congress. Unless and until Congress acts on this matter, I am committed to enforcing current law.

Mr. Chairman, as Congress continues to consider the ICC's future, I would urge you and Members of this Subcommittee to examine the agency's role with respect to other regulated transportation industries: interstate bus carriers, household goods movers and freight forwarders, transportation brokers, water carriers, and pipelines that carry non-petroleum products. If Congress decides to sunset the ICC,

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[1] For motor carriers of freight other than household goods, this legislation would eliminate the filed rate doctrine, eliminate tariff filing and rate regulation for all motor carriers that set rates independently of rate bureaus, codify the current ICC practice of granting motor carrier operating authority to any applicant that meets the safety and insurance requirements, extend the ICC's railroad exemption authority to motor carriers, and promote regulatory uniformity by requiring States to regulate intrastate trucking operations in a manner consistent with ICC regulation.

[2] These regulatory reforms would change current law only with respect to motor carriers of property other than household goods. Current law as to household goods carriers and bus carriers would remain unchanged.

it will have to consider whether the ICC's remaining functions should be transferred to another agency, or whether existing economic regulations governing these industries should be reformed or eliminated.

In summary, I believe there is little, if any public policy justification for moving the ICC's current functions to another government agency. But regardless of whether Congress decides to sunset the ICC, I would urge you to reduce economic regulation of the trucking industry, as provided in S. 2275.

Mr. Chairman, thank you for the opportunity to appear before you today. I would be happy to answer any questions you might have.

Senator EXON. Vice Chairman Phillips, thank you very much for your statement. It is now my pleasure to recognize the dean, I believe, of the Interstate Commerce Commission, Mr. J.J. Simmons. I would point out for those who do not know this—it is a pretty well-kept secret—there are two members on the Commission from Oklahoma. I have found that Chairman McDonald and Commissioner J.J. Simmons were very faulty in their college football judgment, but I generally agree with everything else that they do other than that.

Commissioner Simmons, welcome back once again, and we are always glad to have you.

STATEMENT OF HON. J.J. SIMMONS III, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Commissioner SIMMONS. Thank you, Mr. Chairman.

Distinguished members of the Senate, it is a pleasure to appear before you this morning, even under the difficult circumstances facing the Interstate Commerce Commission. In my more than 10 years as a Commissioner, I have always appreciated the dedication of this subcommittee and the committee to the promotion of safe, efficient, and economical surface transportation in this great country. I strongly believe that the ICC has an important and continuing role to play in maintaining a surface transportation network that is the envy of the world.

Once again, the Congress is considering legislation addressing the statutory responsibilities of the ICC. Whatever legislative proposals are ultimately adopted into law, I can assure you that me and my colleagues will implement them in a manner fully consistent with the intent of Congress.

In 1980, the ICC assumed responsibility for the implementation of wide-ranging deregulatory reforms embodied in the Motor Carrier Act and the Staggers Act. In my opinion, the Commission's performance of this responsibility has been immensely successful. Proof of this success is the current vitality and the financial strength of the rail industry and the entry of thousands of new motor carriers now serving the public.

The key to the Commission's successful efforts was the independence of the Agency. Our independence from direct political control enabled us to balance the needs of shippers, carriers, consumers, and the public at large in the context of the policies established by the Congress. Without this independence, even decisions fairly arrived at would have been perceived as arbitrary and political, thereby undercutting public support for the deregulatory initiatives of the 1980's. For this reason, I am unalterably opposed to the transfer of the ICC functions to the Department of Transportation, or to any other executive department.

Today the ICC retains numerous significant duties, and Congress in recent years has added to those duties. Under the North American Free Trade Agreement, the U.S. transportation market will be gradually opened up to Mexican carriers. The ICC will ensure that limitations on operations by foreign carriers are observed. The Commission has also acted with dispatch to fully implement the various provisions of the Negotiated Rates Act of 1993. We are actively engaged in combatting abusive lumping practices, in regulating the practices of household good carriers which literally affect millions of consumers annually, in preventing uninsured motor carriers from operating over our Nation's highways, and in promoting responsive bus passenger service.

In the rail area, we have contributed to the growth of short-line rail carriers and consequently to the preservation of rail service over lines which would have otherwise been abandoned. We are also charged with approval of rail mergers and abandonments and oversight of car supply, rate reasonableness, and line construction issues. I know that the subcommittee, and in particular the chairman, are thoroughly familiar with these and numerous other responsibilities of the Interstate Commerce Commission.

By the way, Mr. Chairman, we expect before the end of the month to give you and the committee a report on our grain car initiatives—grain car supply initiatives.

It is, of course, the prerogative of the Congress to decide whether certain ICC functions are no longer necessary or in the best interests of the surface transportation industry. I personally believe that the ICC motor carrier regulation in its totality directly contributes to safe operations by motor carriers. But I realize that Congress may decide to scale back and even eliminate some of these functions. If this decision is made, the ICC will fully implement it.

I ask one thing of you and your colleagues in the Senate and the House of Representatives. If the Commission's statutory responsibilities are reduced, let us have sufficient staffing and budgetary resources to effectively carry out the remaining responsibilities. We have a dedicated corps of employees with tremendous expertise in the transportation field, and we want to apply this expertise in carrying out the programs mandated by Congress.

I appreciate this opportunity.

If I can indulge you just another minute, sir, if there are reductions in force as a result of this or any other initiatives that the Congress may take, it was not until 1980 that any minority carriers were in the trucking industry at all. It was a closed shop. Now there are thousands—very few thousands. The ones that I have talked to feel as though if there is any further deregulation that their interests might not be well served. They are going to have a tougher time than anybody else anyway borrowing money and doing everything else.

One word for the employees at the Interstate Commerce Commission. They are a dedicated group, sir, and if changes are made and there are RIF's, I would hope that the committee as much as possible would try to make them as painless as possible.

Senator EXON. Commissioner Simmons, thank you very much for a good statement.

I am pleased to recognize the newest member of the Commission now, although Linda Morgan is not new to us. I would simply say for the information of all, this is the first time that I have seen Linda Morgan in this room when she has not been shuffling questions for me to ask. It is nice to have you down at the other end of the table so I can ask you some questions, Linda.

Congratulations as the newest member of the Commission, and we are pleased to recognize you at this time.

STATEMENT OF LINDA MORGAN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Commissioner MORGAN. Thank you very much, and I am pleased to be on this side. Thank you, Mr. Chairman and other members of the committee, for the opportunity to appear before you today to discuss the future of the Interstate Commerce Commission and its responsibilities and missions. This hearing comes at a pivotal time for the Agency and for surface transportation policymaking. Decisions affecting the future of the ICC and its authority are clearly important to the Nation's transportation system and economy, as well as to the well-being of carriers, shippers, employees, consumers, and local communities across the country. As the newest ICC Commissioner, I am pleased to be able to contribute to this important debate.

This review of the ICC and its functions has intensified and has taken on even more significance in light of the recent action in the House to eliminate funding for the ICC with a view toward ultimately transferring its responsibilities to the Department of Transportation. Significant concern has been raised that the House action was imprudent and not a responsible way to address important matters of surface transportation policy. This hearing today, and the introduction of S. 2275, provide a vital opportunity to address the future of the ICC and its authority in the context of transportation policy.

Proponents of the elimination of the ICC argue that an independent regulatory agency is no longer necessary in surface transportation. This conclusion is ill-founded. The reasons for having an independent agency in surface transportation are no less valid today than they have been in the past. Furthermore, the need for an independent regulatory agency in surface transportation is no less compelling than the need for such agencies to oversee other sectors of the economy.

Consider, for example, the Federal Communications Commission, the Federal Trade Commission, the Consumer Product Safety Commission, the Federal Maritime Commission, and the National Transportation Safety Board. These agencies perform functions similar to those of the ICC, yet no one has suggested that any of these agencies should be merged into an executive branch department.

The proponents of ICC sunset seem to argue that the ICC's independence is less important because surface transportation has been essentially deregulated, and thus the ICC has little to do. This argument is not borne out by the facts. Although Congress indeed passed major reform measures in the early 1980's, it also retained certain important regulatory authority and entrusted it to the ICC.

Furthermore, although the ICC's regulatory authority over surface transportation is more narrow than it once was, the need for an independent agency should not be determined by its size but rather by the nature of its work. If size were determinative, then independent agencies smaller than the ICC would no longer be needed.

Those who support elimination of the ICC also believe that the public is demanding that changes be made in Government and that Congress must show the courage to make such changes. Governmental missions and functions clearly must be evaluated continuously and adjusted in accordance with changing needs and limited resources. And the ICC, like any other governmental agency, must be part of any such scrutiny. However, change also must have a rational basis.

There are those who view change in this case as a way of achieving meaningful and necessary reform in the regulation of surface transportation. However, the goal of regulatory reform need not be achieved only through the action of elimination. In this connection, I commend you, Senator Exon, and you, Senator Packwood, for addressing this goal in S. 2275. First, the legislation recognizes that in an ever-changing transportation marketplace Congress must continue to reevaluate the authority that it entrusted to the ICC to ensure that this authority corresponds to transportation realities. Second, it recognizes that governmental resources must be reviewed, conserved, and reallocated where they are most needed. In addition, it recognizes that the meaningful budget savings being sought in this area only can be achieved through the elimination of certain functions.

Finally, the legislation places the debate over the future of the ICC squarely where it belongs, in the surface transportation policy arena. The bill would provide for real change in a reasoned way. It would provide for meaningful reform. It would provide for solid budget savings. And it proposes to do all of this while preserving an Agency whose independence is critical to the implementation of the other important transportation functions entrusted to it by Congress.

The future of the ICC is not about slaying a "dinosaur" or putting a bureaucracy "on ice." It is about the future of surface transportation policymaking. S. 2275 provides Congress and the transportation community with the opportunity to make responsible decisions about this future.

Thank you, Mr. Chairman and other members of the committee. I would be pleased to answer any questions.

[The prepared statement of Commissioner Morgan follows:]

PREPARED STATEMENT OF LINDA J. MORGAN

Thank you, Mr. Chairman, and other Members of the Committee, for the opportunity to appear before you today to discuss the future of the Interstate Commerce Commission (ICC) and its responsibilities and missions. This hearing comes at a pivotal time for the agency and for surface transportation policymaking. Decisions affecting the future of the ICC and its authority are clearly important to the Nation's transportation system and economy, as well as to the well-being of carriers, shippers, employees, consumers, and local communities across the country. As the newest ICC Commissioner, I am pleased to be able to contribute to this important debate.

This review of the ICC and its functions has intensified and has taken on even more significance in light of the recent action in the House to eliminate funding for

the ICC, with a view toward ultimately transferring its responsibilities to the Department of Transportation (DOT). Significant concern has been raised that the House action was imprudent and not a responsible way to address important matters of surface transportation policy. There is concern that this action was taken without serious regard for the fact that Congress affirmatively entrusted the ICC, as an independent regulatory agency, with important missions and functions even after the regulatory reforms passed in the early 1980s, and that the ICC continues to implement those responsibilities. Also, the House action is viewed, in effect, as precluding a chance to refine and redefine, in a deliberative way, the missions, functions, and priorities of the ICC to ensure that any changes reflect appropriate surface transportation policy. This hearing today and the introduction of S. 2275 provide a vital opportunity to address the future of the ICC and its authority, in the context of transportation policy and the impact of that policy on the economic growth and development of the country.

Proponents of the elimination of the ICC argue that an independent regulatory agency is no longer necessary in surface transportation. This conclusion is ill-founded. The reasons for having an independent agency in surface transportation are no less valid now than they have been in the past. The ICC continues to have important responsibilities to adjudicate disputes and facilitate the resolution of many issues facing the surface transportation sector. Its independence and the expertise which it has developed as a result of the exercise of its regulatory authority are critical to ensuring that these responsibilities are carried out as intended by Congress. This independence and expertise establish the ICC as particularly well-suited to balance the many competing interests as it carries out its adjudicatory and quasi-legislative functions.

Furthermore, the need for an independent regulatory agency in surface transportation is no less compelling than the need for such agencies to oversee other sectors of the economy. Consider, for example, the Federal Communications Commission, the Federal Trade Commission, the Consumer Product Safety Commission, the Federal Maritime Commission, or the National Transportation Safety Board. These agencies perform functions similar to those of the ICC, yet no one has suggested that any of those agencies should be merged into an executive branch agency. Rather, Congress has decided that there is a need for an independent forum in those areas to carry out these functions. The public interest in a sound surface transportation system should receive no less consideration than the public interest in a competitive communications system, the safety and viability of other modes of transportation, or consumer protection.

The proponents of ICC sunset seem to argue that the ICC's independence is less important because the surface transportation industry has been essentially deregulated and thus the ICC has little to do. This argument is not borne out by the facts. Although Congress passed major reform measures in the early 1980s, it also retained certain important regulatory authority and entrusted it to the ICC. The ICC clearly continues to have significant responsibilities under the Interstate Commerce Act. In this connection, it is important to note that, in the roughly 2½ months during which I have been at the Commission, I have voted on approximately 70 cases of varying degrees of complexity involving a wide range of rail and motor carrier issues. All of these cases represent the continuing regulatory authority which Congress has entrusted to the ICC and which must be implemented.

Furthermore, although the ICC's regulatory authority over surface transportation is more narrow than it once was, the need for an independent agency should not be determined by its size but rather by the nature of its work. If size were determinative, then independent agencies smaller than the ICC would no longer be needed. Clearly the need for an independent regulatory agency should be based on the existence of responsibilities entrusted to it by Congress and the fact that these responsibilities are vested, for a reason, in an independent agency.

In addition, proponents of ICC sunset argue that important budget savings would be realized from the elimination of the agency and a transfer of its functions. Even assuming the validity of the savings cited, this argument focuses only on any benefits to be derived from budgetary savings and fails to consider possible detrimental impacts on the implementation of transportation policy. It assumes, for example, that if ICC responsibilities and functions were transferred to DOT, no additional personnel would be needed at DOT to carry out the added functions. Based on that assumption, savings would be realized through elimination of the number of personnel now employed at the ICC. However, if no new staff is added, it is logical to conclude that the implementation of certain transportation policy functions would suffer. Such a prospect does not seem to be in the public interest.

Those who support elimination of the ICC also believe that the public is demanding that changes be made the public is demanding that changes be made in govern-

ment and that Congress must show the courage to make such changes. Governmental missions and functions clearly must be evaluated continuously and adjusted in accordance with changing needs and limited resources, and the ICC, like any other governmental agency, must be part of any such scrutiny. However, change also must have a rational basis and be of benefit to the general public. The existence of an independent regulatory agency in surface transportation continues to be important, and the elimination of the ICC based on budget savings that might be achieved at the expense of transportation policymaking would not seem to be in the public interest.

There are those who view change in this case as a way of achieving meaningful and necessary reform in the regulation of surface transportation. However, the goal of regulatory reform need not be achieved through a drastic action of eliminating an agency. It can be achieved in a more deliberative way without compromising the independence of the decision-making process and the implementation of important transportation policy initiatives.

In this connection, I commend you, Senator Exon, and you, Senator Packwood, for addressing this goal in S. 2275. First, the legislation recognizes that, in an ever-changing transportation marketplace, Congress must continue to reevaluate the authority that it entrusted in the ICC to ensure that this authority corresponds to transportation realities. Second, it recognizes that governmental resources must be reviewed, conserved, and reallocated where they are most needed. In addition, it recognizes that the meaningful budget savings being sought in this area only can be achieved through the elimination of certain functions.

Finally, the legislation places the debate over the future of the ICC squarely where it belongs—in the surface transportation policy arena. The bill would provide for real change in a reasoned way. It would provide for meaningful reform. It would provide for solid budget savings. And it proposes to do all of this while preserving an agency whose independence is critical to the implementation of the other important transportation functions entrusted to it by Congress.

With all due respect, the future of the ICC is not about slaying a "dinosaur," killing a "turkey," or putting a bureaucracy "on ice." It is about the future of surface transportation policymaking and its impact on the future economic growth, development and competitiveness of the Nation. S. 2275 provides Congress and the transportation community with the opportunity to make responsible decisions about this future. In this regard, I and my fellow Commissioners remain committed to working with Congress to ensure that the missions and functions of the ICC are refined and redefined in accordance with the continuing need for a sound transportation system in the public interest.

Thank you, Mr. Chairman and other Members of the Committee. I would be pleased to answer any questions that any of you might have.

Senator EXON. Thank you, Linda Morgan. We appreciate your statement very much.

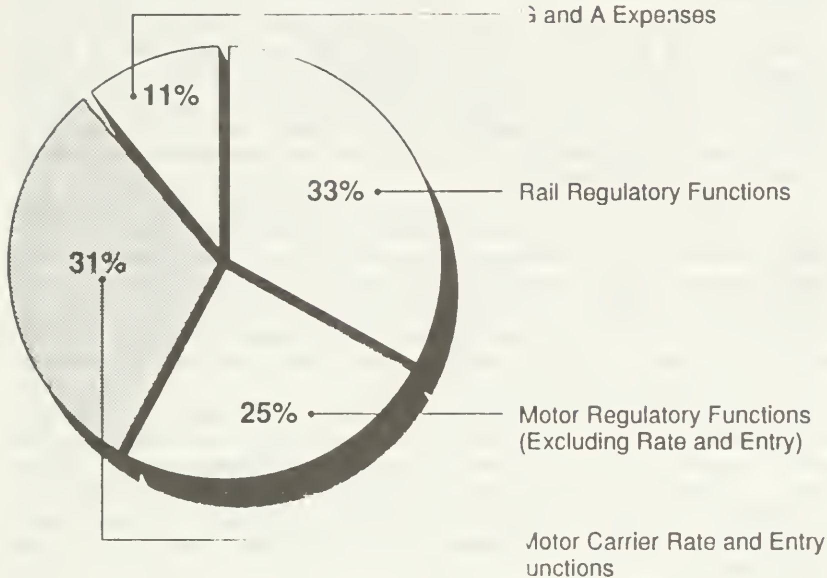
Now I am very pleased to call on Kenneth Mead, who has been here many times in the past and has always given us good counsel and advice. Mr. Mead is a long-time dedicated employee of the General Accounting Office specializing in transportation issues. We already have accepted your statement. Would you please summarize, Mr. Mead?

STATEMENT OF KENNETH M. MEAD, DIRECTOR OF TRANSPORTATION ISSUES, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. MEAD. Yes, Mr. Chairman, I will.

Mr. Chairman, much of the debate about the ICC and its usefulness, its redeeming value, has focused unfortunately on the Agency's motor carrier tariff filing and entry application requirements. That focus has tended to obscure, in some cases substantially, ICC's other statutory responsibilities in the rail and motor carrier areas.

ALLOCATION OF ICC'S FISCAL YEAR 1993 STAFF YEARS



To facilitate a focus on a fuller range of ICC's responsibilities, you have in front of you a pie chart that shows the basic split between the rail and motor carrier responsibilities. When you take into account the administrative overhead, the split is roughly 60–40, with 60 percent going to motor carrier, 40 percent going to rail. I would like to say a few words about the rail functions.

As shown in the chart, ICC devotes a little under 40 percent of its resources or 230 staff-years to the rail area. Based on our review, we feel ICC continues to perform important functions related to the railroad industry. In many instances, shippers have access only to railroads to carry their goods, and in other instances, communities are faced with the prospect, a very real prospect, of unnecessarily losing rail service. As long as those conditions exist, somebody will have to carry out the rail regulatory responsibilities.

The Congress has determined that in the case of rail the public interest is best served if the needs of shippers for reasonably priced railroad services are taken into account and balanced against the needs of the rail industry. And that has been the case for many years. We found in our review that virtually everybody we spoke to valued highly, most highly, the independence of the ICC decisionmaking process.

Motor carriers: ICC also continues to perform important functions in the motor carrier industry, like protection for household goods movements and insurance. However, many question the scope of ICC's motor carrier rate and entry regulations. Since few rate proposals or entry petitions are challenged today—actually, it is under 1 percent—we found that ICC could save about $17 million recurring annual savings, which is about one-third of the

Agency's budget, by eliminating or substantially reducing those regulations.

We also have looked at the bill that you and Senator Packwood introduced and find it to be consistent with our analysis. It could accomplish the twin goals of streamlining Government while preserving an independent agency. It also strikes me as being somewhat more orderly than slicing the funding and then deciding months later where one might shuffle the various functions among the quarters of Government.

ICC's responsibilities for regulating railroads could be transferred to DOT and/or the Department of Justice, but that transfer could compromise the independence of the decisionmaking process without generating meaningful cost savings, and conflicts of interest could be created. The conflict of interest, incidentally, arises because the Secretary of Transportation, by law, sits on Amtrak's board of directors, making funding decisions—presumably he is on the board to promote Amtrak's interests.

There will be over the next 2 or 3 years, as the Chair of the ICC was referring to a few moments ago, many issues on trackage disputes between the freight and passenger rail companies to be resolved. I think it would be problematic to have the Secretary of Transportation trying to sort through those issues, and there might be a perception that he would have difficulty doing that in an even-handed way.

There are other alternatives, like making ICC an independent commission within the DOT, much as they did with the Federal Energy Regulatory Commission, or combining it with the Federal Maritime Commission. I think your bill takes a prudent step toward that by simply directing that a study be done.

And with that I will be glad to close.

[The prepared statement of Mr. Mead follows:]

PREPARED STATEMENT OF KENNETH M. MEAD

We appreciate the opportunity to discuss the results of our review of the Interstate Commerce Commission's (ICC) regulatory responsibilities. In 1980, after ICC had extensively regulated transportation for nearly a century, the Congress substantially reduced ICC's jurisdiction over rail and motor carriers' rates and market entry and exit. Subsequently, several proposals have called for eliminating ICC altogether and on June 16, 1994, the House of Representatives passed H.R. 4556, the Department of Transportation and Related Agencies Appropriations Act, 1995, which eliminates funding for ICC in fiscal year 1995.[1]

To date, much of the debate about ICC and its role has focused on the agency's tariff functions. However, this obscures discussion of ICC's other responsibilities in both the rail and motor carrier areas. Concerned that the Congress have adequate information to determine the future of ICC's regulatory activities, the Subcommittee on Transportation and Hazardous Materials, House Committee on Energy and Commerce, asked GAO to evaluate ICC's current railroad regulatory activities and determine the impacts of transferring these activities to other agencies, such as the Department of Transportation (DOT). In response to that request, we testified on June 9, 1994, at a joint hearing of the Subcommittee on Transportation and Hazardous Materials and the Subcommittee on Surface Transportation, House Committee on Public Works and Transportation.[2] We are here today to further present the results

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[1] This bill also increased the Department of Transportation's (DOT) appropriation by $26.3 million, including $8.3 million in fees collected by ICC. Expectations, as expressed in Congressional debate but not included in the bill, were that $15 million would be used to make severance payments to those employees displaced by eliminating ICC and $3 million to provide for a transition of ICC's activities.

[2] Interstate Commerce Commission: Transferring ICC's Rail Regulatory Responsibilities May Not Achieve Desired Effects (GAO/T-RCED-94-222, June 9, 1994).

of our evaluation. Because ICC allocates more than one-half of its resources to motor carrier activities, our testimony includes an overview of these functions as well. Our main points are as follows:

- In many instances, shippers have access only to railroads to carry their goods. In other instances, communities are faced with the prospect of losing rail service. The Congress has determined that the public interest is best served if the needs of shippers and communities for reasonably priced railroad services are balanced against the needs of railroads for adequate revenues. ICC is charged with this responsibility. The agency continues to (1) review the reasonableness of railroad rates; (2) review and approve railroad mergers, abandonments, consolidations, and line sales; and (3) review and approve applications for trackage rights and resolve disputes. In fiscal year 1993, ICC devoted about 37 percent of its resources to these activities and about 63 percent to motor carrier activities.
- With respect to motor carriers, ICC continues to issue operating certificates and receive tariffs. However, since few rate proposals or entry petitions are challenged today, these activities are largely a formality. As a result, many shippers, transportation brokers, and others question the scope of ICC's continued motor carrier rate and entry regulation. We found that in recent years ICC has had to adjudicate disputes that have arisen because the tariff rates filed by motor carriers have differed from the rates negotiated with shippers—called undercharge cases. Although adjudicating these disputes has substantially increased ICC's workload in this area, fewer such cases are expected in the future once the current cases are resolved. Many who support the deregulation of motor carrier rate and entry favor continued federal enforcement of ICC's ancillary functions, such as providing consumer protection for the movement of household goods. These functions have continuing value and will either need to be retained by ICC or transferred to other agencies.
- ICC's responsibilities for regulating railroads could be transferred to DOT and/or the Department of Justice (DOJ). However, a transfer could compromise the independence of the decision-making process without generating meaningful cost savings. In addition, a transfer of ICC's rail functions to DOT could create conflicts of interest with DOT's responsibility for investing in and promoting the rail industry, especially the intercity passenger rail industry. DOT administers federal funds for the National Railroad Passenger Corporation (Amtrak). Other alternatives for handling ICC's rail responsibilities include making ICC an independent commission within DOT, much as the Federal Energy Regulatory Commission was made an independent agency within the Department of Energy, or merging ICC with the Federal Maritime Commission. Although these alternatives could preserve ICC's independence, they would produce only minimal cost savings for the federal government.

Our review indicates a continuing need for an independent regulatory commission, such as ICC, to address issues of competition in the rail industry and to adjudicate disputes. Budgetary savings might be achieved by further reforming motor carrier regulation, but any savings from changes in organizational responsibility for ICC's rail activities are likely to be small. Nonetheless, over the longer term basic questions need to be resolved about the appropriate scope and extent of motor carrier tariff filing and entry application requirements in a deregulated environment.

If the Congress should decide to eliminate ICC, we believe that a phase-out period will be needed. This period will allow decisions to be made about the need for and value of specific ICC functions, the appropriate organizational location for the functions that are retained, and the staffing levels needed to perform these functions so as to minimize disruptions to the transportation industry. Provision will also have to be made to ensure that any transfer of functions is handled in a smooth and orderly manner. The bill passed by the House (H.R. 4556) deals only with funding issues.

BACKGROUND

ICC is the nation's oldest independent regulatory agency. In 1887, the Interstate Commerce Act established ICC as an independent regulatory agency and charged it with protecting the public from monopolistic and discriminatory practices by the railroads. The Motor Carrier Act of 1935 extended ICC's mandate to include interstate trucking and bus operations. For nearly a century, the Commission exercised extensive economic regulation over the nation's surface transportation industries. ICC controlled the rates that could be charged and decided which firms could transport which goods. In the early 1960s, the agency employed nearly 2,500 people.

Today it employs approximately 625. ICC's budget for fiscal year 1994 is approximately $52.2 million.[3]

In the mid-1970s and early 1980s, in response to changing market conditions and perceptions that excessive regulation had led to significant inefficiencies in the transportation sector, the Congress substantially reduced ICC's jurisdiction over rates and market entry and exit. The Staggers Rail Act of 1980, among other things, increased the freedom of railroads to set rates according to the demands of the marketplace. Similarly, the Motor Carrier Act of 1980 substantially reduced federal regulation of the trucking industry. Nevertheless, the Congress did not completely deregulate the surface transportation sector, and ICC continues to regulate, albeit less extensively, both the rail and the motor carrier industries. In addition, the Congress continues to be concerned that shippers forced to rely on a single railroad not be subject to unreasonable rates and that individual communities served by a single line not be deprived unnecessarily of rail service. ICC's current motor and rail regulatory functions, together with their staff-year allocations, are listed in appendix I.

ICC CONTINUES TO PERFORM IMPORTANT RAIL REGULATORY FUNCTIONS

We reported in 1990 that most shippers had benefited from declines in real rail rates and improvements in service since the passage of the Staggers Rail Act.[4] However, not all shippers saw their rates decline or their service improve. Some shippers, called "captive shippers," are on rail lines served by only one railroad. Although the Staggers Rail Act limited ICC's authority to review rail rates to instances in which (1) a railroad has market dominance—that is, it has no effective competition—and (2) the revenue-to-variable cost ratio exceeds 180 percent, ICC serves an important role by hearing complaints and ensuring that rates are reasonable. In fiscal year 1993, about 37 percent of ICC's 625 staff years were devoted to rail-related activities, and ICC issued 65 decisions pertaining to complaints about rail rates.

The Staggers Rail Act also imposed time limits on the process for abandoning lines to help the railroads reduce their costs. However, ICC continues to review proposals for abandoning rail lines to ensure that shippers and communities do not lose rail service unnecessarily. In deciding whether or not to approve a petition to abandon a rail line, ICC is required by law to take into account (1) the financial interest of the railroads, (2) the service and development needs of local shippers and communities, and (3) the public interest in maintaining a healthy, adequate interstate rail system. In addition, under the Staggers Rail Act the railroads are required to sell lines approved for abandonment to responsible, interested buyers. If the parties involved cannot agree on a purchase price, ICC is empowered to establish terms and conditions.

Finally, ICC maintains responsibility for reviewing and approving mergers and acquisitions of rail carriers and for resolving disputes over trackage rights. Like abandonments of rail lines, some mergers, acquisitions, and trackage disputes are controversial. For example, in one recent rail acquisition case, ICC imposed conditions on the sale to ensure that employees who lost their jobs would be adequately compensated. ICC also reviews and approves applications for trackage rights. The importance of this role is likely to increase in the next few years because 97 percent of the tracks that Amtrak uses are owned by freight railroads and Amtrak will be renegotiating the compensation it pays to use these tracks. Amtrak currently pays nearly $100 million per year to use freight railroads' tracks. ICC is already reviewing one dispute between Amtrak and the Consolidated Rail Corporation over such compensation. Most representatives of the freight railroads we contacted expressed dissatisfaction with the current payments and may seek to increase their compensation. ICC will likely be called upon to help resolve disagreements stemming from Amtrak's renegotiation of agreements to use freight railroads' tracks.

POLITICAL INDEPENDENCE IS AN IMPORTANT ICC ATTRIBUTE

The Congress recognized the importance of maintaining ICC's independence in 1966 when it declined to merge the agency into the newly created DOT. While no agency can be wholly immune to political influence, ICC's status as an independent agency has led to the general perception that the agency is an impartial authority for resolving disputes and ensuring that economic policies affecting surface transportation are carried out fairly and equitably. ICC's five commissioners are ap-

[3] This includes $7.3 million in revenue from such activities as collecting registration and filing fees.

[4] Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980 (GAO/RCED-90-80, May 16, 1990).

pointed by the President, with the advice and consent of the Senate. These appointments expire in a staggered fashion so that a single-term President cannot, except under unusual circumstances, appoint a majority. No more than three commissioners may be from one political party, and a commissioner may be removed from office only for neglect of duty or malfeasance in office.

Our review indicates that this independence is an important attribute valued by all sectors of the transportation community. None of the representatives from the trade associations we interviewed—associations representing most railroad carriers and shippers—favored transferring ICC's rail regulatory functions to an executive branch agency. The consensus was that there are special benefits to having an independent-regulatory agency, such as ICC, to adjudicate disputes and resolve issues affecting rail transport. In general, trade association representatives believed that transferring ICC's functions to DOT and DOJ would affect the impartiality of the decision-making, the ability to balance the interests of all concerned parties, and the accessibility of the process to the public and industry. In particular, some representatives said that small carriers and shippers could be hurt the most, since they would not have the resources to litigate their disputes in court if there were no ICC. According to the representatives, preserving ICC's independence is important to support unbiased decision-making.

REDUCING ICC'S MOTOR CARRIER RESPONSIBILITIES COULD LEAD TO BUDGETARY SAVINGS

Even though the Motor Carrier Act of 1980 largely deregulated the trucking industry, ICC's responsibilities in this area consume approximately 63 percent of the agency's staff year resources. About half of these resources were devoted to regulating rates and entry in fiscal year 1993. In July 1994, legislation was proposed that would reduce much of the federal regulation of motor carriers' rates and entry. We estimate that ICC could reduce its total budget by about 30 percent if its responsibilities for regulating motor carriers' rates and entry were substantially reduced or eliminated.

Some Regulatory Requirements for Motor Carriers May Not Be Needed

The Motor Carrier Act of 1980 substantially reduced federal regulation of the trucking industry by easing entry restrictions for new firms, eliminating restrictions prohibiting a motor carrier from operating as both a common and a contract carrier, and increasing the number of exempt commodities.[5] It also eliminated certain operating restrictions placed on regulated carriers (such as restrictions on which routes and how many shippers the carriers could serve). The act also encouraged greater price competition among motor carriers in general by phasing out ICC's authority to grant antitrust immunity for certain rate-setting activities. Nevertheless, ICC continues to have tariff and entry regulations for approximately 53,000 interstate for-hire motor carriers.[6] ICC grants operating authority/licenses to new carriers, processes about 1 million tariff filings for rate changes, administers insurance requirements for interstate motor carriers, and enforces compliance with its regulations.

Even though the trucking industry is largely deregulated, the law still requires motor carriers to acquire operating certificates and file tariffs. In fiscal year 1993, ICC spent 100 staff years on rate regulation functions and 95 staff years on entry regulation functions. We found that common carriers' rates, which must be reflected in tariffs on file with ICC, are seldom challenged. However, in recent years ICC has been required to resolve disputes that arose because motor carriers' filed tariff rates differed from the rates negotiated with shippers—called undercharge cases.[7] Over the last several years, these cases have substantially increased ICC's motor carrier rate regulation workload: As of May 1994, there were about 340 undercharge cases pending at ICC. The Congress recently enacted legislation designed to help resolve these cases.[8] As a result, ICC expects its workload to decline over the next few years as these cases are resolved. ICC also grants about 10,000 motor carrier licenses per year.[9] According to ICC, 99 percent of these applications are unopposed. In view of

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[5] Interstate truck transportation of some agricultural products is exempt from ICC's jurisdiction. These products include livestock, feed, seeds, and unprocessed agricultural commodities.

[6] ICC exempts certain classes of interstate carriers—such as haulers of fruits, vegetables, and farm products—from regulation.

[7] Trucking Transportation: Information on Handling of Undercharge Claims (GAO/RCED-93-208FS, Aug. 30, 1993).

[8] The Negotiated Rates Act of 1993 (P.L. 103-180, Dec. 3, 1993).

[9] This includes motor carriers of property and passengers.

these facts, many shippers, transportation brokers, and others question whether the current scope and extent of tariff filing and entry application requirements are needed. Eliminating this regulation would require legislative action.

ICC is also responsible for other motor carrier functions. Commonly referred to as "ancillary regulatory functions," these include some aspects of safety and insurance regulation as well as responsibility for antitrust enforcement, cargo damage liability, data collection, owner-operator protection, household goods protection, and Mexican carrier registration. These functions accounted for approximately 38 percent of ICC's motor carrier resources (and 24 percent of ICC's total staff years) in fiscal year 1993. Many of those who support deregulation of rates and entry nevertheless favor continued federal enforcement of some of these ancillary regulations. In our 1987 report on trucking deregulation,[10] we identified a number of ancillary functions—including providing consumer protection for the movement of household goods, protecting owner-operators, monitoring insurance and cargo damage liability, and collecting data—that many believe would need to be continued either at ICC or at some other federal agency if ICC's rate and entry responsibilities were eliminated. We found no evidence to suggest that these activities are any less important today than they were in 1987.

Proposals have been made to reduce ICC's responsibilities for regulating motor carriers' rates and entry. Most recently Mr. Chairman, you introduced legislation on July 1, 1994, S. 2275, "Trucking Industry Regulatory Reform Act of 1994", that would address motor carriers' tariff and entry requirements. Under this proposal, the filed rate obligation would be eliminated for individual trucking companies and the entry review would be streamlined and limited to insurance and safety matters. In addition, ICC would be given the authority to exempt trucking activities from regulation. Enactment of this legislation would reduce ICC's need for resources devoted to regulating motor carriers' rates and entry. We believe your bill is consistent with our analysis and would accomplish the twin goals of streamlining government while preserving an independent agency to regulate rail and motor carrier activities as necessary.

Eliminating Rate and Entry Regulation Would Produce Budgetary Savings

The Congressional Budget Office estimates an initial annual savings of $19 million if all of ICC's motor carrier responsibilities (including the ancillary functions) are eliminated and 300 staff years are cut.[11] The annual savings are projected to increase to $32 million within 4 years after the terminated employees have received all of their compensation, including severance and annual leave pay. We believe that ICC would save approximately $17 million per year (32 percent of ICC's estimated fiscal year 1995 budget) if its motor carrier rate and entry regulations were repealed.[12] This estimate assumes that ICC would eliminate the 192 staff years budgeted for motor carrier rate and entry regulatory functions in fiscal year 1995 plus a portion of ICC's administrative overhead expenses.[13] We did not include the 149 staff years allocable to ancillary and finance functions. As discussed above, some of these activities, such as providing consumer protection for the movement of household goods, appear to have value and would need to be transferred to other federal agencies if ICC were eliminated. However, it is unclear what benefits would accrue simply from shifting these activities to other agencies if ICC is to continue performing rail regulatory activities.

SHIFTING ICC'S RAIL FUNCTIONS TO DOT/DOJ COULD COMPROMISE ICC'S INDEPENDENCE AND YIELD ONLY SMALL COST SAVINGS

ICC's regulatory and adjudicatory responsibilities in the rail area could, in theory, be divided between DOT and DOJ. The responsibility for mergers and acquisitions could be assigned to DOJ, and the other activities could be assigned to DOT. However, transferring ICC's rail functions to DOT and DOJ could reduce the independence, or the perceived independence, of the regulatory process. In addition, if the transfers did take place, DOT and DOJ would probably have to acquire additional staff (or retain current ICC staff) in order to obtain the necessary expertise in rail issues. Depending on how many of ICC's staff would need to be absorbed or replaced

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[10] Trucking Deregulation: Proposed Sunset of ICC's Trucking Regulatory Responsibilities (GAO/RCED-87-107, Apr. 23, 1987).

[11] This estimate assumes that ICC would cease to regulate motor carriers, intercity buses, interstate water carriers, and movers of household goods.

[12] This estimate includes only current wages and salaries and does not include severance pay or annual leave pay for terminated employees.

[13] Alternatively, ICC might find that it needs to reallocate some of the cost savings to other areas that might already be underfunded.

by DOT and DOJ, the budget savings could be small and largely limited to reductions in administrative or overhead costs. In fiscal year 1993, administrative costs consumed about $7.6 million of ICC's budget. On the basis of ICC's fiscal year 1993 allocation of staff between rail and motor carrier functions, we estimate that 37 percent of the agency's administrative costs ($2.8 million) are assignable to rail activities.

Loss of Independence Could Result From Transferring ICC's Rail Functions

Transferring ICC's rail functions to DOT and DOJ could reduce the independence of rule-making and dispute resolution. In declining to merge ICC into the newly created DOT in 1966, the Congress reaffirmed its belief that an independent body was necessary to ensure that the regulatory decision-making process was free from partisan influence. Although the regulatory environment within which ICC makes decisions has changed substantially since 1966, ICC's remaining rail regulatory responsibilities continue to require an unbiased consideration of the public interest. Since both DOT and DOJ are part of the executive branch and the Secretaries of these agencies serve at the pleasure of the President, both are already subject to more direct partisan influence than ICC. In contrast, ICC is a bipartisan collegial body. Although its commissioners are appointed by the President and confirmed by the Senate, they may be removed only for cause. Therefore, transferring ICC's rail responsibilities to DOT or DOJ could introduce a partisan influence into the decision-making process. Representatives of the rail industry and shippers we spoke with expressed serious concerns about the loss of independence that could occur if ICC's rail responsibilities were transferred to other agencies.

Transferring ICC's rail functions to DOT could also create potential conflicts of interest, since DOT's responsibilities include investing in and/or promoting Amtrak. DOT administers federal funds for Amtrak, and the Secretary of Transportation sits on Amtrak's Board of Directors. Transferring ICC's responsibilities for resolving rate and service disputes among railroads, including Amtrak, to DOT could raise questions about DOT's ability to make unbiased decisions. For example, questions could arise about the appropriateness of DOT's deciding Amtrak's current dispute with the Consolidated Rail Corporation (Conrail) over Amtrak's payments for using Conrail's tracks. This case includes issues about how much is to be paid and how such payments are to be calculated, and it can be expected to have implications for the entire rail industry as Amtrak's current operating agreements with freight railroads are renegotiated over the next several years. Over the years, successive administrations have held different views on the need for intercity passenger rail service. Such policy considerations could, or could be perceived to, play a role in the outcome of the disputes between freight railroads and Amtrak.

Budget Savings From Transferring ICC's Rail Functions Would Be Minimal

ICC's rail functions could, in theory, be divided between DOT and DOJ. DOT could assume all of ICC's rail functions except the approval of mergers and acquisitions. Authority for this function could be transferred to DOJ. The amount saved from such transfers would likely be small, since neither agency is currently positioned to handle ICC's functions. The Federal Railroad Administration (FRA) is primarily responsible for regulating railroad safety. FRA officials told us they would need additional staff to gain the necessary expertise and handle the increased workload if FRA were to assume ICC's existing rail responsibilities. DOJ's Antitrust Division is responsible for evaluating industry mergers for possible anticompetitive effects. However, ICC maintains sole responsibility for approving or denying railroad mergers and/or acquisitions. Officials at DOJ said they occasionally participate in rail merger proceedings before the ICC and provide it with economic analyses and other input for railroad mergers and acquisitions. However, they noted that their focus is on the competitive aspects of mergers rather than on possible economic and/or financial impacts on rail labor.

If ICC's rail responsibilities and functions are transferred to DOT and DOJ, both agencies will likely need to acquire the necessary staff and expertise if they are to handle these duties in the same manner as ICC. DOT's FRA acknowledged the need for both staff and expertise. DOJ officials told us they believe DOJ could assume ICC's merger and acquisition authority without additional resources, but they would not consider the noncompetitive effects of mergers, such as their potential economic and financial impacts on rail labor. If consideration of such factors is to continue as part of the process for approving mergers, we believe additional staff will be needed either at DOJ or DOT—depending on which agency assumes responsibility for them.

ALTERNATIVE ORGANIZATIONAL STRUCTURES COULD PRESERVE ICC'S INDEPENDENCE BUT OFFER SMALL COST SAVINGS

Several alternative organizational structures are available for handling ICC's rail regulatory functions. These include making ICC an independent commission within DOT and/or merging ICC with another commission, such as the Federal Maritime Commission (FMC). While each of these alternatives would preserve ICC's independence, the cost savings from adopting any one of them are likely to be minimal.

Making ICC an independent body within DOT and DOJ would allow the agency to retain its status as an independent federal commission responsible for regulating and adjudicating railroad issues. It would continue to operate much as it does today, presumably with similar staffing levels, but it would, in name at least, be a part of DOT. The Federal Energy Regulatory Commission (FERC)—an independent regulatory agency responsible for overseeing the natural gas industry, electric utilities, hydroelectric power projects, and oil pipeline transportation—operates under such an arrangement. Similar to ICC, it has both regulatory and adjudicatory functions. FERC has rate-setting powers and issues certificates for the construction and abandonment of interstate natural gas pipeline facilities. However, FERC is officially a part of the Department of Energy (DOE). An agency official emphasized that neither the Secretary of Energy nor any other DOE employee may direct or control FERC's activities. According to a FERC official, there were few, if any, cost savings in its move to DOE because the integration was a simple transfer of functions with no reduction in staff or budget. The same situation could apply to ICC—that is, ICC could retain its independent status but the move might produce few, if any, cost savings.

ICC could also be merged with FMC. Under this proposal, ICC's rail regulatory and adjudicatory functions would stay largely intact, but the merged commission would take on FMC's responsibilities for ocean-going and domestic offshore transportation. ICC and FMC have many similar functions and duties. FMC is responsible for regulating oceanborne transportation in the foreign commerce and in the domestic offshore trade of the United States, receives and reviews tariff filings of common carriers, and regulates rates and charges of controlled carriers to ensure that they are just and reasonable. Like ICC, FMC has five commissioners who are appointed by the President with the advice and consent of the Senate and no more than three of whom may come from any one political party. To the extent that the two commissions could be integrated, some savings in administrative overhead costs might be achieved. In fiscal year 1993, ICC incurred about $7.6 million and FMC about $4 million in administrative overhead costs. Additional savings would depend on the extent to which staff and services from the two agencies could be integrated. These savings would likely be small, since the types of industries regulated by each agency differ widely. S. 2275 would require the Secretary of Transportation to study the feasibility and efficiency of merging ICC with FMC and report to the Congress.

On June 16, 1994, the House of Representatives passed H.R. 4556, the Department of Transportation and Related Agencies Appropriation Act, 1995. Under this legislation, fiscal year 1995 funding for ICC was eliminated. However, DOT's appropriation was increased by $26.3 million (including $8.3 million in user fees to be collected by ICC) with the expectation, as expressed in Congressional debate, that $15 million would be used for severance pay for employees displaced by eliminating ICC. Since the House bill deals only with funding issues, it does not address the transfer of ICC's functions to other agencies or consider how the laws and regulations currently assigned to ICC will be administered.

CONCLUSIONS

ICC continues to perform a number of important rail regulatory functions that will remain necessary as long as there are captive shippers and market-dominant railroads. These functions could conceivably be transferred to DOT and DOJ, but it is not clear whether the benefits of a transfer would be significant. Furthermore, a transfer could entail a loss of independence in the decision-making process. The potential for budgetary savings is greater in the motor carrier area. Many shippers and transportation brokers question the need for the current regulation of motor carriers' rates and entry. However, before eliminating this regulation, the Congress may wish to consider to what extent motor carrier tariff filing and entry application requirements are appropriate in a deregulated environment. These functions constitute about one-third of ICC's annual budget. ICC's ancillary motor carrier functions, such as providing consumer protection for the movement of household goods, continue to have value and will likely need to be either performed at ICC or transferred to another agency along with the resources needed to adequately perform them.

If the Congress should decide to eliminate ICC, we believe that the potential impacts of this action on the transportation industry should be taken into account. This will require consideration of the need for and value of ICC's functions, the appropriate organizational location for the functions that are retained, and the appropriate staffing levels for these functions. In addition, a transitional period will be needed to ensure a smooth and orderly transfer of activities.

Mr. Chairman, this concludes my testimony. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

APPENDIX I—ICC's Allocation of Staff Years for Rail and Motor Regulatory Functions, Fiscal Years 1993–95

	Fiscal year 1993	Fiscal year 1994 [1]	Fiscal year 1995 [1]
Rail regulatory functions:			
Rate regulation	41.0	37.5	37.6
Antitrust matters:			
Major mergers/consolidations	12.1	14.4	13.1
Pooling, rate bureaus, etc	1.0	1.0	1.0
Minor mergers/consolidations	12.8	13.9	13.8
Abandonments	71.0	70.8	71.7
Acquisitions	13.1	14.2	14.3
New constructions	7.5	8.3	8.4
Trackage rights and leases	11.3	11.1	11.0
Data reporting	37.0	37.5	36.2
Allocation of G&A Expenses [2]	25.2	25.5	24.8
Total rail	232.0	234.2	231.9
Motor regulatory functions:			
Rate regulation	100.0	108.8	108.0
Entry regulation	95.1	84.8	83.8
Finance regulation	6.2	5.9	6.0
Ancillary functions:			
Safety	10.1	8.5	8.5
Insurance	46.5	45.3	45.5
Antitrust enforcement	3.7	3.8	3.8
Cargo damage liability	23.0	22.1	22.2
Data reporting	5.8	4.5	4.0
Owner-operator protection	27.9	27.4	26.4
Household goods rules	21.6	23.3	23.3
Mexican carrier registration	9.2	8.9	8.9
Allocation of G&A expenses [2]	42.8	43.5	42.2
Total motor carrier [3]	391.9	386.8	382.6
Total motor carrier and rail	623.9	621.0	61.5

[1] Staff years for fiscal years 1994 and 1995 are based on budget estimates
[2] G&A represents staff years associated with general and administrative activities
[3] Motor carrier staff years excludes 1 staff year devoted to water carrier functions
Source Interstate Commerce Commission.

Senator EXON. Mr. Mead, thank you very much. We appreciate your statement, and your prepared statement has been accepted for the record.

Senator Packwood, would you prefer to go ahead right now? I will be glad to recognize you for any questions you have of the panel.

Senator PACKWOOD. Mr. Mead, I found your statement and your study very good. I want you to be very specific, because I agree with your conclusions: Nothing is to be gained by simply passing an appropriation, cutting off the money, and then seeing what should we do. What are some of the specific functions that the ICC

now does, and especially in the area of trucking, that could simply be eliminated—I do not mean transferred, just eliminated?

Mr. MEAD. The two big ones are the requirement to file tariffs—that accounts for 108 staff-years—the other is entry applications.

Senator PACKWOOD. Out of about 625 staff-years, is it?

Mr. MEAD. Yes, thereabouts.

Senator PACKWOOD. So, that is about 20 or 18 percent.

Mr. MEAD. Yes, sir.

Senator PACKWOOD. All right.

Mr. MEAD. And the entry applications, which is another 83 staff-years.

However, you should retain, in our judgment, based on our review, a requirement, some sort of registration requirement so you can make sure that motor carriers are fit from a safety standpoint and that they also have insurance. If the carriers are relieved totally of an obligation to file, to register, then you would not be able to make that determination.

Senator PACKWOOD. But tariff and entry, by and large, we could get rid of, except for registration?

Mr. MEAD. Yes, sir.

Senator PACKWOOD. Now, why is it—because the argument was raised earlier and even the Secretary made reference to it—if the Department of Transportation is now regulating safety, is there a need for any involvement in the ICC in this area?

Mr. MEAD. Somebody needs to handle the insurance function, there is no question about that.

Senator PACKWOOD. But for the moment let us separate safety from insurance, but go ahead and address them both.

Mr. MEAD. Actually, the staff-years that ICC dedicates to safety are trivial. There is possibly 8 staff-years, 8 or 9 staff-years, devoted to that function.

Senator PACKWOOD. To safety.

Mr. MEAD. To safety, sir.

Senator PACKWOOD. Basically, just recordkeeping, I take it.

Mr. MEAD. Yes, they check with the Department of Transportation to see, when a carrier files, whether that carrier has an unsatisfactory fitness rating. And if it does, ICC will not approve their application.

Senator PACKWOOD. But 99 percent of the applications are approved anyway, so this is a relatively modest function.

Mr. MEAD. Yes.

Senator PACKWOOD. Now with the insurance, go ahead.

Mr. MEAD. As to insurance, that is an important function because at ICC—this is an ongoing function. Not only do carriers have to satisfy insurance requirements when they apply for operating authority but also the insurance companies have to notify ICC when there is a cancellation. There is quite a bit of activity at ICC during the year on this, although this is a function that conceivably, under the study you referred to in your bill, could be transferred to DOT provided you transfer the resources that are necessary to carry out the function.

Senator PACKWOOD. Well, that is a function that could be performed at either Agency, then.

Mr. MEAD. Yes, sir.

Senator PACKWOOD. In this case we do not need an overlap, in your judgment?

Mr. MEAD. No, sir.

Senator PACKWOOD. Now, let us come back to straight-out entry. If 99 percent of the applications are approved, is that an argument to simply get rid of any entry requirement at all, or do you at least need some pro forma investigation because of the safety issue?

Mr. MEAD. You do need, in our judgment, some investigation on the safety issue, and of course on the insurance issue.

Senator PACKWOOD. Right. Could those both be adequately done by the Department of Transportation with its current personnel?

Mr. MEAD. No, sir.

Senator PACKWOOD. Why?

Mr. MEAD. Because the Department of Transportation, based on all the work we have done, is far behind in even assigning fitness ratings to carriers. There are 260,000 or 270,000 carriers that they are responsible for, and they get around to them maybe once every 15 years.

Senator PACKWOOD. By fitness rating, do you mean safety?

Mr. MEAD. Yes, sir.

Senator PACKWOOD. OK. Well, then, let me ask you a question: When an application comes in and the ICC sends over to the Department of Transportation and says, what is their safety status, the Department of Transportation can be 15 years behind?

Mr. MEAD. There is a substantial risk that the new carrier will not have secured a safety rating. There is a substantial risk of that.

Senator PACKWOOD. Will not have a what?

Mr. MEAD. A safety fitness rating from the Department.

Senator PACKWOOD. Of any kind?

Mr. MEAD. Of any kind.

Senator PACKWOOD. Well, then, what does the ICC do, not having any record from the Department of Transportation on this?

Mr. MEAD. They would have no basis but to approve the application.

I might add, based on the work we have done at DOT, the people that they have there now are already rather stretched to carry out their existing responsibilities. I do not know how they would be able to adequately discharge insurance responsibilities in addition to that.

Senator PACKWOOD. Is the Department of Transportation trying to take care of any insurance responsibilities now?

Mr. MEAD. Yes. They have some insurance responsibilities now.

Senator PACKWOOD. In your judgment, is that something that ought to be transferred to the ICC? [Laughter.]

Mr. MEAD. You can make that case.

Senator PACKWOOD. Well, it almost sounds like you could make the case for both insurance and safety, to transfer them one way or the other, and it sounds like you have some question about the rapidity of movement in the Department of Transportation.

Mr. MEAD. Well, based on the work that we have done there it is somewhat alarming to hear that there would be an assumption that the Department of Transportation could assume all of these ICC functions without cost, simply through attrition.

Senator PACKWOOD. Mr. Secretary, what do you think?

Mr. KRUESI. Senator, as you might expect, I have a somewhat different view than Mr. Mead on this subject. There are two points that I would make in response. First, new carriers, those falling into high-risk categories such as hazardous materials carriers are targeted by Federal Highways for safety reviews. Those reviews tend to be paperwork reviews, reviews of maintenance records, and so forth.

Second, the more fundamental safety protection is a program that you are very familiar with, and indeed were critical for its beginning, and I think is very important, and that is the Motor Carrier Safety Assistance Program wherein investigations and safety inspections are conducted at the State level with Federal assistance. MCSAP fundings for this current fiscal year is on the order of $65 million and next year we hope, with the approval of Congress on our appropriation, to request $83 to $85 million.

The idea here is to make sure that people who are in law enforcement agencies responsible fundamentally for highway safety, monitoring highway speeds, and others, get the assistance they need from the Federal Government to conduct their program, and our Department provides training to allow that to happen.

So, there really has been a shift away from trying to conduct paperwork reviews on all carriers, and a shift toward looking at actual operations out on the road to target our reviews on problem carriers. We think this change in approach is a vital and important improvement in actually ensuring real safety on the road.

Senator PACKWOOD. Madam Chairman, let me ask you this: There is a natural tendency in all Government agencies to protect their turf, and they do it in all honesty. They think what they are doing is critical, and I understand that. When you work at it for years or supervise it for years you see it through those eyes. That sometimes makes you a target, therefore, for people who see it differently.

In your judgment, and then I will ask each of the other Commissioners, which of the ICC functions that you now have could be simply eliminated? I do not mean transferred, I mean eliminated without any danger to the public.

Chairman McDONALD. I think we could eliminate tariff filing for water carriers, which as you know is a very competitive sector.

Senator PACKWOOD. How many of your man-hours does that take?

Chairman McDONALD. It does not take that many, but it, in my view, is a burden on the industry and it is a very competitive industry.

Senator PACKWOOD. What else?

Chairman McDONALD. I would not recommend others, but I would say regarding your last question that our insurance monitoring protects people on the highways generally, and although we only have about 53,000 of those carriers they carry some 48 percent of the freight in interstate commerce, and so when they run into you in your car they have insurance because our program is active and ongoing and ensures that they keep it.

Senator PACKWOOD. Let me ask you a tangential question before the other Commissioners answer. Is there any need for any continuance of the rate bureaus as far as trucking is concerned?

Chairman MCDONALD. You know, I largely view the rate bureaus as service organizations to small and medium motor carriers and I am not at all sure they need our antitrust protection to continue their work. They seem to provide many needed services, and they tend to be expanding and serving carriers nationwide, as most carriers have nationwide authority.

So, I do not think they would really suffer by that, and again, we are talking about just a few staff-years in terms of monitoring time. But I do not think that is a high-priority function, Senator. I do believe the activities of NMFTA require continued antitrust immunity.

Senator PACKWOOD. Ms. Phillips.

Vice Chairman PHILLIPS. I think the major area where regulation could be eliminated would be in the trucking industry, and I think S. 2275 takes a very important step in that direction.

Basically, what we do in terms of entry requirements, having the public convenience and necessity test and a public interest test is currently required by the statute. Those are basically meaningless tests at this point. Applicants have to file paper, but these tests do not do anything to ensure that these people have insurance or meet the safety requirements, which is really what the marketplace is about now.

We should not be, in the Federal Government, in the business of saying that Joe Blow has done market analysis sufficient to determine that people are going to want his service.

Senator PACKWOOD. So, what do we do to get rid of that portion of it? Our bill moves partially there.

Vice Chairman PHILLIPS. Your bill would do that with respect to motor carriers of general freight. It does not touch household carriers or bus carriers, and I am only addressing general freight carriers at this point. So, your bill would take care of that. It would reduce the entry test to what it basically is and should be, which is safety and insurance.

Another important area is in the area of ratemaking. I think the undercharge crisis demonstrated that the filed rate doctrine has long outlived its usefulness and in fact has caused a great deal more harm than good. The trucking industry, as you well know, is extraordinarily competitive. We do not need to have the same types of mechanisms in place that were needed perhaps back in 1935 when the Motor Carrier Act of 1935 was first enacted. Your bill again also takes an important step in terms of getting rid of the filed rate doctrine, getting rid of tariff filing requirements.

Under your legislation the rate bureaus would still be allowed to exist. My personal view is there is no longer any need for antitrust immunity for rate bureaus. I think that one could make a case perhaps, however, that they should be allowed somehow to determine rate classifications, but that is sort of a tangential issue to collective ratemaking.

Senator PACKWOOD. And determine it without antitrust exemption?

Vice Chairman PHILLIPS. I would hope there would be some way that that could happen. I have not researched it thoroughly to find out if that could occur. I think even if there were limited antitrust immunity for that specific function I am not sure that that would be particularly anticompetitive. But that is an area where the truckers have large concerns that if we were to get rid of that facet of antitrust immunity that they would have a lot of trouble pricing their services.

Those are the main ones to get rid of. I think the fact that your and Senator Exon's bill also includes exemption authority for the ICC would be very helpful. Our General Counsel Henry Rush has prepared a compendium of 400-plus overall requirements we have. Many of those apply to the trucking industry. We would be able to then go through, find ones that are not serving any public purpose go through our administrative rulemaking procedures that we do now, and be able to further reduce unneeded regulations.

And so I think basically trucking is the main area. I think there may well be other areas of Commission regulation we could eliminate, but trucking is the main one and I think would be the main revenue generator.

Down the road I think that we could do some things on rail, as well, and we have been very aggressive in using our exemption authority in the rail area already.

Senator PACKWOOD. Commissioner Simons?

Commissioner SIMONS. First of all, sir, I do not want to be in the uncomfortable position of disagreeing with you at all. It is not prudent.

Senator PACKWOOD. Do not forget I am trying to save the ICC.

Commissioner SIMONS. And that is what I am thinking about. [Laughter.]

Actually, I am in the position of saying that you asked a question about rate bureaus. Small truckers utilize the rate bureaus. Many of these truckers are driving their trucks, and they do not have time to do the paperwork that is necessary for this function.

You also mentioned the mess with the filed rate doctrine. That is the fault of the Commission. When this Commission, years ago, in 1984 and 1985, saw that the truckers were hauling below cost, this Commission should have done something. Because no business, it does not matter whether you are a truck driver or whether you are operating an oilfield rig like I did, if you are operating below cost you cannot do that very long unless you have predatory ideas in your mind.

Senator PACKWOOD. Yes, but in this business, if you are in the trucking business and you are attempting to haul below cost you are not going to be in business very long, but there are lots of other competitors that are right there behind you.

Commissioner SIMONS. There are a lot of bankruptcies out there to show just what you said.

Senator PACKWOOD. But that is good.

Commissioner SIMONS. The guy that is driving the truck does not think it is good.

Senator PACKWOOD. Well, I hope you are not suggesting, Commissioner, that we should have a system that saves all those who might go bankrupt from going bankrupt.

Commissioner SIMONS. No, but we opened up the Motor Carrier Act, and good businessmen should not be hampered at all, but there are some businessmen that have gone out of business that were not necessarily bad businessmen.

I have never been able to prove it because nobody will step forward to actually say so—in the rail transportation policy you have a statement in there about predatory pricing. It is not so in the trucking industry.

Senator PACKWOOD. I will get and put in the record, Mr. Chairman, a statement of a professor when the Motor Carrier Ratemaking Commission was still in existence, and it goes something like this:

[The following testimony was from Prof. Roy Sampson, Professor of Transportation, School of Business Administration, University of Oregon, before a hearing of the Motor Carrier Ratemaking Study Commission in San Francisco, CA, on February 12, 1982.]

Mr. PACKWOOD. Professor Sampson, in your prepared statement you indicate that many small truckers don't know how to determine their own costs, yet there are lots of small truckers that stay in business, so I assume they have got to be breaking even or making a profit, how do they determine their costs?

Mr. SAMPSON. Many of them stay in business by taking the rates that are established by the bureaus and many of them don't stay in business. Many of them stay in business and are losing their shirts and don't know it. To use an anecdote, in Oregon, as you know, until probably the middle 1960's, there was no regulation of entry into the log trucking business. It then became regulated and I personally knew a fellow who was a log truckdriver and he would drive long enough to get a down payment for a log truck and then he would be hauling for himself, he would think that he was making money as long as he was making the payments on his truck and paying the fuel bill and had a few bucks in the bank. And eventually something would happen, the truck would break down, he'd have to get a new truck. He didn't know very much about these things, like depreciation and opportunity costs and contingency accounts and that fellow was in and out of the log truck business as an owner/manager at least three times before eventually he was saved by being regulated out of business.

Senator PACKWOOD. And he was talking about the independent trucker—that these people do not realize that they are not making money. A fellow works 14 hours a day and he repairs his own truck, and he is going in the red but does not realize it and he did not realize it until we finally saved him by regulating him out of business. Then he realized it. That almost sounds like what you are saying.

Commissioner SIMONS. That could very well be, in some cases, and I will not disagree with you. But there are some good businessmen out there. I have been a small businessman and I have operated at cost, but I could not even do that long. And fortunately, somebody smiled on me and gave me a contract and I was able to keep my crew in many instances and actually stay in business.

Senator PACKWOOD. Commissioner Morgan.

Commissioner MORGAN. I think, adding to what has already been said, that S. 2275 focuses on the two key areas that are ripe for reform: entry and tariff filing. I also would add that Section 11 of S. 2275 provides an important opportunity to look ahead and review some other areas within the ICC's jurisdiction to see where other efficiencies and reform would be appropriate.

Chairman McDONALD. Senator, if I might clarify, I support your bill, S. 2275, and so I support the areas of further deregulation in motor carriage. I was adding water carriage as something else you might consider eliminating.

Senator PACKWOOD. I had not thought about that, and I appreciate that.

Thank you, Mr. Chairman.

Senator EXON. Senator Packwood, thank you very much for an excellent line of questioning.

I would say to this panel and to the panels that will follow that, because of time constraints, there undoubtedly will be several questions for the record. We ask that you reply as quickly as possible.

I am going to reserve most of my questions which I think are important as we do have to conserve some time here. I have appreciated very much your testimony.

Let me ask one question of you, Chairman McDonald and any other members of the panel who have something to say about it. Then, I would ask a second general question of the panel.

Chairman McDonald, if S. 2275, which has widespread support and which Senator Packwood and I have introduced, is passed, most of the tariff requirements, previously the responsibility of the Interstate Commerce Commission, would be eliminated. What tariff-filing functions will remain, and what staffing levels would be required to carry out those functions in general terms?

Chairman MCDONALD. Senator, I would need to look and answer for the record a specific staffing level. Clearly, we need to keep some staffing and expertise to finish off the Negotiated Rates Act resolutions. We will report to you next year on that, and we have the 3-year liability. We also have rail tariffs, and we need some staff-years for that.

I had estimated, as Ken did, that eliminating all motor rate regulation would allow the reduction of 108 FTE's, which I think Senator Packwood calculated at about 17 percent, but let me give you a specific figure for the record.

[The information referred to follows:]

For the fiscal year 1995 budget process, the Commission estimated that 100.3 FTE's would be devoted to all motor carrier rate regulation functions, including tariff filing. One of the provisions of S. 2275 would eliminate tariff filing requirements for most freight motor common carriers. We estimate that the elimination of tariff filing functions under S. 2275 would allow for the reduction of 58.1 FTE's, yielding first-year savings, not including the cost of separating any Commission employee, in excess of $4 million. To orderly reduce a larger number of FTE's associated with motor carrier rate regulation, other functions would have to be eliminated.

Senator EXON. Thank you very much. Any other comment on that?

Commissioner SIMONS. Not on that, but something else, Senator.

Senator EXON. Well, go ahead.

Commissioner SIMONS. My paramount concern is safety, sir, whether it is done by DOT or done by us. DOT does not make safety ratings for operators of passenger vans weighing less than 10,000 pounds and carrying less than 16 passengers. Out where I come from there are a lot of those kinds of vans, because you do not have bus service any more, and those vans out there can kill people just like anybody else, and I would hope that DOT, or whomever is going to have the responsibility, that they be able to do this in a better fashion.

Also, when a new trucker comes on, as Mr. Mead says, we give them temporary authority, because actually they are not able to get a safety check. Something ought to be done about that, sir, and I

hope that in whatever legislation you have that we will be able to do something on it. It is pure safety.

Senator EXON. Thank you.

I would ask the following of the ICC Commissioners, and possibly Mr. Mead would want to add a comment, or maybe you would want to answer this for the record. If S. 2275 becomes law, in dollar savings, as a percentage of your present budget, how much savings would eventually accrue?

Chairman MCDONALD. Around $10 million, Senator.

Senator EXON. Mr. Mead, do you have any opinions on this, or have you looked at, what the total might be?

Chairman MCDONALD. I believe it will be higher. I think it may go as high as $15 to $17 million, once we deal with severance pay, and clear up the filed rate cases. I think it is several years down the road before you get to $17 million.

For your first-year savings, we are probably looking somewhere at the area of $4 million.

Commissioner MORGAN. Over the course of 5 years, you probably would be looking at $50 million, but the savings in each of the outyears would be greater than in the first year.

Senator EXON. What was that total? Did you say $50 million?

Commissioner MORGAN. $50 million; right.

Senator EXON. So, that was more or less in the area where we had calculated it when we put this bill together.

Thank you for that information, and I also would invite you at this time, if you could agree on a more precise estimate over the 5-year period for the record.

My last question would be of Mr. Kruesi. Mr. Kruesi, is it reasonable to assume that the Department of Transportation could absorb all of the ICC functions, powers, and duties as envisioned by the House of Representatives? Could you do all this over in the Department of Transportation without additional staff and therefore additional operating costs?

Mr. KRUESI. Mr. Chairman, I was struck by the comments of the last panel about the ability or inability of the Department of Transportation to absorb the FTE's at the Interstate Commerce Commission. Proponents of the grenade approach, which is just to blow the ICC apart quickly, should bear in mind that under the budget, there are legal requirements that some of our staff are for air traffic control, some for the Coast Guard, and so on for the other agencies within the Department of Transportation. It is not a simple matter to just absorb a group of 600 people without regard to those requirements. In fact, it is not legal to do so.

So, that is problem 1, and an example of the kinds of things that would need to be sorted out, even if there were to be a complete absorption of the ICC by the Department of Transportation.

We believe it is a bad idea to do it, though, for more fundamental reasons, which are more basic than questions of savings of money. It is a question of the functional responsibilities of the ICC, and it is also a question of making sure that decisions regarding the locations of central governmental functions are done in an orderly, sensible, sound way. Our problem, our fundamental problem with the House action is, it does not do that.

Instead, it simply says an agency is abolished, and whatever it is that this agency does is going to be done in some way or another by the Department of Transportation. That is not the way to do it, which is why we believe that your approach and the approach of Senator Packwood is the right way to do this.

Namely, to understand now what people agree can be done and should be done and then in a sensible, sound way, have the ICC, and the Department of Transportation, spend 6 months reviewing these functions carefully and making judgments about what should be continued, what should be eliminated, what should be absorbed, and make those recommendations to Congress. Finally then, work with Congress for a sensible, thorough review. That is what your bill proposes, and that is why we believe it is the appropriate procedure.

Senator EXON. Thank you very much. I will just wind up with my thanks to panel 1 for your testimony.

Let me summarize, if I might, by saying that in these days of political turmoil, in these days of disgust with if not distrust of public officials, it may feel wonderful to lead a charge of bulls running through the streets of a city in Spain. If you do not stay ahead of the bulls they will run over you.

But a charge of the bulls can be like a bull in a china shop. When we are talking about the public interest, the public good, and the public safety as Commissioner Simons has said, many things must be taken into account. Therefore, I am not going to be leading a charge of the bulls, as popular a position as that might be, because we have responsibilities here for that is in the public good.

Whatever is in the public good involves not only costs but also safety performance. I appreciate the fact that you and the Commission, as it is now structured, have taken a very healthy look at this. We are looking forward to your guidance and counsel in the future.

This panel is excused, and we appreciate your being here. I now will call panel No. 2 with my apologies and with my thanks for your patience.

Panel No. 2 consists of Thomas Donohue, president of the American Trucking Associations; Donald J. Schneider, president of Schneider Trucking Co. of Green Bay, WI; Martin E. Foley, executive director of the National Motor Freight Traffic Association, Inc.; Edwin L. Harper, president of the Association of American Railroads; Joseph M. Clapp, chairman and CEO of Roadway Services, Inc.; Edward R. Trout, president, Cornhusker Motor Lines of Omaha, NE; and James V. Dolan, vice president of law, Union Pacific Railroad, from Omaha, NE.

Gentlemen, thank you for being here. We must move along, and once again, I am sorry we have to rush you, but I know you planned on being out of here long before this time, so let us move ahead. There will be questions for the record.

Let us begin with you, Mr. Donohue. Thank you for being here, and welcome back once again.

STATEMENT OF THOMAS DONOHUE, PRESIDENT, AMERICAN TRUCKING ASSOCIATIONS

Mr. DONOHUE. Thank you very much, Mr. Chairman. I am very pleased to be here, seated with this distinguished panel, many of whom I have worked for, and sir, you can be sure that my comments today will be thoughtful if nothing else.

We would like to make a few comments today on behalf of ATA as it relates to the ICC and to regulatory reform in general. First, Mr. Chairman, we oppose any elimination of the ICC that allows the rules and regulations to remain in place without a means to implement and administer them.

We understand the desire to control costs not only at the ICC but in motor carriers and railroad companies as well. We specifically oppose the action taken by the House of Representatives that zero funds the ICC while keeping all the regulations in place. However, if the Congress believes there is a way to reduce the ICC budget without affecting the ability of the agency to perform its essential functions, you will have our support.

On the matter of deregulation, it is important for the committee to know that at the June meeting of ATA we voted to no longer oppose Federal preemption of State regulation on motor carrier rates and entry based on economic factors. In a large part, this change in policy was due to the actions of the Senate in adopting Section 211 to the Airport Improvement Act, and also had to do with other current realities of the *Federal Express* court decision in California, the deregulation activities in many States, and the Federal legislative initiatives that we are talking about here today.

You know that we support parts of the airport bill, particularly 211, with the rejoinders that we have presented to the committee that would protect our ability to do business in an orderly fashion. Based on this new policy, we are suggesting that you, in this committee and in the joint committee that is dealing with the appropriations, level the playing field and provide for the orderly conduct of our business.

Now, let me spend the majority of my time commenting on the 1994 Trucking Regulatory Reform Act, the bill that you and Senator Packwood have prepared. The proposed studies that you have put forth are an excellent idea. It is time to focus on the future scope of the ICC's regulation, and ICC merger possibilities with other Government agencies. The safety criteria that you have proposed for entry reform will have our support.

Section 7, emphasizing safety rather than public need as a basis for entering is a reform that reflects very simply the longstanding practice of the ICC. Since highway safety is so important, however, no matter what the truck is carrying or who is operating it, we would urge this committee to consider expanding the scope of those requirements to all trucking companies, when you limit it simply to safety and insurance.

On the matter of tariff filings, the debate on whether or not tariff filings should be continued and in what form and for whom is one of the most controversial issues facing the group here today. In fact, we have a policy on our books right now which supports the continuation of interstate tariff filing and other provisions such as antitrust and public notice provided in the filed rate doctrine.

We support tariff filing and other provisions simply because they help avoid litigation and provide for an orderly and integrated trucking industry, particularly, as we know, in the less-than-truckload business. However, if this committee can find a way to eliminate ICC and carrier costs associated with the actual filing of the tariff while keeping the necessary provisions to protect our ability to do business, it will have our support.

On the matter of exemptions, Mr. Chairman, we support the concept of allowing the ICC and in fact all Government agencies to eliminate needless regulations. A good example of this occurred in 1982, when the ICC with your support stopped requiring the filing of contracts, a decision that was later upheld by the court. That was a cost-effective decision not only for the Government but for the carriers, and we continue to support that today.

However, an overly broad exemption provision that might allow the ICC to do away with the negotiated rates adjustments, or safety and licensing for insurance or other matters, would not be in the best interest, and so we would hope that while you give in your legislation exemption power, that it would be limited by things that you would define as not being under the exemption allowed at the ICC.

Mr. Chairman, you have difficult issues and emotional people involved in them. We appreciate you looking at them very carefully. We are prepared to participate in this debate and provide any information you need, and would be happy to answer your questions.

Thank you very much.

[The prepared statement of Mr. Donohue follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations. I welcome the opportunity to present ATA's views on the several issues being considered by the Committee at these hearings.

The American Trucking Associations ("ATA") is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District Of Columbia, eleven affiliated national organizations and more than 4000 individual motor carrier members, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt; large and small.

On behalf of ATA and its diverse membership, I will address four issues.

First, it is extremely important to both carriers and shippers to maintain funding for the Interstate Commerce Commission. Regardless of whether you consider yourself a "regulator" or a "deregulator", the concept of eliminating the funding for a federal agency while maintaining the laws and regulations that the agency is delegated to enforce is as senseless as turning off the engines of an airplane while it is still flying.

Second, the need to amend the federal-preemption language of Section 211 of HR.2739, the Federal Aviation Administration Authorization Act, which was passed by the Senate last month and is now in conference. The scope of Section 211's preemption from state regulation must be expanded so as to create a truly level playing field; one group of carriers must not be given a competitive advantage over another merely because of the way the company is structured.

At the same time, the preemption language must be limited to enable the states to continue to regulate non-rate or economic entry factors of the intrastate trucking industry.

Third, the "Trucking Industry Regulatory Reform Act of 1994," as proposed by Chairman Exon and Senator Packwood, provides the foundation for meaningful regulatory reform:

- Further study of the future of ICC regulation and the ICC is an excellent idea.
- Codifying the ICC's existing emphasis on safety and insurance rather than economic need as the criteria for entry control is long overdue.

• Reduction in the cost to carriers and the government of the tariff filing function is an admirable goal if the important benefits of the "filed rate doctrine" are maintained.

• While ATA supports the elimination of unnecessary regulation, the proposed general exemption power for the ICC is too broad. This power must be restricted so as not to frustrate the goals of Congress or eliminate the uniform standards and rules that are essential to an efficient interstate trucking industry.

ICC FUNDING

In what appears to be an unprecedented action, the House of Representatives last month voted to eliminate the funding for the Interstate Commerce Commission as of October 1, 1994, while leaving intact all of the legal obligations the Interstate Commerce Act imposes on transportation carriers, the ICC, and others. In our research, we have been unable to discover any other instance in which the funding for an agency has been terminated by Congress without its first revising the substantive law for which the agency was responsible, or transferring the functions of the agency to another federal agency. This Committee recognized this point in 1978 when it transferred or eliminated the functions of the CAB prior to the sunsetting of the agency.

I urge the Senate not to terminate ICC funding, but to provide the Commission with sufficient funds to perform its remaining functions. I have attached to this testimony a list of examples of what would happen if Congress were to eliminate the funding of the ICC without either revising the Interstate Commerce Act or transferring the ICC's authority to another federal agency. Here are a few of the highlights from that list:

• There would be no consumer complaint mechanism for household goods consumers. The ICC has adopted extensive rules and mechanisms for protecting consumers on household goods shipments. With the elimination of the ICC, consumers would lose these important protections.

• There would be an unprecedented insurance crisis in the trucking industry. Federal law and regulations: (1) require ICC regulated carriers to have their insurance on file with the ICC; (2) require insurance companies to notify the ICC prior to any cancellation or a carrier's insurance; and (3) provide for motor carriers to self-insure, if they meet specific conditions and obtain the ICC's approval. All these functions rely on the existence of the ICC.

• The U.S. would not be able to implement NAFTA. Mexican carriers would continue to be excluded from the United States in violation of the NAFTA provisions. The Mexican carriers would not be able to operate in the United States since they would not be able to obtain ICC operating authority or file their rates or insurance as required by the Interstate Commerce Act—requirements that would remain in effect even in the absence of funding to administer them.

• All carrier tariffs would be frozen. All rates, classifications, tariff rules, mileage guides, etc. would be frozen as they exist on the day the ICC closes its doors. The Interstate Commerce Act requires common carriers to file their tariffs (including the Classification) with the ICC. Revisions to existing tariffs must also be filed. If there is no ICC, there would be no agency to receive the tariffs even if the carriers, bureaus, etc. attempted to file them.

• There would be no enforcement of lumping prohibition. In 1980, Congress enacted laws that prohibit a shipper or receiver of property from using duress to force a driver to load or unload a vehicle, or to hire a third party (a lumper) to do so at the carrier's expense. The responsibility for enforcing these prohibitions was delegated to the ICC. The illegal lumper problem continues to be a major concern for the trucking industry. If the ICC were eliminated, there would be no enforcement of the lumping rules.

PREEMPTION OF STATE REGULATION MUST RESULT IN AN EVEN PLAYING FIELD FOR ALL CARRIERS

At its June meeting, the ATA Executive Committee made a significant change in its policy with respect to the federal preemption of state economic regulation of intrastate trucking. In large part, this change in policy was due to the actions of the Senate in adopting Section 211 of the Airport Improvement Act, S. 1491. That section would preempt state economic regulation of the intrastate operations of many motor carriers. The ATA Executive Committee voted that while, in general, state economic regulation should not be preempted, ATA would no longer oppose Federal preemption of state regulation of motor carrier rates and entry based on economic factors, as long as Congress:

1. Preserves the ability of states to maintain beneficial regulatory protections such as: uniform liability rules; antitrust immunity for interlining, classification and mileage guides; financial fitness of motor carriers (including insurance requirements and self-insurance authorization); and uniform operating practices (such as uniform bills of lading, credit rules, independent contractor leasing rules and regulations). This will ensure stable, qualified and safe transportation to the general public.

2. Preserves the existing state tax exemptions and similar benefits that licensed and certificated carriers enjoy by allowing states to continue to issue certificates or permits or take other steps that enable the state to identify carriers that meet non-economic requirements.

3. Assures the right of carriers to tax write-offs of the reduction in value of state economic operating authorities caused by the Federal statutory change, either as provided for under current law or with new legislation, if necessary.

4. Provides a level playing field by giving the broadest interpretation of eligibility of who qualifies as a deregulated carrier, and enacts any further federal legislation necessary to allow all motor carriers (other than household goods carriers) to enjoy the same benefits and rights in intrastate commerce.

5. Allows continuation of state regulation of the intrastate transportation of household goods.

Based on this new policy, ATA asks those members of this Committee who will be on the Senate/House Conference Committee to consider these factors and to make revisions in Section 211 that will protect these non-economic aspects of state regulation and ensure that the benefits and rights being given some carriers are enjoyed by all carriers.

"TRUCKING INDUSTRY REGULATORY REFORM ACT OF 1994" PROVIDES A STARTING POINT FOR REGULATORY REFORM

S. 2276, the "Trucking Industry Regulatory Reform Act of 1994" as proposed by Chairman Exon and Senator Packwood provides the foundation for meaningful regulatory reform.

Study. ATA supports the idea of further studies both as to the future of ICC regulation and of the ICC. What aspects of regulation are essential to an efficient and profitable trucking industry? Should the agency continue as it is, be merged with the Federal Maritime Commission, or have its functions transferred to some other federal agency, such as DOT?

Entry. ATA strongly supports the proposed entry reform provision of Section 7 of S. 2276. Safety fitness and financial responsibility have been the key factors at the ICC for determining entry for at least the last decade. Recognition of this emphasis on safety, rather than public need as the basis for entry, is a reform that has been needed for many years. But highway safety is important, no matter what the truck is carrying or who is operating it. This Committee should expand the scope of these requirements to apply to all trucking operations, not just those currently regulated by the ICC.

Tariff Filing. The debate on whether or not tariff filing should be continued—in what form and for whom—is one of the most controversial issues facing the trucking industry today. In fact, ATA currently has a policy which supports the continuation of ICC tariff filings and other provisions of the "filed rate doctrine," such as antitrust immunity and public notice of rates. ATA continues to support these provisions because they help avoid unnecessary litigation and provide for an orderly, integrated, nationwide trucking industry. However, if this Committee can find a way to eliminate ICC and carrier costs associated with tariff filings while keeping the important benefits of the "filed rate doctrine," ATA would support this provision of the S. 2276.

With respect to the broad exemption provision of the proposed legislation, ATA has some serious reservations. ATA supports the concept of allowing the ICC, or any federal agency, to eliminate needless regulation, but the proposed provision is written too broadly, without necessary restraints on the ICC's authority. This broad exemption power could be used to frustrate the intent of Congress and to eliminate various aspects of federal regulation which are essential to the efficient operation of an integrated, national trucking industry. The ICC exemption provision should therefore be written to expressly exclude the exemption of matters such as:

- The provisions of the Negotiated Rates Act of 1993, the remedy to the undercharge crisis, which took so many years to be enacted.
- The safety and fitness licensing provisions of S. 2276.
- Existing insurance provisions: Federal law requires all for-hire motor carriers to maintain certain levels of public liability insurance. ICC-licensed carriers must keep evidence of this insurance on file with the agency. This requirement ensures

that the public is adequately protected in the event of an accident. In addition, the ICC has granted over 40 carriers the right to self-insure in order to meet these federal requirements. These carriers save hundreds of thousands of dollars a year in that way. The status of these carriers as self-insurers is based in part on the ICC's ability to police them to make sure they remain financially sound and continue to operate safely.

- An extensive system of consumer protection for household goods shippers. These protections and the regulation of these carriers should remain within the ICC and the status quo maintained.
- Uniform rules with respect to bills of lading; claims rules; cargo liability; credit rules; statute of limitations on claims and collections; and contract rules.
- Continued ICC jurisdiction over carrier mergers and acquisitions; rules governing the operation of freight brokers; owner-operator/carrier leasing regulations; and enforcement of the prohibitions on lumping abuses.
- Antitrust immunity for the motor freight classification, mileage guide, inter-line rates, and agency agreements.

These are aspects of ICC regulation as to which there is little, if any, controversy within the trucking industry with respect to the need to retain them.

An efficient and economical interstate trucking industry requires that certain uniform practices, rules and other requirements be maintained on a national level. The trucking industry will not be able to operate in the efficient and economical manner that U.S. industry and consumers have become accustomed to if it is to become subject to a myriad of inconsistent state and local laws and regulations. Unlike the retailer or manufacturer who may operate facilities in several states, the facilities and personnel of an interstate trucker are not stationary, but are by their nature mobile and provide service in many different jurisdictions.

A single shipment may begin in one state and pass through several other states on the way to its destination. The shipper and receiver of the goods may be located in different states. Without uniform federal laws and regulations governing the provision of such services, the potential conflicts and confusion between and among state laws is beyond comprehension. Therefore, it is essential to the interstate trucking industry and to the users of its services that an agency such as the ICC exist with the exclusive jurisdiction to set the rules and regulations by which these carriers operate in interstate commerce.

Further, the elimination or absence of federal regulation in this area could result in the imposition of state regulations.

REDUCTIONS IN THE ICC BUDGET CAN BE MADE WITHOUT AFFECTING THE REGULATION OF THE INDUSTRY

If the Congress believes there is a need to reduce the budget of the ICC at this time, it should be done without reducing the agency's ability to perform its essential functions.

- As indicated in a recent GAO report, a significant saving will be accomplished by going to a "safety fitness" criterion, instead of a public need criterion for licensing.
- The ICC's budget could be further reduced through elimination of positions in offices that deal with the Commission's internal matters rather than the regulation of the industry.
- Further savings could be accomplished if this Committee were able to devise a method of reducing the tariff filing requirements while retaining the essential benefits of the "filed rate doctrine."

SUMMARY

ATA supports the continued funding of the Interstate Commerce Commission so as to enable the agency to continue those functions that are essential to the efficient and orderly operation of the interstate motor carrier industry.

ATA encourages the House-Senate Conference Committee to revise Section 211 of the Airport Improvement Act to create a level playing field on rates and entry, but allow the states to continue to regulate other aspects of intrastate trucking.

The "Trucking Industry Regulatory Reform Act of 1994" is a solid foundation on which to base further regulatory reform. ATA supports the need for further study of ICC regulation and the ICC itself. The licensing provisions, basing entry on safety factors, are long overdue and should be expanded to cover all carriers. Reduction in the cost of tariff filing for carriers and the government is an admirable goal, provided that the important benefits of the filed rate doctrine can be retained.

Due to the interstate nature of the industry, uniform rules and regulations are needed in areas such as carrier liability, insurance, and claims. Continued ICC ju-

risdiction over mergers and acquisitions, and continued antitrust immunity for the freight classification, mileage guide, interlining, and agency agreements, are important to an efficient interstate industry.

Finally, if ICC funding is to be reduced, it should be done in areas that will not jeopardize the functioning of the agency.

WHAT IF THE ICC IS GONE BUT THE LAW ISN'T

Zeroing out the ICC's budget without any legislative action changing the Interstate Commerce Act could have some disastrous effects. The following are the chaotic highlights:

1. *Frozen Tariffs.* All rates, classifications, tariff rules, mileage guides, etc. would be frozen as they exist on the day the ICC closes its doors. The Interstate Commerce Act requires common carriers to file their tariffs (including the Classification) with the ICC. Revisions to existing tariffs must also be filed. If there is no ICC, there would be no agency to receive the tariffs even if the carriers, bureaus, etc. attempted to file them.

Enforcement. Since there would be no ICC, there would be no one to enforce these rules until a matter reached court. As the "undercharge" crisis showed, a shipper is liable for the rate stated in the tariff. Therefore, if the shipper paid an amount other than that in the tariff on file September 30, 1994, it could be liable for the difference. Similarly, if a carrier raised its rates and attempted to collect the increased amount, a court would only allow a judgment for the tariff amount.

2. *No New Entry Into Industry.* Since a carrier needs an ICC license to operate, there would be no new entry into the industry. The states would still have the authority to fine anyone operating without an ICC authority.

3. *No Mergers and Acquisitions.* Mergers and acquisitions of all but the smallest carriers could not happen because they must be approved by the ICC.

4. *Self-Insurance Approvals Would Lapse.* No additional carriers would be able to qualify as self-insurers. Further, carriers would not be able to meet the conditions of existing self-insurance approvals (periodic financial and claims reporting), which would then lapse by their own terms. The states would no longer accept a carrier's existing self-insurance approval as evidence of financial responsibility. To exacerbate the problem, when a carrier's self-insurance approval lapses (voluntarily or involuntarily), it would be unable to file evidence of commercial insurance with the ICC. (See next paragraph).

5. *Unprecedented Insurance Crisis.* ICC-licensed motor carriers must have current insurance on file with the ICC. Further, the insurance on file remains in effect until the insurance company has provided the ICC with 30 days notice that the coverage is being terminated. The ICC's closing would thus cause a two-fold crisis for both motor and insurance carriers. First, motor carriers would not be able to file evidence of new insurance. This would be especially disastrous to a motor carrier that has a notice of cancellation pending at the ICC. Second, an insurance carrier would not be able to notify the ICC of pending termination of coverage. Thus, insurance in effect on September 30, 1994 would remain in effect indefinitely with respect to third parties, even if the trucking company had ceased paying its premiums.

6. *NAFTA Crisis.* Mexican carriers would not be able to take advantage of the NAFTA. They would not be able to operate in the U.S. since they would not be able to obtain ICC operating authority or file their rates or insurance as required by the Act.

7. *Owner-Operator Issues.* It might be necessary for carriers to redefine their relationships with owner-operators. The current control the carriers exercise over their owner operators without them becoming employees is based largely on provisions of the ICC's leasing rules. It is unclear what would happen to these regulations if the agency were effectively terminated via de-funding.

8. *Brokers' Role Enforcement.* There would be no one to enforce the broker-bonding and other requirements.

9. *No ICC Enforcement of Credit, Claims, and Other Regulations.* Again, it is unclear what would happen to the ICC's regulations, but even if the regulations remained valid, there would be no one to enforce or review them.

10. *Lack of any Enforcement of Lumping Prohibition.* There would be no enforcement of the lumping rules.

11. *No Consumer Complaint Mechanism for Household Goods Consumers.* The ICC's extensive rules and mechanism for protecting consumers with respect to household goods shipments would cease to exist.

Senator EXON. Mr. Donohue, thank you very much. We will now go to Mr. Schneider, who is next on the list I have here. Mr. Schneider, welcome, and please proceed with your testimony.

STATEMENT OF DONALD J. SCHNEIDER, PRESIDENT, SCHNEIDER NATIONAL, INC.

Mr. SCHNEIDER. Senator, thank you for allowing me to appear before you. I am Don Schneider, president of Schneider National. We are the largest truckload carrier probably in North America. We run about 25,000 truckloads a week throughout the United States, and operate into and out of Canada and Mexico. I applaud what you are doing here today. It is extremely important that we eliminate waste in Government in any way possible, and certainly what you are doing is part of that.

What I would ask you to do is get it done one way or another. Certainly the preferable way is to change the underlying laws that require this waste in the first place, but if not, eliminate the funding, but get it done. It is very important.

I think that the legislation that you are proposing goes somewhat in that direction. Certainly a very important part of that is filing of rates and entry. I do think there are a number of other requirements that are still vestiges of the 1980 act that are no longer of any value, and one of them in particular is the filing of financial information that we do quarterly and annually, and let me read to you from a report that the ICC Office of Economics put out in May 1992 that make some statements along this line: "Specifically, we are now collecting data for which we have little or no need. The industry has been filing reports which we use rarely, if not at all." This came right from their records.

We in 1985 received an exemption to not have to file financial statements. In 1989, that exemption, along with a number of other carriers individually, was withdrawn for no apparent reason. That is why I think it is dangerous, as part of that legislation, to openly allow the Commission to decide what to exempt or not exempt, and I think you should be more specific.

In summary, then, Senator, I applaud totally what you are doing. I think this is the right way to go about eliminating waste in Government.

Thank you.

[The prepared statement of Mr. Schneider follows:]

PREPARED STATEMENT OF DONALD J. SCHNEIDER

My name is Donald J. Schneider and I am the president of Schneider National, Inc.

Schneider National is the largest truckload carrier on the North American continent. We operate throughout Canada, the United States, and Mexico.

Schneider National operates in excess of 8,500 tractors and 22,400 road trailers. We move about 24,400 truckloads per week and have approximately 13,950 associates. In 1994, we will run 1,182,014,000 miles.

Schneider will serve more than two-thirds of the Nation's "Fortune 500" and thousands of additional shippers and consignees located at points throughout the United States and Canada.

Schneider National publishes its own rates and tariffs and negotiates its own contract rates. Schneider National does not participate in rates set collectively through rate bureaus or other similar agencies.

While Schneider National does transport exempt commodities from time to time, virtually all of the operations described above involve regulated commodities and

are therefore subject to the Motor Carrier Act of 1980 or, if an intrastate shipment, are subject to the various States' regulatory schemes.

We are approaching the 15th year since entry and rates were effectively deregulated in the interstate motor carrier industry. Nevertheless, the vestiges of economic regulation remain, even with respect to interstate traffic. The Interstate Commerce Commission ("ICC") continues to require filings, reports, and other paperwork, examples of which I will provide, that provide no useful purpose and, from our perspective, run contrary to the national transportation policy adopted by Congress. Under these circumstances, the frustration with the ICC which caused the House of Representatives to vote to eliminate funding as of October 1 is very understandable.

Make no mistake—I favor complete interstate and intrastate economic deregulation. I am concerned, however, that with outmoded statutes and regulations left on the books but no agency to administer them, the void will be filled by the States or by civil litigants. Revision or elimination of its underlying statutory and regulatory framework is necessary.

The undercharge situation is perhaps the clearest example of the danger of allowing outmoded statutes and regulations to remain on the books. The ICC stopped any meaningful examination of rates long ago. In fact, the volume of changes to tariffs in the current marketplace is so great that there is no way for the ICC to properly catalog, much less police tariffs. More important there is no need for the ICC to even try. Virtually every other industry and their customers get by without publicly filed rates. Yet, we continue to be required to file rates. This year, we will file well over 20,000 pages, costing tens of thousands of dollars in filing fees and requiring over 400 worker-days of effort. For what purpose? No customer is going to contact the ICC to determine our tariff rates in deciding whether to tender freight to us. They'll call us or a competitor.

As I'm sure you are all aware, almost all exchanges of price data between competitors are illegal under the antitrust laws because of the clearly anticompetitive potential effect of such exchanges. Despite our national transportation policy favoring competitive and efficient transportation services (49 U.S.C. 10101), the ICC is, in effect, running a tariff clearinghouse. This would be illegal activity for almost any other industry. Yet, the continuing existence of this arcane system has resulted in numerous suits by bankruptcy trustees to collect the full amount of actually filed rates no matter how clearly a shipping contract may have reflected a lower rate.

The ICC is currently investigating the possibility of converting to an electronic tariff filing system. Although its intention may be well meaning, even if the substantial technical issues can be resolved, the only thing accomplished will be that the ICC has become more efficient at collecting data that at best is meaningless, and is likely anticompetitive.

Certain of the ICC Commissioners have recognized that the problems that remaining economic regulations create, but lacking a clear congressional mandate, they have either felt powerless to act, or the courts have overturned their actions. Others within the ICC have sought to justify their continued existence by creating or preserving work that creates no value, such as collecting financial statements.

While the ICC, after many years, has finally eliminated its unique uniform system of accounting which, in effect, required motor carriers to keep a separate set of books solely for purposes of filing reports with the ICC, it continues to require the filing of financial reports. This, despite the fact that its own Office of Economics admitted that they "use (the information) rarely or not at all" and that "(the ICC) is now collecting data for which we have little or no need."[1] Again, the ICC is simply acting as a clearinghouse for the exchange of data within the industry where direct exchanges of such data would, in other industries, be worrisome at best under the antitrust laws.

There are a number of regulations remaining that should be eliminated. These are primarily in the areas of: collective ratemaking; tariff and rate filings; finance and financial reporting; claims; recordkeeping; acquisitions; entry; credit and collections; and lease and interchange.

We believe these ICC regulations no longer serve any useful purpose.

Naturally, I am aware that the Senate recently passed S. 1491 promoting State regulation of rates, routes, and services of certain motor carriers that qualify as "intermodal all cargo air carriers." Although directionally it is certainly correct, it does not, in my opinion, go far enough. The distinctions between different types of carriers, in this case "intermodal all cargo air carriers" and others, is growing increasingly artificial in the marketplace. We favor Federal preemption of State regu-

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[1] Options paper submitted to the ICC, May 19, 1992, Voting Conference by Office of Economics of the ICC.

lation of motor carrier rates and entry based upon economic factors as applied to all nonhousehold goods carriers.

Clearly, the time has come for a top to bottom review of the ICC's activities and the statutes it is charged to administer. That review is, in my opinion, clearly overdue and should be placed on a fast track.

Senator EXON. Mr. Schneider, thank you very much. Those are worthwhile suggestions. We will take them into consideration.

Next, I would call on Mr. Foley, the executive director of the National Motor Freight Traffic Association. Mr. Foley, we appreciate you being here and providing us your expert testimony on this whole rate bureau proposition. Please proceed.

STATEMENT OF MARTIN E. FOLEY, EXECUTIVE DIRECTOR, NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

Mr. FOLEY. Thank you, and good afternoon, Mr. Chairman, and thanks again for the opportunity to speak at the hearing today. I am executive director of the NMFTA, which is the National Motor Freight Traffic Association, and it is a national, nonprofit trade association whose members include some 7,000 motor common carriers of general freight that specialize in LTL service, and they operate in interstate and intrastate commerce under certificates issued by the ICC and the various State regulatory agencies throughout the country.

As pertinent here, NMFTA represents the interest of its members in matters affecting transportation regulatory matters and legislative proposals. NMFTA is opposed to sunsetting the ICC, and urges the Senate not to concur in the recent House action, but instead to restore fully the ICC's funding for fiscal year 1995.

Obviously, without funds the ICC cannot perform its statutory responsibilities created by the Congress in the Motor Carrier Act of 1980. This would impair the preservation of a financially sound motor carrier infrastructure adequate to meet the needs of the public; it would render the Commission unable to discover and/or prevent unreasonable and discriminatory rates and practices; it would delete its ability—that is, the ICC's ability—to ensure reasonable service to small shippers and small or out-of-the-way communities; and it would nullify altogether the ability of the Congress to have implemented, the regulatory measures they recently enacted in the Negotiated Rates Act of 1993, provisions which were then deemed so vital to correcting certain serious abuses which had arisen.

My familiarity with the ICC and its functions come both from my present position and the fact that for 31½ years before I went to work for NMFTA I worked for the ICC as a member of its field staff and later at a number of executive positions at the ICC. So, my comments today are on behalf of the members, of course, but I also have grave personal concern about the harmful consequences that many motor carriers and members of the shipping public will experience should the ICC be sunset.

Since enactment of the Motor Carrier Act of 1980, the ICC's budget and staff have been cut dramatically, from some 1,946 people and an appropriation of just under $80 million in fiscal 1980 to the proposed budget of 615 employees and a total budget somewhere under $53 million for fiscal 1995.

Plainly, the ICC has proposed a very modest budget. Dollarwise, it is about 33 percent below that in fiscal 1980, and bodywise it is

approximately 30 percent of its 1980 workforce, and yet still required to monitor almost three times the number of carriers that were licensed by the Commission back in 1980.

Even so, the ICC's regulatory functions over motor carriers have recently been increased at the behest of the Congress. For example, concern about the climate created by diminished regulation is evidenced by the necessity for Congress' enacting the Negotiated Rates Act of 1993. This act, passed on December 3 last year, entrusted the ICC with substantial regulatory duties in resolving an undercharge problem which had plagued the agency and the Congress at least since 1989.

The NRA gave the ICC a key role in resolving these disputes under the procedures prescribed in that legislation to settle claims involved in negotiated but unfiled rates. The Congress also gave the agency jurisdiction to determine under an alternative procedure for resolving these undercharge claims, whether they constitute unreasonable practices, and thereby nullify the claims.

The NRA gave the ICC the responsibility of promulgating and administering informal procedures for enabling motor carriers and shippers by mutual consent to resolve undercharge and overcharge claims resulting from certain inadvertent billing and/or tariff errors.

The Negotiated Rates Act also mandated the Commission to restore tariff integrity pertaining to contracts with contract carriers, the use of secret customer account codes, and so-called range tariffs, and outlawed altogether off-bill discounting, which is a polite phrase, Mr. Chairman, for certain billing and collecting practices whereby persons who are not the payors of the transportation charges were in fact receiving rebates and kickbacks from the transportation rates paid to the carriers.

By sunsetting the ICC through the failure to approve its appropriation request for fiscal year 1995, the Congress would eliminate the very agency it entrusted to eliminate the very pernicious practices that Congress perceived as clearly detrimental to the public interest. Absent the ICC's involvement in curtailing those activities, there can be little doubt that those practices will be quickly revisited by those who profited from them originally.

So, in summary, Mr. Chairman, NMFTA would point out that when the Congress extensively reviewed the regulation of motor carriers and enacted the Motor Carrier Act of 1980 and then just recently corrected pressing regulatory problems that had arisen in transportation through passage of the Negotiated Rates Act, it imposed regulatory duties on the ICC designed to promote and preserve a financially sound motor carrier infrastructure capable of meeting the needs of commerce and protecting the public interest. Those regulatory goals continue to be in the interests of the public and the motor carrier industry, and there is simply no record establishing the contrary.

Given these considerations, NMFTA sees no rational basis having been put forth for denying the agency charged with the responsibility of carrying out those statutory objectives the modest funding necessary to perform its duties. Certainly, to the extent that any other agency were to be charged with the duty of fulfilling those regulatory provisions, or if the parties had to resort to judi-

cial remedies to resolve their transportation disputes, the alleged savings from sunsetting the ICC would be illusory indeed.

NMFTA respectfully urges the Senate to restore fully the ICC's fiscal year 1995 appropriation which was stricken by the House.

Mr. Chairman, because of time constraints, and I see the red light, we have limited our comments just to the ICC appropriation matter, but our statement which was filed with you for the record includes our views on Senate bill S. 2275.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Foley follows:]

PREPARED STATEMENT OF MARTIN E. FOLEY

My name is Martin E. Foley and I am the Executive Director of National Motor Freight Traffic Association, Inc. (NMFTA), a position I have held since December 1985. NMFTA is a non-profit trade association, consisting of some 7000 participating motor common carriers of property operating in interstate and intrastate commerce pursuant to operating authorities issued by the Interstate Commerce Commission and state regulatory authorities. As pertinent, NMFTA is charged with the duty of representing the interests of its member carriers in matters affecting transportation, including legislative proposals. NMFTA is opposed to the sunsetting of the ICC and urges that the Senate not concur in the House's action denying the ICC its fiscal 1995 appropriation. Failure to enable the ICC to perform its statutory responsibilities created by Congress in the Motor Carrier Act of 1980 would impair the preservation of a financially sound motor carrier infrastructure adequate to meet the needs of the public, would prevent the curtailment of unreasonable and discriminatory rates and practices, and would diminish access to small shippers and small or rural communities to reasonable service. Also, it would nullify the ability of Congress to implement the regulatory measures it recently enacted in the Negotiated Rates Act of 1993 which were deemed so vital to correcting very serious abuses which have arisen in interstate transportation.

My familiarity with the ICC and its functions arises both from my present position, and the fact that for the 31½ years preceding my employment by NMFTA, I was employed by the ICC. I served the agency in various capacities including District Supervisor, District Director, Regional Manager, Director of the Bureau of Traffic for 12 years, and Managing Director. Through those positions I was involved with virtually all phases of the ICC's regulatory responsibilities and witnessed the impact of those regulations on the carrier and the shipping public. That long experience causes me considerable concern for the harmful consequences that many motor carriers and segments of the shipping public will experience should the ICC be sunsetted.

The climate created by diminished regulation is well evidenced by the necessity for Congress' enacting the Negotiated Rates Act of 1993. Since the enactment of the Motor Carrier Act of 1980, the ICC has seen its budget and staff shrink dramatically. In fiscal year 1980, the ICC had 1,946 employees and an appropriation of $79,063,000 to regulate some 18,045 trucking companies. The proposed budget of the ICC for fiscal 1995 is $52,729,000, consisting of $44,429,000 in appropriated funds and $8,300,000 in retained user fees, with a staff of 615 employees to regulate in excess of 53,000 motor carriers. Plainly, the ICC has proposed a modest budget, about 33 percent below that which it had in fiscal 1980, with approximately 30 percent of its 1980 employees to monitor almost three times the number of carriers that were licensed in 1980. Importantly, the ICC's regulatory functions over motor carriers recently have increased at the will of Congress.

As noted, the Negotiated Rates Act of 1993, passed on December 3, 1993, entrusted the ICC with substantial regulatory duties in resolving the undercharge problem which the agency and Congress grappled with since 1989. The ICC has been given a key role in resolving such disputes under the procedures prescribed in that legislation to settle claims involving unfiled, negotiated transportation rates. Moreover, the agency was vested with jurisdiction to determine under an alternative procedure for resolving such undercharge claims, whether they constitute unreasonable practices thereby nullifying the claims; and was given the responsibility of promulgating and administering informal procedures for enabling motor carriers and shippers, by mutual consent, to resolve undercharge and overcharge claims resulting from certain inadvertent errors.

The Negotiated Rates Act also imposed regulatory duties on the ICC pertaining to the contracts of contract carriers, the use of customer account codes and so-called

range tariffs, and the cessation of certain billing and collecting practices whereby persons not the payors of the transportation charges were receiving kickbacks from the transportation rates paid to the carriers. By sunsetting the ICC through the failure to approve the agency's appropriation request for fiscal 1995, Congress would eliminate the very agency it entrusted to terminate various pernicious practices which were perceived as clearly detrimental to the public interest. Absent the ICC's involvement in curtailing those activities there can be little doubt those practices will be quickly revisited by those who profited from them originally.

Fairness and protection of the public interest have been the centerpieces of Congress' regulation of trucking and key elements of the National Transportation Policy. Both the Motor Carrier Act of 1980 and the Negotiated Rates Act of 1993 reinforce Congress' intent to preserve those principles in transportation. Tariffs are intended to effectuate full disclosure to the public as to the rates available for transportation services, and those rates are to be reasonable and non-discriminatory. The regulatory scheme also intends that the motor carriers operating in interstate commerce are operationally and financially fit and safe. The ICC establishes insurance requirements for the carriers and it will immediately act to revoke the authority of any carrier whose insurance has lapsed. Similar revocation occurs where carriers fail to meet safety fitness standards. This is an important enforcement tool which depends on the existence of ICC authority. Further, the Commission prescribes regulations governing the handling of loss and damage claims by the carriers and the return to shippers of duplicate or unidentified payments for transportation services, etc. These matters are all designed to protect the public interest.

Moreover, it is the charter responsibility of the agency "to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States * * *" and "to promote safe, adequate, economical, and efficient transportation." With the demise of the ICC, the sole agency which as carried forward those directives since the inception of motor carrier regulation in 1935, those regulatory objectives will not be served and the public, particularly small shippers and small and rural communities, will be left without the safeguards Congress in its wisdom has deemed essential in meeting the needs of commerce. Plainly, denying the ICC the appropriations it requires to carry out its regulatory responsibilities is ill-conceived and would ultimately lead to the flourishing of the unfair and undesirable transportation practices the regulation of motor carriage is designed to prevent.

No other agency has, at this point, been designated as the transferee of the regulatory duties entrusted to the ICC. Plainly, the Department of Transportation, an Executive Department, would not be the proper repository for those often politically sensitive, quasi-legislative, quasi-judicial functions. So too, any other regulatory agency to which those statutory responsibilities would be transferred would have to acquire the expertise necessary to deal with the complex regulatory issues the ICC has handled since the inception of regulation. In effect, such agency would have to be expanded to have staff experienced and capable of handling motor carrier transportation matters. This will necessarily entail additional expense for such agency and any perceived savings from eliminating the ICC's appropriations ultimately will be minuscule. So too, if no such agency is designated, there can be little doubt that disputes between shippers and carriers over transportation matters will be pursued and resolved in the courts-much as has been experienced with the undercharge fiasco. Again, additional and substantial expenses will be incurred by all with the resultant elimination of any practical remedy for small shippers and small carriers. Indeed, many such potential disputes could be readily and conveniently resolved by the procedures created by the Negotiated Rates Act which are to be administered by the ICC.

SENATE BILL NO. 2275

Senate Bill No. 2275, entitled the "Trucking Regulatory Reform Act of 1994", introduced by Senator Exon, would effectuate trucking regulatory reform and addresses current concerns regarding the expense of trucking regulation. Importantly, that legislation in preserving the ICC would retain the agency's role in administering the provisions of the Negotiated Rates Act of 1993. Also, it would amend the Transportation Policy so as to "encourage fair competition, and reasonable rates for transportation by motor carriers of property," and "would require fair and expeditious regulatory decisions when regulation is required." NMFTA fully supports those objectives. Its concerns with the bill are directed to the unbridled exemption authority which would be vested in the ICC, and the termination of tariff filing by individual motor common carriers. Those provisions would not serve the public interest and would render the bill's policy objectives nugatory.

Initially, NMFTA supports the bill's proposal to modify carrier licensing procedures to "fitness" determinations only. Such determinations would safeguard the public interest as to the safety and financial fitness of the carriers operating on the nation's highways, and would produce substantial cost savings to the ICC in greatly simplifying the processing of the thousands of applications filed annually, and to the public by reducing the burden now associated with such filings.

Section 5 of the proposed legislation would include motor carriers within the provisions of 49 U.S.C. § 10505 which presently authorize the Commission to exempt from regulation the services provided by rail carriers. This broad exemption would not be in the public interest. In the Motor Carrier Act of 1980, Congress fully reviewed the provisions of the scheme of motor carrier regulation and carefully crafted those exemptions where a need for diminished regulation was seen as necessary or desirable. In the legislative history of the 1980 Act, Congress unequivocally indicated that specific direction was being provided to the ICC from which it was not to depart in regulating motor carriers. Nothing has changed and no problem areas have been identified or findings made which would justify changing the explicit direction Congress gave the ICC in 1980 as to its regulation of motor carriers. To depart from the wisdom of that policy at this time, would only recreate the conditions which required Congress to step in and redress policies the ICC was then implementing which were designed to deregulate motor carriers without Congressional approval of that action. Contrary to the proposed transportation policy such departure would not promote fair and expeditious regulatory decisionmaking.

While the proposed exemption authority would, on paper, be identical to that which the ICC now has with respect to rail carriers, in practice it would be much broader. The only meaningful limitation on the use of the exemption authority is set forth under § 10505(a)(2) which requires that the exemption either be of limited scope or necessary to protect shippers from an abuse of market power. As a practical matter the limitation of § 10505(a)(2) would be meaningless inasmuch as motor carrier regulation, as opposed to rail regulation, would seldom, if ever, be required to protect shippers from an abuse of market power because of the inherently competitive nature of motor carriage. Thus, the Commission would be without any practical constraint with regard to its exemption power over motor carrier regulation.

NMFTA fully supports the regulatory objectives of Senate Bill No. 2275 that competition be fair and that rates be reasonable. As Senator Exon so correctly pointed out in introducing this bill, competition should produce quality services at affordable prices, but that such competition should be tempered with concern for fairness, the public interest, and public safety. Aptly, the bill also leaves in place the provision of the Motor Carrier Act of 1980, that the rates and classifications of all motor carriers be reasonable, and that the rates and classifications of motor common carriers not be discriminatory. However, the proposed termination of the public filing of tariffs makes those laudatory regulatory objectives virtually impossible to achieve.

Public Tariffs provide the full and open disclosure to the public and carriers which underpin a competitive, reasonable and non-discriminatory rate structure. Without public tariff filings the ICC will not have readily available to it the fundamental information essential in determining whether rates are reasonable or nondiscriminatory. The public will likewise be seriously disadvantaged in that, other than for the files of the carriers, which will cover literally thousands of prices, and which will not have to be organized in any particular fashion, individuals realistically will be unable to determine whether they are being treated fairly. Carriers, too will lose convenient access to information regarding the rate actions taken by other carriers which is critical to full and open competition among carriers.

Furthermore, the bill proposes a regulatory mechanism whereby the ICC can revoke the authorities of motor common and contract carriers which fail to met their statutory duties of establishing reasonable rates, classifications, rules or practices. Absent filed tariffs, in which such provisions are found, the agency will not have access to the very documents it needs to carry forward that important statutory responsibility. In sum, in the absence public tariff filings, the ICC will not be able to achieve the sound regulatory objectives intended by the bill.

For the foregoing reasons, I respectfully urge the Subcommittee to oppose the denial of the ICC's requested appropriations for fiscal 1993; and believe that Senate Bill No. 2275, which seeks to retain many of the valuable regulatory functions administered by the ICC, is a sound response to the proposed sunsetting of the ICC. However, I submit that the bill goes too far in providing the ICC expansive exemption authority, and in eliminating tariff filings by motor common carriers of property.

Senator EXON. Thank you, Mr. Foley, and as I said earlier, your prepared statement is a part of the record already. Thank you for summarizing.

According to my sheet, the next witness is identified as the president of the Association of American Railroads. I am somewhat confused, because Ed Harper spends so much time here that I thought he was a member of the committee. [Laughter.]

I am glad to see you do have another position, Mr. Harper. I recognize you for your testimony at this time.

STATEMENT OF EDWIN L. HARPER, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. HARPER. Thank you very much, Senator, and good afternoon. The Association of American Railroads, the AAR, opposes the recent House action with respect to the fiscal year 1995 DOT appropriations bill, H.R. 4556, which seeks to sunset the Interstate Commerce Commission, the ICC.

The ICC currently exercises significant regulatory authority over rail transportation matters. The House action contemplates that this authority ultimately would merely be transferred to DOT. The AAR sees no public policy benefits from a mere transfer of authority from the ICC to DOT. A reduction in regulatory activity, not a mere shifting of the jurisdictional base, should be the Congress' objective.

The AAR takes no position on the specific provisions of S. 2275 eliminating or reducing certain ICC regulatory functions over motor carriers. However, the AAR believes that the focused approach taken by S. 2275 with respect to the identification and elimination of unnecessary ICC regulatory functions is the proper way for the Congress to exercise its ICC oversight responsibilities.

The measures should be clarified with respect to the study provisions. S. 2275 could be broadened to include identifying those existing ICC functions in the rail area that could be eliminated. A transfer of existing rail regulation functions from an independent regulatory agency such as the ICC to an executive branch agency such as DOT as contemplated by the House action would sacrifice the benefits of existing organizational structure established by the Congress to assure independent and nonpartisan decisionmaking with respect to rail regulation.

The public interest would best be served if rail regulation functions continue to be exercised by the ICC as an independent regulatory agency. A transfer of rail regulatory authority from the ICC to DOT would result in a significant loss of government expertise in rail economic regulation matters, and there would be little prospect of savings from such a transfer.

The AAR agrees with the conclusion of the General Accounting Office that any savings from changes in organizational responsibility for ICC's rail activities are likely to be small.

DOT administers Federal funds for Amtrak, and some may challenge DOT's impartiality with respect to Amtrak compensation issues that are currently under ICC jurisdiction. The House action sunsetting the ICC has the potential to create serious uncertainty and administrative chaos unless provision is first made for the

transfer to DOT of ICC functions and the handling pending ICC proceedings.

At a minimum, Congress should ensure that if it decides to sunset the ICC, the action is taken in an orderly fashion, and provision is made for the handling of pending cases.

Thank you very much, Senator. We would be pleased to answer questions at an appropriate time.

[The prepared statement of Mr. Harper follows:]

PREPARED STATEMENT OF EDWIN L. HARPER

Mr. Chairman and Members of the Subcommittee, the Association of American Railroads (AAR) appreciates the opportunity to testify at this oversight hearing on the general functions of the Interstate Commerce Commission (ICC) pertaining to rail regulation and on those aspects of the recently introduced Trucking Regulatory Reform Act of 1994 (S. 2275) as they relate to the ICC's continuing rail regulation functions. This opportunity is especially important in light of the recent vote of the U.S. House of Representatives on the Fiscal Year 1995 Department of Transportation Appropriations Bill (H.R. 4556) to eliminate all funding for the ICC. The House action to sunset the ICC contemplates ultimate transfer of the ICC's rail regulation functions to the Department of Transportation (DOT).

AAR is a trade association whose member railroads account for approximately 75 percent of the line haul mileage, employ approximately 89 percent of the workers, and produce approximately 91 percent of the freight revenues of all railroads in the United States.

The House action makes little sense from a public policy perspective, is counterproductive, and will not result in any meaningful cost savings. A reduction in regulatory activity, not a mere shifting of the jurisdictional base, should be Congress' objective.

AAR supports the approach taken in S. 2275 as an alternative to the House sunset legislation. AAR takes no position on the specific provisions of S. 2275 eliminating or reducing certain ICC regulatory functions over motor carriers. However, the focused approach taken by S. 2275 with respect to the identification and elimination of unnecessary ICC regulatory functions is the proper way for Congress to exercise its oversight responsibilities. That focused approach should be broadened to include a statutory mechanism for a zero-based review of all ICC functions including specifically the identification and elimination of unnecessary rail functions as well as motor carrier functions.

1. *There are no public policy benefits from a mere transfer of authority from the ICC to DOT.*

Although the transportation of goods by rail has been substantially deregulated in the Railroad Regulatory Reform Act of 1976 (4R Act) and the Staggers Rail Act of 1980, Congress did not entirely eliminate rail economic regulation. Under current law, the ICC still exercises significant regulatory authority over rail transportation. Approximately 37 percent of the ICC's total budget of $52 million for Fiscal Year 1994 (approximately $20 million) is expended on rail-related matters.

As is clear from the debate on the DOT Appropriations Bill, the action taken by the House is focused not on an evaluation of whether the ICC's general rail regulation functions continue to be necessary, but on the agency's current functions with respect to motor carrier regulation. These motor carrier functions (particularly over rates and rate filings) have been challenged by many members of the House as largely unnecessary and ICC sunset is intended to effect an examination of such functions with a view towards their elimination. With respect to the ICC's rail regulatory functions, however, the House was silent.

A transfer of authority from the ICC to DOT to perform rail regulatory functions simply because the ICC's regulatory functions over motor carriers are in question makes little sense from a public policy perspective. If Congress wants to reexamine the ICC's motor carrier and other functions to determine whether they are largely unnecessary and should be eliminated, Congress can do so—and should do so—without the premature step of sunsetting the agency first.

The proper course of action is for Congress first to substantively examine the continuing need for the ICC's overall regulatory functions and then make a judgment whether and to what extent those functions should be eliminated or transferred to another agency for more efficient performance. For Congress simply to terminate the ICC and transfer its functions—including over rail matters—in wholesale fashion is not costeffective decision-making.

Indeed, the orderly approach AAR suggests is the path that Congress took before it decided to sunset the Civil Aeronautics Board (CAB). Congress first closely examined the CAB's regulatory functions over air carriers and ultimately determined that its principal functions were no longer necessary. Only after that determination did Congress take the next logical step of sunsetting the agency itself, transferring the few functions that remained to DOT. Congress did not decide to eliminate the CAB first, transfer its functions to DOT, and work backward into a substantive evaluation of what regulation needed to be continued.

In contrast to the House action, S. 2275 takes a more appropriate course with respect to Congressional oversight of the ICC's existing regulatory functions, including providing for the ultimate elimination of those functions that are no longer necessary. S. 2275 contains specific provisions that would eliminate or reduce the ICC's authority over specified areas of motor carrier regulation (particularly rate filings and entry regulations) that are deemed unnecessary. S. 2275 further requires (1) the ICC, in consultation with DOT, submit a report to congress identifying and analyzing all regulatory functions of the Commission and (2) the ICC submit a report to Congress containing recommendations for additional reforms in the motor carrier area or others that would enhance efficiency in government.

S. 2275 properly singles out for Congressional action specific areas of existing regulation that are no longer necessary and provides for their removal. S. 2275, through its study provision, also seeks to identify additional areas of existing ICC functions where regulatory reforms can be achieved.

The measure falls short, though, in neglecting rail issues. It is time to review whether existing railroad regulatory functions are still needed, taking into account the regulatory matrix governing the railroads' principal competitors, trucks and barges. AAR urges that the study provisions of S. 2275 be broadened specifically to require the ICC, in consultation with DOT, to prepare a report identifying and analyzing those existing ICC responsibilities in the rail area that can be eliminated.

AAR anticipates that the ICC would solicit the views of carriers and shippers in preparing such a report. For its part, AAR will work closely with the ICC, DOT and other interested parties in identifying existing areas of rail regulation where efficiencies can be achieved.

2. *A transfer of existing rail regulation functions from an independent regulatory agency such as the ICC to an Executive Branch agency such as DOT as provided for in the House action would sacrifice the benefits of the existing organizational structure established by Congress to ensure independent, nonpartisan decision-making with respect to rail regulation. The public interest would best be served if rail regulation functions continue to be exercised by the ICC as an independent regulatory agency.*

The ICC was established by Congress as an independent regulatory agency to ensure as much as possible that regulatory decisions pertaining to rail transportation would be made in a neutral, non-partisan manner based solely on public interest considerations. Thus, Congress insulated the ICC from the changing political makeup of the Executive Branch and guarded against politicization of the decision-making process by providing for a board of independent Commissioners appointed by the President from both political parties. Congress further provided for staggered terms of ICC Commissioners to ensure that a single President cannot easily stack the ICC in favor of a particular regulatory view. Congress also provided for a sufficient number of ICC Commissioners—currently five—to promote diversity of views and independent decision-making.

The railroad industry merits the same measure of protection against politicization so long as railroads are subject to the existing panoply of maximum rate and other economic regulation.

3. *A transfer of rail regulation authority from the ICC to DOT would result in a significant loss of government expertise in rail economic regulation matters, and there would be little prospect of savings from such a transfer.*

At present, the ICC possesses expertise in railroad economic regulation that no other federal agency—including DOT—possesses. This expertise includes evaluating maximum rate cases under the ICC's Constrained Market Pricing guidelines, calculating the Rail Cost Adjustment Factor (a quarterly index of railroad costs upon which carriers may take regulation-free rate increases), development of the Uniform Rail Costing System for costing rail movements, calculation of avoidable costs in abandonment proceedings, and the application of other public policy issues in abandonment, competitive access, car service, merger and acquisition, line sales and other rail regulation proceedings.

Indeed, in testimony before the House, DOT specifically noted that it did not support or want ICC functions transferred to it and, more importantly, that it did not have "the areas of expertise that are really unique to the ICC. * * *" The only prac-

tical means through which DOT can acquire necessary expertise in rail regulation matters is if DOT were to employ those ICC officials who presently carry out these regulatory functions. In such event, the results of the exercise would be nugatory.

A mere transfer of ICC's rail regulation functions to DOT as contemplated by the House action will result in no meaningful savings in the rail area. DOT will be performing the same rail regulation functions that the ICC currently performs, and there is no basis for concluding that it can perform these functions more efficiently than the ICC. Indeed, because DOT currently has no expertise in rail regulation, DOT cannot now perform these services and will likely have to employ ICC personnel to carry out any rail regulation functions transferred to it.

In analyzing the possible cost benefits of transferring ICC rail regulation functions to DOT, the General Accounting Office (GAO) concluded in its testimony before the House that "any savings from changes in organizational responsibility for ICC's rail activities are likely to be small." AAR agrees with GAO's conclusion.

4. *Some may challenge DOT's impartiality with respect to Amtrak compensation issues.*

Current law provides that Amtrak compensate freight railroads for use of their track and that disputes over compensation amounts, if not voluntarily resolved, are subject to ultimate ICC resolution. At present, at least one dispute over Amtrak compensation payment is pending before the ICC and several more cases are possible as current contracts between Amtrak and freight railroads expire.

DOT administers federal funds for Amtrak and has a direct interest in seeing that Amtrak's expenses are reduced to the maximum extent possible. DOT accordingly would have, or would be perceived to have, a built-in bias in resolving issues pertaining to how much Amtrak must reimburse freight railroads for use of their tracks. This is an issue that should be decided by an independent agency such as the ICC (and which cannot be transferred to DOT).

5. *The House action sunsetting the ICC has the potential to create serious uncertainty and administrative chaos unless provision is first made for the transfer to DOT of ICC functions and the handling of pending ICC proceedings.*

Elimination of funding for the ICC without first making provision for the orderly transfer of functions from the ICC to DOT and for the handling of pending cases can only lead to administrative chaos. If the status of pending cases is left in limbo, litigants will be provided with no guidance as to how to proceed and will have spent time and money for nothing. In addition, pending cases involving important issues of rail public policy will remain undecided.

At a minimum, Congress should ensure that, if it determines to sunset the ICC, the action is taken in orderly fashion and provision is made for the handling of pending cases.

Senator EXON. Thank you very much, Mr. Harper. Next, we will hear from Joseph Clapp, the chairman and CEO of Roadway Services of Akron, OH. Mr. Clapp, welcome.

STATEMENT OF JOSEPH M. CLAPP, CHAIRMAN AND CEO, ROADWAY SERVICES, INC.

Mr. CLAPP. Thank you. It says here, good morning, Mr. Chairman.

I am Joseph M. Clapp, chairman of Roadway Services, and I appreciate the chance to talk to you today. I am also joined in these comments by Yellow Corp. and by Overnite Transportation Co., which is owned by the Union Pacific Corp., so listen up down there.

Roadway Services is a transportation holding company of a number of motor carrier subsidiaries. Our annual revenues are about $4 billion. Our largest operating company is Roadway Express. It is one of the largest general freight carriers in North America. We also own Roadway Package System—that is RPS, the other guys—as well as Roadway Global Air, which is a worldwide air freight carrier, a group of regional carriers, and some other companies. I will not go through all of that.

Yellow Corp. owns the Nation's largest general freight carrier, LTL Carrier, as well as regional carriers and, of course, Overnite is our Nation's fourth largest LTL carrier.

Mr. Chairman, as evidenced by the inclusion of section 211 in the airport bill, which would effectively eliminate States' regulation of most motor carriers, as you observed in the introduction of your bill, coupled with the House's recent vote to eliminate funding for the ICC, and given the thoughtful legislation which you and Senator Packwood have introduced, even I can see that change is in the air.

In this context, and inasmuch as we are faced with an imminent decision concerning the fate of the Commission, we wanted to bring you some recommendations that are similar in some respects to what is in your bill, but in a couple of respects go beyond it, and I hope we can interest you in those provisions.

Mr. Chairman, there is no question I believe that our transportation system today should be a market-based system. The rules which govern the conduct of business in the market must be the minimum necessary to provide an efficient and orderly market, and the oversight of that minimally necessary framework should, I believe, be the responsibility of a streamlined ICC.

If I may say so, I come here today as one who has toiled under the ICC regulations for more than 35 years. During that time, I have worked at a small company as well as our present large one, I have worked in our field operations as well as headquarters, I have dealt with shippers as a sales representative, and with the ICC as a practitioner.

I have had direct responsibility at one time for our company's pricing and ICC compliance, I have worked here in town on the 1980 act—perhaps more importantly, I have had the opportunity as a CEO to help shape the strategic changes necessary for our company to respond to the dramatic and swift changes in the marketplace.

I like to think of that role as positioning our company to intercept the emerging needs of the customer. I think it is time now to position the law and the ICC to intercept the needs of the users of the country's outstanding transportation system. Many of the ICC's functions are no longer necessary and should be eliminated or revised to better reflect the needs of users of the system today.

Therefore, we have these proposals. The principal ones are four in number. First of all, we propose that the requirement to file tariffs with the ICC be eliminated in favor of a disclosure requirement. Let me explain.

Do not require us to file tariffs at the Commission, but require carriers to make their rates publicly available. Require that rates, including discounted rates, be provided in writing. Both parties to the transaction should be entitled to rely on those rates which are put in writing and disclosed up front.

I would require that that rate, the one that is agreed to, be charged and collected, so to that extent, therefore, while we would propose the elimination of tariff filings and the bureaucracy and the cost that goes with it, we do not propose eliminating the so-called filed rate doctrine, which requires people to observe what that written rate was.

Give us the authority to quickly set and change rates based on the market. Maintain the ICC's oversight responsibilities to review as an adjudicatory body a rate that is challenged as unreasonable or discriminatory or otherwise unlawful.

Eliminate the present antitrust immunity for general rate increases, but I urge you to continue the carrier immunity that governs the interlining of shipments and the establishment of joint rates for the interlining of shipments, and it is my belief on the advice of counsel that we could not do that in the absence of antitrust immunity for this activity. Even though only 1 percent of our shipments are interline, that is several thousand a day, and we could not do that, because almost everybody has overlapping authority today, without antitrust immunity overseen by an independent agency.

Second, provide for a free market in transportation. Eliminate the public convenience and necessity test. Base entry solely on the applicant's fitness to comply by requiring all new carriers to demonstrate their awareness of the DOT safety regulations, and the applicable ICC regulations, as well as the existence of a program to comply, as well as the insurance requirements, as a condition of operating.

Finally, and this one goes—or, next to finally—this one does go beyond what you all did. Please make this new, market-based streamlined system the national standard. What I mean by that is to recognize the legitimate State interest in motor carrier oversight by permitting those States that wish to regulate intrastate commerce to continue doing so, but please require that their laws be compatible with the new Federal scheme, which would provide for open entry and free rates.

Mr. Chairman, in light of the exemption of many but not all State motor carrier operations which would result from the passage of section 211 of the airport bill, we believe this recommendation to be a particularly important one, not only to recognize the States' interest but also to preserve a level playing field for all competitors in intrastate markets. We can do it. We have the model for that in the Staggers Act.

Finally, Mr. Chairman, we recommend Congress preserve those beneficial elements of the ICC regulations which are fundamental to the conduct of business and which facilitate business between carriers and shippers.

Just a couple of quick examples. The rules governing cargo loss and damage liability are well settled as to the extent of that liability, what the processing requirements are, the shipper's access to the court, et cetera, uniform bills of lading, which happen to contain the terms and conditions of the transportation agreement which governs common carriage, commodity classifications, and standardized mileage guides, the rules governing the extension of credit to shippers, the authority over mergers and acquisitions, which quite frankly work better at the ICC than they do at DOJ, the rules governing driver leasing, then, finally, the prohibitions against abusive practices such as the giving or receiving of rebates and concessions and, I suggest, it can happen.

All you have to do is look at the lumping controversy. I think it ought to be illegal, continue to still be illegal to bribe somebody for their business.

These are examples of rules governing the conduct of business that I think facilitate the business as opposed to being anticompetitive.

One provision of your bill which I would urge some caution on, I would recommend that we do not provide for administrative exemption of carriers, because we want to be careful that everybody does play under the same streamlined minimally necessary set of rules.

If part of my business gets exempt and part of it is not, I now have a more complex set of rules, and I do not have the availability, for example, of the necessary antitrust protection for the interline business or for the classification, things of that nature.

I am out of time. I greatly appreciate your patience, which has been worn thin already today I am sure. We would be happy to provide language as well as to answer questions.

[The prepared statement of Mr. Clapp follows:]

PREPARED STATEMENT OF JOSEPH M. CLAPP

Good morning Mr. Chairman. I am Joseph M. Clapp, Chairman and CEO of Roadway Services, Inc., and I appreciate the opportunity to appear here today to share the views of Roadway Services, Inc. (Roadway Services). I am also joined in these comments by Yellow Corporation (Yellow) and Overnite Transportation Company (Overnite).

Roadway Services is a transportation holding company, consisting of a number of motor carrier subsidiaries. Our principal operating subsidiary, Roadway Express, is one of the largest nationwide long-haul common carriers of general freight in the United States. It serves all of the United States, as well as points in Canada, Mexico, and Puerto Rico, through a network of over 600 terminals.

In addition to Roadway Express, we operate: Roadway Package System, which provides small package transportation services; Roadway Global Air, Inc., a worldwide air cargo carrier specializing in heavy weight freight; Roadway Logistics Systems, which designs, implements and manages customized logistics systems for companies of all sizes; Roberts Express, which provides expedited delivery services for time-sensitive shipments; and the following regional carriers: Central Freight Lines, Coles Express, Spartan Express, and Viking Freight System. Roadway Services is a publicly-traded company with annual sales of $4 billion. Like Roadway Services, Yellow Corporation is also a transportation holding company which owns the nation's largest less-than-truckload (LTL) carrier, Yellow Freight, as well as several regional carriers: Preston Trucking Company, Saia Motor Freight, and Smalley Transportation. Overnite is our nation's fourth largest LTL carrier.

REGULATORY CHANGES ARE NEEDED

As evidenced by the inclusion of section 211 in the Senate version of the Airport Improvement Act, which would effectively eliminate state regulation of most motor carriage, and the House of Representative's recent vote to eliminate funding of the Interstate Commerce Commission (ICC), and the important legislation which you, Senator Exon and Senator Packwood have introduced, it is clear that a change is in the air.

In this context, and inasmuch as we are faced with an imminent decision concerning the fate of the ICC, I wanted to bring to you some recommendations not only about the importance of this agency, but also about how the rules governing our vital industry might be streamlined and made more responsive to today's dynamic transportation marketplace.

It has been almost fifteen years now since the Motor Carrier Act of 1980 was enacted, and Congress last carefully considered the ICC's specific responsibilities concerning motor carrier regulation and, more importantly, the need, if any, for the ICC's role to continue. Clearly, therefore, it is an appropriate time for Congress to again take a close look at the ICC. While it is clear that changes are indeed warranted, your look should be a measured one, so that full consideration can be given

to the consequences that could result from whatever actions Congress ultimately takes before they occur rather than afterwards. Neither shippers nor carriers can afford another undercharge situation.

THE MOTOR CARRIER INDUSTRY SHOULD BE A MARKET-BASED SYSTEM

There is no question that our transportation system today should be market based. The rules which govern the conduct of business in the market must be the minimum necessary to provide an efficient and orderly market. The oversight of that minimally necessary framework should, I believe, be the responsibility of a streamlined ICC.

Substantial changes have occurred since the Motor Carrier Act of 1980 was passed, both in the operations and composition of motor carriers, as well as in the marketplace in which they now operate. In 1980, the motor carrier industry was still highly regulated and our markets principally regional and national in their scope. That has significantly changed. Today's marketplace has greatly expanded to one of intermodal and international, if not global. proportions. Even pickups and deliveries within the same state are now largely part of a continuing interstate or international movement.

To survive in today's arena, carriers can not afford to be a plodding, inefficient "one-size-fits-all." To succeed as carriers today, we have to be creative and have a flexible profile. We must be capable of quickly modifying our operations and services, as well as our prices, in order to respond to the rapidly changing needs of our customers, and the ever-changing face and complexity of the marketplace.

Mr. Chairman, 15 years ago I was not a proponent of deregulation. Today I am a proponent of a free market in transportation. I believe that many of the ICC's functions are no longer necessary and should be eliminated, or revised to better reflect the needs of carriers and shippers today.

RECOMMENDED REGULATORY CHANGES

Therefore, we have some carefully considered and hopefully significant proposals to offer as the framework for a restructured regulatory system and an ICC for the 21st Century:

1. *We propose that the requirement to file tariffs with the ICC be eliminated in favor of a disclosure requirement.*

- Do not require carriers to file tariffs with the ICC, but require carriers to make their rates publicly available.
- Require that rates, including discounted rates, be provided in writing. Both parties to the transaction should be entitled to rely upon the rate disclosed.
- Require that the rate agreed to be the one that is charged and collected. To that extent, therefore, while we would propose the elimination of tariff filings, and the bureaucracy that goes with them, our proposal would not eliminate the so-called "filed rate doctrine" requiring carriers to collect the rate the shipper is quoted.
- Give carriers authority to set and quickly change rates based on market conditions.
- Maintain the ICC's oversight and responsibilities to review any rate that is challenged as unreasonable, discriminatory, or otherwise unlawful.
- Eliminate the present antitrust immunity for general rate increases, but continue carrier immunity to interline shipments and establish a joint rate, and for the collective setting of classifications, uniform mileage standards, and the standardization of bills of lading.

2. *Provide for a free market in transportation.*

- Eliminate the "public convenience and necessity" standard for market entry.
- Base entry solely on an applicant's fitness to comply, by requiring all new carriers to demonstrate both their awareness of the DOT's safety regulations and the applicable ICC regulations as well as the existence of a program to comply, as a condition of operating.

3. *Make this new market-based. streamlined system the national standard.*

- Recognize a legitimate state interest in motor carrier oversight by permitting those states that wish to regulate intrastate commerce to continue doing so, but require that their laws be compatible with the new federal scheme, including the new open entry for those who are fit and the new rate freedoms. Mr. Chairman, in light of the exemption of many but not all state motor carrier operations which would result from the passage of section 211 of the Airport Improvement Act, we believe this recommendation to be a particularly important one; not only to recognize the states' interest, but also to preserve a level playing field for all competitors in intrastate markets.

4. *Finally. we recommend Congress preserve those beneficial elements of the ICC's regulations which not only facilitate business, but are fundamental to the conduct of business between carriers and shippers and provide a responsible code of conduct. The following are examples:*

- The rules governing cargo loss and damage claims and liability: they are well-settled as to the extent of a carrier's liability, the filing and processing of claims, and the shipper's access to the courts.
- Uniform bills of lading, which contain the terms and conditions of the transportation agreement governing common carriage.
- Commodity classifications and standardized mileage guides.
- The rules governing the extension of credit to shippers.
- The rules governing driver leasing.
- The prohibitions against abusive practices, such as the giving or receiving of rebates and concessions.

THE ICC SHOULD NOT BE ABOLISHED AND ITS RESPONSIBILITIES SHOULD NOT BE TRANSFERRED

I come here today as one who has daily toiled in the trenches of the ICC's regulations for over 35 years. During this time, I have worked at a small company as well as our large one. l have worked in our field operations as well as headquarters. I have dealt with shippers as a sales representative, and I have dealt with the ICC as a practitioner. I have had direct responsibility for our company's pricing and for its ICC compliance. I have represented our company in Washington, including having worked extensively on the 1980 Motor Carrier Act. And, I have had the opportunity as CEO to help shape the strategic changes necessary for our company to respond to the dramatic and swift changes in the marketplace I like to think of that last roles as position our company to intercept the emerging needs of the customer. l think it is time now to position the law and the ICC to intercept the needs of the users of our country's outstanding transportation system.

You should forgive me, therefore, Mr. Chairman, if I do not believe that there is any such thing as "DEREGULATION." Quite the contrary. Every business is governed by rules and somebody set them. So it is not simply the case that the rules will go away if the ICC does. The issue is not regulation. The issue is jurisdiction. If the ICC does not set the rules, you will soon see motor carriers and shippers subject to multiple and often conflicting sets of rules at both the state and federal levels. I am seriously concerned that the void created by the ICC's elimination would be quickly filled in the name of "consumer protection" by the myriad of states' consumer agencies and States' Attorneys, to say nothing of the efforts which could be made to expand the Federal Trade Commission's jurisdiction to include motor carriers operations. However, even if such regulatory efforts do not materialize or prove to be unsuccessful at this time, I am equally concerned with the prospect of having the only rules governing a national motor carrier system being made ad hoc and without regard to their consistency by individual courts, particularly at the state level where judges tend to be elected.

Our nation's economic policy and implementing decisions need to be decided with consistency and a reasonable degree of predictability, based on the merits of the substantive issue involved with regard not only to the carrier and shipper directly involved but also with respect to the impact on carriers and shippers generally. Our ability as carriers, and that of our shippers, to plan our future growth, particularly with respect to our long-term capital investments, is directly dependent on our ability to predict with confidence and relative accuracy what the rules and outcome of the game will be. While a "free market" is the best way to foster competition between individual carriers, there nonetheless needs to be a minimum set of rules to govern the responsible conduct of our.businesses. A "free market" should not mean a "free-for-all," where the large carriers and shippers can take advantage of the small. To those who would point to states in which so-called "total deregulation" has occurred and who would say that my fears are unfounded, do not ignore the effect and influence which the ICC's standards of conduct have had on the conduct of business by carriers in those states.

In its June 9th testimony before subcommittees of the House Public Works and Transportation and Energy and Commerce committees, the General Accounting Office stressed the importance to shippers and carriers of having the ICC's functions continue being administered by a politically independent and impartial ICC rather than the Department of Transportation or Justice. I agree.

Economic issues involve a host of disparate and competing interests: carriers competing within the same mode; carriers within competing modes; carrier employees and other workers; large shippers, including the Federal government; small ship-

pers; individual consumers; state governments. Economic issues also involve private disputes between individual entities. The successful adjudication and fair resolution of these disparate interests and private disputes requires not only specialized transportation expertise, but demands impartiality. Should we expect anything less?

If Congress intends for our common carrier system to remain viable and continue growing, our rules in the future need to be set by a single, impartial agency that knows about and understands the transportation business and its complexities. Neither carriers nor shippers can afford to have the legality of rates, the terms of payment and credit, the extent of liability for cargo damage, and so on, depend upon which state we happen to be in at the particular time, or which agency happens to be making the determination. To be a successful in business, I have to know that whatever I say in Ohio means the same thing in California, and vice versa.

I am equally concerned that the ICC's functions could also end up being be split among several federal agencies, whose purposes and regulatory philosophies may not always coincide, to the detriment of those who must comply. For example, the Department of Labor and the Federal Highway Administration have conflicting interpretations of the Federal Highway Administration's driver qualification standards leaving carriers in the quandary of having to decide with which interpretation to comply. Likewise, while the Americans With Disabilities Act (ADA) went into effect on July 26, 1992, the Equal Employment Opportunity Commission and National Labor Relations Board are yet to reach a mutual agreement on the employers' obligations arising under the ADA and National Labor Relations Act.

Throughout its long existence, the ICC has played a crucial role, not only in its regulation of individual motor carrier operations, but also in helping to develop and shape our nation's motor carrier system. While the ICC has had its critics over the years, including myself, I do not believe that anyone in this room today can honestly deny that our nation's motor carrier system is the best in the world. Neither can anyone fall to recognize how vital our motor carrier system is to the stability and growth of our economy.

While J strongly support deficit reduction, and applaud the members of Congress who seek this end, I am personally well aware of and sensitive to the unnecessary and significant financial costs and many unresolved issues that motor carriers and shippers alike would having to face were the ICC to summarily close, or its functions summarily transferred to an agency less knowledgeable in the complexity of motor carriage or whose mandate is broader and less focused on transportation matters.

CONCLUSION

For the foregoing reasons, Roadway Services, Yellow Corporation, and Overnite are strongly opposed the current efforts to eliminate the ICC and or to transfer the ICC's motor carrier functions to the Department of Transportation and/or other federal agencies through the appropriation process. If Congress is truly committed to eliminating the ICC and transferring its motor carrier functions elsewhere, we urge that it be done only after careful consideration of the myriad duties currently being performed by the ICC, the benefits which are being conferred on carriers and shippers, and the consequences which would occur to carriers, shippers and consumers were they eliminated or transferred.

Finally, Mr. Chairman, we have offered a series of recommendations here today which we feel will significantly streamline the ICC, help reduce our country's deficit, and at the same time, help ensure that the motor carrier industry remains a strong and valuable contributor to our nation's economy and future growth. In that regard, Roadway Services, Yellow Corporation, and Overnite stand ready and willing to provide Congressional staff with the details of our proposals.

Mr. Chairman, I graciously thank you for the opportunity to appear here today.

Senator EXON. Thank you, Mr. Clapp. We will take into consideration the suggestions and questions which you raise regarding the bill that Senator Packwood and I introduced. It is not written in concrete. We recognized early on that it did not cover all of the bases. The suggestions which you and some of the other members of the panel have made are going to give us food for some thought and consideration. That is why we hold these hearings.

Do not feel sorry for us sitting up here. You people are not used to these kinds of things, but we are. [Laughter.]

The last two witnesses are constituents of mine, both with whom I have worked very closely over the years on rail matters. Most of the time we agree; sometimes we do not. But, both of these individuals I am about to introduce are people in whom I have a great deal of confidence, as well as the organizations that they represent.

First, we will go to the trucking side, Ed Trout, president of Cornhusker Motor Lines, an operator who knows what is down where the rubber meets the road. Ed, thanks for being here, and please proceed.

STATEMENT OF EDWARD R. TROUT, PRESIDENT, CORNHUSKER MOTOR LINES, INC.

Mr. TROUT. Thank you for inviting me.

I will begin my statement with my observations of the funding of the ICC. Although I applaud the congressional efforts to reduce Government spending, I believe the House action eliminating funding for the ICC essentially puts the cart before the horse.

We cannot eliminate funding for an agency, yet maintain all the necessary legal requirements under the Interstate Commerce Act. So, a good compromise is S. 2275. It provides an evenly balanced, win-win for the ICC, the industry it regulates, and the shipping public.

Here is how I assess the impact and benefits of the principal provisions of the bill.

No. 1, it reduces Government spending by $50 million over 5 years.

No. 2, it eliminates tariff filing requirements.

Our company, like many carriers, operate in most cases under a contract which is done between the relationship between the shipper and the carrier. We are doing it right now, so discontinuing the filing of individual tariffs will be an easy transition.

We welcome the elimination of the other-than-collectively filed rates that do prevent interlining, as Joe Clapp alluded to.

No. 3, it streamlines the entry review. Anyone who wants to enter our industry should be able to do so, subject to their ability to secure and maintain required levels of insurance.

No. 4, the granting of the exemption authority to the ICC scares me quite a bit. I think a system of checks and balances between Congress and the ICC needs to exist to make sure decisions are fair and equitable. If there are some issues or elements of the Act that need to be eliminated, I would like to take them up at this committee rather than just give the exemption authority.

No. 5, the merging of the ICC and the Federal Maritime Commission represents a great match for two principal reasons: We benefit from the economies of scale and, as our industry continues to evolve toward seamless international transportation, using trucks, rail and water, it makes sense that the oversight authority evolve in the same manner in order to maybe even produce an "Intermodal Commerce Commission." And that kind of fits with what you were saying earlier, Senator Hutchison.

No. 6, it would review operations at the ICC. This should be done today, I am sure, and probably every couple of years in the future. Probably the same concept should be done at just about every Government agency.

No. 7, and this is important to us, the legislation ensures that necessary interests that have been protected by the ICC will continue. Empowering the ICC as a universally recognized and accepted single governing authority over operating matters within our industry is of enormous importance. These relationships in operating matters include the contracts between carrier and shippers, owner-operator matters, NAFTA, credit and collection practices, function of brokers, claims, lumping, insurance, complaint procedures, antitrust immunity for interlining, classification of mileage guides, and last but not least, the resolution of overcharge issues.

If we do not have the single governing authority, the ICC, then we could end up with a different provision or rule in just about every State. In other words, we would have 50 different bosses instead of 1.

Last, the ICC has had, and should continue to have, a meaningful role in the advancement of NAFTA between Mexico and U.S. carriers. We must keep Mexican carriers without proper insurance and safety ideas off of our Nation's roads.

Now, a minute or two on the Senate action on 211.

I basically concur with the amendment, but there are five critical elements that we must have. And Tom Donahue mentioned those in his statement.

I would like to say, though, that we are in support of that again. We are in our second decade of deregulation, and the time has come for our intrastate counterparts to join us.

However, if and when the Senate acts on 211, then it must go the whole 9 yards in deregulating intrastate commerce. Either everyone, with the exception of the household goods carriers, is deregulated, or none of us is. Do not force me to start an air carrier division.

If legislation is passed as it is currently proposed, the larger carriers, who can generate 15,000 air shipments, will have an unfair advantage over those small carriers that make their living in intrastate commerce. I support the spirit of this legislation.

Thank you for the opportunity to speak here. I would be happy to answer any questions.

[The prepared statement of Mr. Trout follows:]

PREPARED STATEMENT OF EDWARD R. TROUT

Good morning everyone. My name is Ed Trout. I'm the President and owner of Cornhusker Motor Lines, headquartered in Omaha, Nebraska. Cornhusker is a truckload carrier serving all 48 states of the United States with a fleet of 180 trucks.

I started my career in trucking in 1960 as a dispatcher at Bee Line Motor Freight, a small intrastate carrier that serves the state of Nebraska. During my years at Bee Line I held a number of positions which allowed me to become very familiar with the Interstate Commerce Commission ("ICC") and its tariffs, rules and regulations. Complementing this was my tenure as committeeman, board member and president of the Middlewest Motor Freight Bureau from 1965 to 1988. These experiences, together with those gained from the operation of Cornhusker, have provided me with a broad perspective of the Interstate Commerce Commission and its impact on an interstate and intrastate carrier's operations.

I am before you today to discuss two important issues to me and my colleagues in the trucking industry. The first is the legislation that would further deregulate our industry; the second is the proposal to eliminate the funding for the ICC. I would like to start with my thoughts and observations on the ICC.

THE FUTURE OF THE ICC

Although I applaud Congressional efforts to reduce government spending, I believe the House action eliminating funding for the ICC essentially puts the cart before the horse. We cannot eliminate finding for the agency yet maintain all of the necessary legal requirements under the Interstate Commerce Act. This is why I believe that, overall, Senator Exon's proposal is an evenly balanced "win-win" for the ICC, the industries it regulates, and the shipping public. Here's how I assess the impact and size up the benefits of the principal provisions of this bill:

1. It reduces government spending by 50 million dollars over 5 years.

2. Generally, S. 2275 provides an excellent framework within which to recast the ICC and eliminate regulations that are no longer of value and preserve those that are most vital to our industry and the shipping public.

3. It eliminates tariff filing requirements. Our company, like most carriers, operates under contract carrier authority in which the essential terms of the shipper-carrier relationship are contained in a contract. Notably, this authority governs over 95 percent of our shipments. That means that only 5 percent of our traffic moves under common carrier authority, for which tariffs must be filed with the ICC. The elimination of the requirement to file these tariffs is heartily supported. It should be an easy transition.

4. It streamlines the entry review. At one time, entry into the trucking industry was strictly regulated under the watchful eye of the ICC. I recall a time in the late 60's when we attempted to extend our interstate authority 50 miles. We had unqualified support from blue chip companies as well as from several local and regional shippers. We lost. Thankfully, those days are now long gone. In the spirit of de-regulation, anyone who wants to enter our industry should be able to do so in a swift and efficient manner, subject to their ability to secure and maintain required levels of public liability, cargo and physical damage insurance. The provision in Senator Exon's bill to streamline the entry process is logical and of great benefit to our industry.

5. The granting of exemption authority to the ICC over any trucking matter under its jurisdiction after a proper showing scares me a little bit. While I have the utmost faith in the present leadership of the ICC, this has not always been the case with past ICC chairpersons and probably won't be in the future. A system of checks and balances between Congress and the ICC needs to exist to make sure decisions are fair and equitable. If there are some issues or elements of the Act that need to be eliminated, I'd like to see us discuss those issues now.

6. Merging the ICC and the Maritime represents a great match for two principal reasons:

a) We will benefit from economies of scale, the elimination of possible duplication of duties, and one-stop shopping for transportation companies.

b) We end up with an agency that is more in tune to our industry, our trends, and our future. Our industry continues to evolve towards seamless transportation using trucks, rail and water. It makes sense that the oversight authority evolve in the same manner to produce an "INTERMODAL COMMERCE COMMISSION."

7. Review of ICC operations. Not only is that a great idea for today, but that should go forward in the future. Review the ICC operations on a regular basis, for example, once every other year. The same concept should be applied to every department and agency in the federal government.

8. The legislation ensures that the interests that have been protected by the ICC will continue. Empowering the ICC as the universally recognized and accepted single governing authority over the key relationships and operating matters within our industry is of enormous importance. These relationships and operating matters include:

a) The contractual relationship between carrier and shipper;
b) The contractual relationship between carrier and owner operators;
c) The implementation of NAFTA;
d) Generally accepted credit and collection practices;
e) Regulation of the role and function of brokers;
f) Regulation of claims and proper resolution thereof;
g) Regulation of lumping practices;
h) Financial fitness, including insurance and self-insurance matters;
i) An appropriate complaint procedure;
j) The resolution of undercharge issues; and last but not least,
k) Antitrust immunity for interlining, classification and mileage guides. A good example in the retention of Antitrust immunity in certain areas is a National Mileage Guide. The National Mileage Guide published by an area of the American Movers Conference on behalf of our surface transportation system is of critical impor-

tance to the economic stability of that system. Miles determine the charges paid by shippers to carriers and the compensation carriers, in turn, pay to owner-operators. Since 1936, the AMC Mileage Guide has been the standard employed by shippers, carriers and thousands of owner-operators who operate on our highways everyday. This system has earned the confidence of the transportation industry and has been accepted as the preeminent source for determining accurate highway mileages for transportation purposes.

At first glance, the calculation of highway mileages may appear to be a simple proposition. However, the determination of accurate mileages can be used and relied upon by trucking companies, shippers and owner-operators on a nationwide basis, applicable to any shipment regardless of origin or destination is a complicated process. Without a mandated mileage tariff system, rates quoted by motor carriers on a per-mile basis (e.g. $1.00 per mile) could be assessed by any number of methods, viz., (1) odometer readings; (2) hubometer readings; (3) the route preferred by the driver; (4) the route preferred by the dispatcher; (5) the fastest but not the shortest highway route; (6) the highway route without tolls, etc. These arbitrary methods will result in inaccurate billings, auditing errors and disagreements between carriers, shippers and owner-operators about charges and compensation. The current system protects my company and provides my industry with a reliable standard for its pricing. I strongly believe this must be preserved.

If we don't have this single governing authority—the ICC—then we will end up with a different provision or rule in every state; in other words we will have 50 bosses instead of 1. This goes against the grain of what this bill is trying to accomplish.

9. The ICC has served as a vital communication link between the industry and Congress. During the 1993 midwest flooding, the ICC monitored the effects of this disaster on Nebraska carriers and shippers, and provided comprehensive reports to Congress and to the Secretary of Transportation. These reports assisted in Congress' deliberations on the nature and extent of funding relief for carriers the and affected areas. This representation for us and our shippers is necessary and valued.

10. The ICC has had, and should continue to have, a meaningful role in the advancement of NAFTA between Mexico and The United States. Central to this role is the control over and enforcement of our laws on Mexican carriers coming into the United States. We must keep Mexican carriers, without proper insurance, off our nations' roads.

Summary: For those of us carriers who have been operating in interstate commerce, it is nice to be doing business with a certain set of rules. Some of these rules are unique. One unique rule is that it's a criminal offense if a carrier offers a shipper a rebate for extra business or special privileges. We need rules like this to keep us all on our toes, and we need the ICC to enforce them.

We want the result of this legislation: a modern, streamlined, and responsive ICC. Let's take the seeds out of the watermelon by eliminating the requirements and regulations that are no longer relevant to us, preserving the ones that are, merging agencies with similar and overlapping agendas and improving efficiencies within this newly crafted entity.

INTRASTATE REGULATION

I'd like to now take a few minutes to discuss the senate action on 211, the Airport Bill, that preempts intrastate regulations on various classes of carriers.

The trucking industry, through the ATA, has voted to change its long held policy on further industry de-regulation. Specifically, we no longer oppose Federal efforts to reduce or eliminate intrastate regulation of motor carrier rates and entry based on economic factors, so long as Congress

1. preserves the rights of the ICC to maintain uniform regulations for the benefit of the industry and shipping public, that are listed on page 5 of my text.
2. Preserves the rights of states to identity carriers that fail to meet economic requirements of entry.
3. Allows carriers to deduct, for tax purposes, the reduction in value of state economic operating authorities caused by the Federal statutory change.
4. Provides a level playing field by broadly and fairly defining who qualifies as a deregulated carrier operating in intrastate commerce.
5. Preserves existing state regulation of the intrastate transportation of household goods.

My company and I strongly support the ATA's position. We are into our second decade of deregulation and the time has come for our intrastate counterparts to join us. It is profoundly ridiculous when Cornhusker delivers a load to Scottsbluff, NE and is prevented from securing a load from Scottsbluff back to Lincoln, Nebraska.

However, if and when the Senate acts on 211, then it must go the whole nine yards in deregulating intrastate commerce. Either everyone, with the exception of household goods carriers, is deregulated or no one is. Don't force me to start an air carrier division or motivate me to try to figure out how I can get credit for at least 15,000 air shipments. If the legislation is passed as it is currently proposed, the larger carriers who can generate 15,000 air shipments will have an unfair advantage over those small carriers that make their living in intrastate commerce traffic.

I support the spirit of this legislation and look forward to the day when all intrastate carriers are relieved of unnecessary and obsolete regulation.

Thank you very much for the opportunity to be here today.

Senator EXON. Thank you very much, Mr. Trout.

At this point it would be appropriate, I think, to enter into the record, without objection, letters I received from the Nebraska Motor Carrier Association, Sandra Bergman of the Nebraska Truck Services, Inc., and the Nebraska Public Service Commission which address the matter you have just referenced. It would be timely for those letters to appear in the record at this point.

Without objection, it is so ordered.

[The information referred to follows:]

LETTER FROM MEMBERS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

JULY 12, 1994.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: On June 16, 1994, the House passed an amendment to H.R. 4556, the Department of Transportation (DOT) appropriations bill, which would eliminate funding for the ICC. We understand that Senator Danforth of Missouri may attempt similar action when the DOT appropriations bill comes up for debate in the Senate.

The Nebraska Public Service Commission urges you to oppose any legislation which would abolish the ICC's funding in an effort to sunset the agency. Merely transferring the ICC's functions to the DOT will result in no significant, if any, costsavings to the Federal budget. The DOT does not have the expertise to handle areas unique to ICC jurisdiction, and we believe such areas of regulatory expertise are better left to a bipartisan, independent regulatory Commission, as Congress wisely intended when it created the ICC.

Further, this commission believes the approach taken by the House amendment will only serve to disrupt the motor carrier and rail transportation industries. Pending cases and proceedings will be left in limbo, and tariff filings will remain frozen. This will create a chaotic situation wherein carriers are obligated to operate under still-existing rules and regulations with no agency presently able to administer them. We hope that you would agree such a disorderly process of change is harmful to all transportation interests concerned.

The Nebraska Public Service Commission supports the maintenance of the ICC as an independent agency charged with protecting the public from discriminatory practices. An independent ICC remains responsible and answerable to the Congress, and not to the White House or the Secretary of Transportation. Such independent best serves the States, the regulated carriers, and the general public interest.

We thank you for your consideration and attention in this matter, and again urge your opposition to any effort to eliminate the ICC's funding or transfer its jurisdictional responsibilities to the DOT.

Sincerely,

FRANK E. LANDIS,
Chairman.
JAMES F. MUNNELLY,
Second District.
DUANE D. GAY,
Third District.
ROD JOHNSON,
Fourth District.
DANIEL G. URWILLER,
Fifth District.

LETTER FROM FRANK E. LANDIS, COMMISSIONER, NEBRASKA PUBLIC SERVICE COMMISSION

JUNE 23, 1994.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: It has come to our attention that you are one of the conferees appointed to the House and Senate conference committee assigned with the task of hammering out differences between the House and Senate versions of the Airport Improvement Program and reporting out a final version for approval of both Houses of Congress.

The Nebraska Public Service Commission has previously expressed our opposition to Section 211 of S. 1491 which would deregulate intrastate transportation of intermodal all cargo air carriers. We do not believe section 211 of the bill removes any real competitive advantage Federal Express held over UPS in the express package market as alleged by the bill's proponents. Instead this legislation serves to create a devastating competitive disadvantage for the bulk of smaller intrastate carriers which will not be able to compete against Federal Express and UPS, both of which already dominate the intrastate and interstate package shipment market.

However, if ultimate passage of S. 1491 and its controversial section 211 is imminent, the Nebraska Public Service Commission would like to propose that an effective date of January 1, 1966 or 1997 be written into the final draft of this legislation. Since most State legislatures, including our own, will undoubtedly be faced with amending current State law to conform with the federally imposed changes, we will need adequate time within which to react and adjust accordingly.

Therefore, the commission respectfully asks your assistance in offering and supporting such a proposal. We see no reason for immediacy in enacting this deregulatory legislation; but given the impact S. 1491 will have on the intrastate motor carrier industry, we believe that granting the States ample time to amend their statutes and responsibly reform their regulatory functions is certainly warranted.

We appreciate your continued attention and serious consideration of this matter. Please inform us of your position regarding our request for a reprieve with respect to enactment of S. 1491.

Thank you.

Sincerely,

FRANK E. LANDIS,
Chairman.

LETTER FROM SANDRA A. BERGMANN, DIRECTOR, TARIFF SERVICES, TRUCK SERVICES, INC.

JUNE 13, 1994.

Senator J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: You are aware of opposition to Section 211 of S. 1491 by some members of the Nebraska Motor Carriers Association. However, I have been made aware of concerns by nonmembers. With the newest information coming to us about changes in the amendment that "Most motor carriers who choose to do so could bring themselves within the scope of this exemption by providing the service of an indirect air cargo air carrier (an air freight forwarder)" I believe you should hear from these carriers also.

Over the last few days I have received over 25 calls by trucking companies (Nebraska carriers that are nonmotor carrier members) who are distressed about this amendment. I have emphasized that they may fax, write, or call your office on this issue, but they are reluctant (they have no fax machine or long-distance calls are costly or they are not sure how to talk to you or your staff). They have asked me to pass on their concerns. The number of calls is significant in that these carriers have never contacted our office previously.

Concerns:

- "How could this happen without us being asked?"
- "I haven't seen anything in the newspapers."
- "How will I be able to compete, I only have two trucks?"
- "My customers want to know if I'm going out of business since I won't be able to be competitive."

• "How do I know what this bill says if nobody has talked about it? This is a big issue—it's my company."

• "I've worked hard to keep my Nebraska authority. I'm too small to have interstate work."

• "I can tell you why nobody knows about this thing, because nobody wants us to know. I talked to a couple guys from other States at the truck stop and they didn't know anything about this. We are small and nobody cares about all of the small companies."

• "Our Senators know how important we are in trucking in Nebraska because of all our agriculture needs and how much we've put into our companies. Let them know we are really concerned and worried. Sometimes they ask us. I like that."

• "I only move little shipments. Does that mean I have to be like UPS or Federal Express. I can't do that."

• "This is deregulation, we don't want it, don't they know that?"

This is a partial list. The other comments basically are repetitious. With few exceptions, carriers feel you can and will make sure that the Nebraska views are heard and reflected in your opposition to this amendment.

I realize one of the concerns for you and other Senators regarding this amendment is the lack of people voicing any opposition. I believe after listening to all these people it is quite obvious "no one has told them."

Just for Nebraska alone there are approximately 840 separate authority holders of intrastate regulation. If you compound this by the number of company employees ranging from 5 to 250 plus, and add all the allied portion of the industry which service trucking in Nebraska—i.e., advertising, agribusiness, equipment repair, battery sales, body repair, community college education programs, computer sales and software, CPA's, diesel engine dealers, communication equipment, equipment manufacturers, equipment parts and accessories, hazardous material cleaning, insurance, office supplies, paint manufacturers, printing services, refrigeration equipment, safety training, telecommunications, tire dealers, tire manufacturers, towing services, trailer dealers, trailer manufacturers, trailer repair, truck dealers, truck rental, truck repair, truck stops, truck washes, vending services, and warehousing; then add all the shippers and consumers of the trucking industry services, the number continues and may even be staggering as to the impact on Nebraska's economy and every other State's.

Simply put, every piece of motor transportation legislation is significant and should not be held out in any other way. Any form of intrastate deregulation does impact interstate regulation and the reverse. Every carrier in the State of Nebraska understands this and believers you should be aware of it also.

An amendment (either initial or in compromise status) which impacts motor transportation to any extent and has not had a hearing before the appropriate transportation committee, either should be eliminated or forwarded to that committee for full review and comment. Your assistance is needed to assure this amendment is dealt with properly.

Thank you.

Sincerely,

SANDRA A. BERGMANN,
Director, Tariff Services.

Senator EXON. Now, I am pleased to call upon a representative from a rather small, obscure company in Nebraska that is in the railroad business. They also are in the trucking business. They even are in the baseball business. The latter of which I am most interested in, I might say. [Laughter.]

Jim Dolan is here. He is vice president of law for Union Pacific Railroad in Omaha, NE. Welcome back, Jim. We are glad to have you. Please proceed.

STATEMENT OF JAMES V. DOLAN, VICE PRESIDENT—LAW, UNION PACIFIC RAILROAD CO.

Mr. DOLAN. Thank you, Chairman Exon, Senator Hutchison.

I think the first thing that I want to emphasize on behalf of the Union Pacific is that we support deregulation and reduction in Government spending. We always have. The problem is that the

House proposal to defund the ICC accomplished neither of those objectives.

In fact, and I think we have heard this today both from Congressman Kasich and from Congressman Hefley, the ICC effectively performs a number of very important rail regulatory functions. They include the review and approval of rail mergers and control cases. And, Mr. Chairman, I will return to that and try to answer Senator Danforth's question about what makes those different in a few minutes.

But they also include abandonment applications, the resolution of disputes between railroads sharing joint facilities. And then, finally, the issue of maximum rate regulation in those limited cases where there is not effective rail competition.

And with due respect to Senator Danforth, these are not trivial issues; these are very, very important issues.

The ICC performs these functions very well. And in recent years, they have performed them very efficiently.

I was reading the other day that in 1960, the ICC had 600 administrative law judges. They now have two. That is a record of efficiency that I think few—no, I think no other Government agency can really match.

Now, to be sure, these functions could be transferred to the DOT or the DOJ or some other regulatory agency. But we submit that this will produce little or no additional savings and no new efficiencies. All you would be doing is transferring work.

Indeed, we fear that the opposite could occur—that you could have substantial inefficiencies resulting from the fact that you would have new people acquiring new expertise and experience in an area where the ICC already has that expertise and experience.

It is important to remember—and I think it has been noted a couple of times today—that these functions are basically adjudicatory in nature. It is critical that they performed by an independent agency, free of political pressures.

An agency such as the ICC is in a better position, we submit, to do this than a governmental department such as DOT or DOJ.

With respect to rail mergers that Senator Danforth asked about, certainly the Department of Justice and the Federal Trade Commission address rail mergers. And the issue was raised about, What makes rail mergers different from other mergers?

The answer, Chairman Exon, really lies in the question of freedom of entry or barriers to entry. If you have a merger between two airlines, such as we have had in Omaha any number of times and we have the loss of a direct flight between Omaha and Washington, DC, in the airline business, another airline can come in and take up the cudgels and replace them—as, with your help, we recently have had with respect to Midwest Air Express.

In the case of railroads, you cannot build another railroad between Kansas City and St. Louis. You cannot build another railroad between Dallas and Los Angeles. The railroads, by virtue of the physical nature of their business, their structure, present special problems. And the standards for reviewing rail mergers are, for that reason, different from the standards for reviewing other mergers. And the ICC has the expertise in that area.

The ICC, in our view, has been doing a very good job in recent years. Its staff is absolutely first rate. They decide cases based upon the record, as they should. They decide cases based upon the law, as they should. And there is little more which you can ask from an administrative agency.

Now, to be sure, there is room for further improvements, but we believe that S. 2275 will move in that direction. We are firmly convinced that this Commission and its staff are committed to gaining the additional efficiencies. And we believe that the road is in streamlining the ICC, making it better, not in abolishing it.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Dolan follows:]

PREPARED STATEMENT OF JAMES V. DOLAN

My name is James V. Dolan, and I am Vice President—Law of Union Pacific Railroad Company. I am appearing here today on behalf of both Union Pacific Railroad and the Railroad's sister companies, Overnite Transportation Company and Skyway Freight. The Railroad, headquartered in Omaha, Nebraska, is one of the seven large Class I railroads in the United States, with roughly 18,000 miles of track in 19 states mostly west of the Mississippi River. Overnite, headquartered in Richmond, Virginia is the Nation's fourth largest less-than-truckload motor carrier, and Skyway Freight, headquartered in Watsonville, California, plans and provides transportation logistics services. These companies are wholly-owned subsidiaries of Union Pacific Corporation, headquartered in Bethlehem, Pennsylvania.

Union Pacific opposes the elimination of the Interstate Commerce Commission, and congratulates Senator Exon on his proposal to streamline the agency and reengineer it for the next century. The Chairman is to be commended for his leadership in this area.

Mr. Chairman, as you know, Union Pacific supports both deregulation and less government spending. However, simply defunding the ICC and dumping its functions into the Department of Transportation or some other agency is neither a deregulation proposal nor a budget-cutting proposal.

The Staggers Rail Act of 1980 took a large step toward deregulating the rail industry. The ICC has done a good job of implementing these reforms, and Union Pacific Railroad provides a good example. Prior to 1980, UP averaged roughly 137 million revenue ton-miles annually with an average revenue of 3 cents per ton-mile. Today, we handle roughly 221 million revenue ton-miles, and despite over a decade of inflation, our average revenue is 2.2 cents per ton-mile. While there has been considerable deregulation as compared with the pre-Staggers Act era, the ICC still performs important rail functions which, it is generally agreed, must be performed by some governmental agency. Some of these functions include passing on rail mergers and control transactions, deciding whether to permit rail line abandonments, setting terms for railroad joint facilities when the parties cannot agree, and regulating maximum rail rates in those limited situations where effective competition does not exist. These rail functions would not be eliminated under any of the proposals to eliminate the ICC that we have seen. Rather, it is contemplated that these functions would be transferred to the Department of Transportation.

Since most of the rail functions would remain, transferring them to DOT would not, as the GAO has noted, produce savings. If anything, it would add to costs and inefficiencies, as DOT struggled to develop expertise in these complex areas. The most efficient and economical way to perform these functions is to leave them within a streamlined ICC. The Commission's staff has in-depth expertise in rail matters. They prepare well-crafted, soundly-reasoned opinions. The Commission decides cases promptly, and has a good record on appeal. Shifting rail functions to DOT—which does not want them—would inevitably undermine the high quality and efficiency of the ICC's current performance of these functions. Important cases—such as the application of Union Pacific Railroad and Chicago and North Western Railway for common control authority, which has been pending since January 1993 and is scheduled to be decided late this year or early next year, and the upcoming application to merge the Burlington Northern and Santa Fe railroads—would very likely be badly delayed and disrupted.

Beyond this, our concern is not just one of efficiency. The ICC's rail functions are largely adjudicatory. We strongly believe that they are better performed by a neutral, independent agency than in the political environment of a cabinet department.

Mr. Chairman, we believe the Exon proposal is the right direction for the ICC. The time has come to eliminate truck tariff filing, to cut back sharply on truck entry regulation, and to give the Commission the same exemption authority in the motor carrier industry that it has in the rail industry. The rail exemption authority has been used successfully over the past decade, and such authority will be an important tool for the Commission to use in the future with the motor carrier industry. Finally, the Exon proposal requires a high-priority, focused study of what further deregulation and streamlining can be done at the ICC. Together these steps will yield substantial, immediate savings and will yield further large savings in the near future.

Chairman McDonald and the other members of the Commission are clearly committed to running a tight ship and implementing further deregulation where it makes sense. The best way to achieve major savings and additional, genuine deregulation is to enact the Exon bill and let the Commission carry on with this constructive "reinvention" process.

Thank you for the opportunity to present our views, and I would be happy to answer any questions.

Senator EXON. Mr. Dolan, thank you very much. Those also were good comments and suggestions. This has been a particularly interesting panel. It seems to me you have been concise. You have gotten down to the cases in point. You have made some excellent suggestions, and we will take those into consideration.

I did have some questions, but I will submit those questions to you for the record in the interest of conserving time. Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman.

I would just like to ask one question to anyone on the panel who would respond. What objections would there be to a consolidation of transportation economic regulatory functions into one agency that might be the ICC, which might have some excess capacity, or some amalgamation of transportation economic regulatory agencies, getting away from the DOT, the DOJ, to the extent possible, but consolidating those transportation functions?

Mr. TROUT. I mentioned that in my comments, Senator. I, quite frankly, when I read Senator Exon and Senator Packwood's bill, thought that was a great idea. There is going to be an awful lot of parochial ideas that you are going to have to merge together, and it is probably going to take a little while to get that done. But, as I said in my testimony, this transportation is moving to an intermodal, international, global system. It just makes sense that the oversight should be in that direction, too.

I think it is a good idea.

Senator HUTCHISON. Would you include aviation? Would there be any objection if you had aviation, maritime and surface all together?

Mr. DONOHUE. Senator, I think there are three components here. One is finance, which everyone is talking about. Second are the rules, regulations and statutes under which we have to live and be judged. And third is then structure.

And I think you ask a very pertinent and key question, but I think before you get to that you have to look at the questions and the rules under which the railroads or the truckers or the intermodal shippers operate. What our concern is with the present action in the House is that they will leave all the rules, take away the money, and leave us holding the bag.

If Mr. Clapp filed a rate on September 30 of this year for one of his businesses, he would have to live with it for the rest of his life,

because there would be no place else to file it if the ICC went away.

So, I think if you address your idea from the point of view, How do we assure that the industries that are being regulated have a place for those regulations to be dealt with an adjudicated?—and as was indicated from our friend from the railroad, that that is a judicial, independent type of activity in most instances.

So, once you get figured out that you are going to have sufficient people, structure and money to take care of the industries that are being regulated—as long as you leave those rules on the books—then you can pretty much put it together in any structure you like, as long as it does not put the fox in charge of the chicken coop.

Senator HUTCHISON. Let me just ask one other quick question, because I know we are in a time situation here. On another issue for the truckers, which is the filing of your insurance coverage both at DOT and ICC, the filing of financial information at ICC, are those issues things that we could look at for elimination or at least avoidance of duplication? And is it a big deal?

Mr. SCHNEIDER. Senator, let me answer that. I am Donald Schneider with Schneider National. In 1985, we filed for an exemption with the Interstate Commerce Commission, and they granted it under a different set of Commissioners, not to have to file financial information. They lived with that, and their staff has actually very actively indicated that there is no need for that kind of information.

In 1989, we received an order from them rescinding that for no apparent reason, and asking us to begin to file it again. But this kind of waste just does not make any sense. And I would totally agree that, whatever legislation, you need to eliminate those underlying requirements and not let them decide whether they are going to make exemptions or not and then change them later on with a different set of commissioners.

Mr. HARPER. Senator Exon, you indicated earlier some flexibility with respect to your bill. The suggestion that Senator Hutchison has made about studying about the possibility of bringing several modes together in an agency such as the ICC may present the opportunity for the Exon-Packwood-Hutchison bill. [Laughter.]

Senator HUTCHISON. The chairman is not laughing. [Laughter.]

Senator EXON. We have enough trouble with the Exon-Packwood bill. [Laughter.]

Mr. HARPER. Yes, but you might have more votes with this one.

Senator EXON. I must tell you in all frankness that we put that in there looking toward more consolidation. So, I do not rule out at all what the Senator is suggesting. I simply would say that, as a practical matter, there would be so much hell raised about consolidating just those two agencies that I do not think we have time to resolve all of the problems that would occur. If I know anything about history around here, if we get bogged down into making the Exon-Packwood bill the Exon-Packwood-Hutchison bill, all encompassing, we might have three votes for the bill—Exon, Packwood and Hutchison—and we have some other people to consider.

Senator HUTCHISON. I will just say that maybe that is the beauty of being a freshman around here. One continues to dream. [Laughter.]

Mr. DONOHUE. Senator, two comments. One on the insurance issue. What DOT does on insurance, it checks insurance after the fact, when people have had accidents and so on, to make sure it is the case. And they are really separate functions. But they could be done by either agency, and you could work that out.

On the matter of the filing of financial information, things have changed a great deal in our business. And I think, taking a thorough review of what information is required—I mean, everybody under $10 million does not file; some of the people on the top have exemptions. And I am not sure—we make a few dollars at ATA, taking that information and selling it around, but I do really think that it is an issue that deserves some current analysis and consideration. And there may well be, as Mr. Schneider indicated, a need for a new day.

Senator HUTCHISON. Thank you.

Thank you, Mr. Chairman.

Senator EXON. Senator, thank you very much.

I will have some questions for the record for this panel. I appreciate your patience. With that, this panel is excused.

We will call panel three at this time: Kevin Kaufman, a member of the Transportation Committee of the National Grain and Feed Dealers Association; William A. McCurdy—could we have order please? Those of you who are leaving, if you could leave as expeditiously as possible.

Order, please.

I am calling Kevin Kaufman, a member of the transportation committee of the National Grain and Feed Dealers Association; William McCurdy, Jr., logistics and commerce counsel for E.I. DuPont de Nemours and Co.; Richard Velten, director, distribution and transportation, Johnson & Johnson Hospital Services representing the National Small Shipments Traffic Conference; Joseph Lema, vice president for transportation, National Coal Association; Edward M. Emmett, president, National Industrial Transportation League, and I add that Mr. Emmett was a very distinguished member of the ICC; and Ed Wytkind, executive director of the transportation trades department of the AFL–CIO.

Gentlemen, you are the last panel, you have been extremely patient, and we appreciate that. We think your testimony is very, very important. I would advise you that we have already accepted your full statement for the record to be printed. We would ask that you please summarize as quickly as possible, because your input on what we are doing in this whole area is critically important. Let us begin with Kevin Kaufman.

STATEMENT OF KEVIN KAUFMAN, MEMBER, TRANSPORTATION COMMITTEE, NATIONAL GRAIN AND FEED ASSOCIATION

Mr. KAUFMAN. Mr. Chairman, Senator Hutchison, on behalf of the National Grain and Feed Association we are very grateful to be able to be here today. My name is Kevin Kaufman. I am vice president with Louis Dreyfus Corp. I am currently serving as a member of the National Grain and Feed Association's Transportation Committee.

We feel very strongly that the maintenance of an independent regulatory agency in the form of the Interstate Commerce Commission is of prime importance to our membership which consists of 37 affiliated State and regional grain and feed associations which represent thousands of grain and feed companies throughout the United States. And, by the way, they are taxpayers.

More than 100 years ago, the Congress enacted the Interstate Commerce Act in order to protect individuals and companies engaged in commerce from discriminatory practices that might limit their opportunity to freely merchandise and convey their products to market.

Now, the Interstate Commerce Commission was established in order to provide an independent agency, and to administer the act in order to efficiently resolve disputes through adjudication.

In the case of grain shippers, who are also taxpayers, this has given them equal standing by not imposing upon them the undue hardship of bearing the excessive costs of judicial resolution.

Now, recently the House of Representatives, as we all know, voted to deny funding for this independent agency, and if the Senate concurs we will be left with a law or the protections afforded within the act without an independent agency available for shipper redress.

Now, it is important to note that the protections afforded rail users in the Interstate Commerce Act remain a fundamental necessity to ensure competitive, efficient, and equitable rail transportation for grain shippers and those rural communities dependent on rail service. The availability of rail transportation on a timely, predictable, and reasonable basis is extremely important to both country elevators and local farmers.

The continued consolidation of the rail industry creates entities with enhanced market power. Now, while it is desirable to have a profitable and healthy rail industry, this enhanced power of these consolidated entities increases the importance of the shipper protections contained within the Interstate Commerce Act. Thus, the need for this independent agency is actually more important than it was in 1980 when the Staggers Rail Act was enacted.

Now, we all know that Congress is under considerable pressure to look for savings within Government, and so it is not surprising that they have come forward and put this agency under scrutiny, and perhaps some intergovernmental integration may be more efficient. However, this policy in the case of the ICC we believe strongly to be very shortsighted.

Congress has mandated that the ICC administer the Interstate Commerce Act. If they choose to deny funding then they will have to designate some other entity to do the same.

Now, the DOT has been suggested, but the DOT is neither independent nor possesses the staff of experts necessary to provide a competent and timely forum to administer the act. In fact, the DOT themselves are very concerned about their ability to administer it, and our friend who spoke from Ohio today, the Representative from Ohio, I believe intimated that perhaps they are also incompetent to do so.

So, if the Interstate Commerce Act is essential then there is a definite need for a competent authority to administer it. I do not

believe that transferring the expertise from the ICC to the DOT would result in very great savings. And, in fact, we have had testimony today from the GAO that in fact it perhaps would end up costing money, or at least there would be inefficiencies merely because of the administrative costs in so doing.

We have often made the point in business sometimes that 1 plus 1 does not always equal 2. In many cases it equals 5 because a combining of disparate interests often results in less efficiency.

Now, the National Grain and Feed Association commends Senator Exon and others for their efforts to craft a compromise and to ensure the continued existence of the Interstate Commerce Commission. And we are confident that upon deliberation the Senate will recognize the irreplaceable service that the ICC has continued to provide to shippers and farmers throughout the United States.

Thank you very much.

[The prepared statement of Mr. Kaufman follows:]

Prepared Statement of Kevin Kaufman

The National Grain and Feed Association (NGFA) thanks the subcommittee for this opportunity to submit testimony at this oversight hearing on the Interstate Commerce Commission. My name is Kevin Kaufman and I serve as vice president of Louis Dreyfus Corporation in Wilton, Connecticut. I am a member of the NGFA's Transportation Committee and appear in that capacity today.

THE NATIONAL GRAIN AND FEED ASSOCIATION

The National Grain and Feed Association is the U.S.-based nonprofit trade association for the North American grain and feed industry. NGFA's membership consists of more than 1,000 grain, feed and processing firms comprising 5,000 facilities that store, handle, merchandise, mill, process and export more than two-thirds of all U.S. grains and oilseeds utilized in domestic and export markets.

Founded in 1896, the NGFA's members include country, terminal, and export elevators; feed mills; cash grain and feed merchandisers; commodity futures brokers and commission merchants; processors; millers; and allied industries. The NGFA also consists of 37 affiliated state, provincial and regional grain and feed associations whose members include more than 10,000 grain and feed companies in North America.

NGFA members utilize truck, rail and water modes of transportation to ship and receive grain and grain products throughout North America and international markets. Rail transportation, however, is critically important to the industry because it often is the only economically viable method of transporting raw agricultural commodities from rural production areas to domestic users and export points. Even where truck and water transportation is utilized, rail is often used for a portion of the journey. And, rail transportation remains the single most predominant mode of grain transportation in the United States, representing approximately 50 percent of loaded ton-miles for grain.[1]

NEED FOR AN INDEPENDENT REGULATORY AGENCY

The National Grain and Feed Association believes that the public, rail users and rail carriers are best served by maintaining an independent regulatory agency such as the Interstate Commerce Commission. We do not believe that supervision of rail regulation should be transferred to a cabinet level agency, without a background in surface transportation dispute resolution, where the politics of the day may prevail.

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[1] USDA studied the modal tonnages and shares of grain transported to market by rail, barge and truck for the period spanning 1978 through 1989. For example, in 1989 the modal shares were determined to be: 48.8 percent for rail, 22.9 percent for barge and 28.3 percent by truck. See generally Jerry D. Norton, Paul J. Bertels and Freeman K. Buxton, Transportation of U.S. Grains: A Modal Share Analysis, U.S. Department of Agriculture, Agricultural Marketing Service (July 1992).

The Interstate Commerce Commission serves a necessary function in regulating rail transportation.[2] This nation's agricultural production and marketing system is heavily dependent on rail transportation to move bulk agricultural commodities, fertilizer and agricultural products to domestic users and export points. While the Staggers Rail Act of 1980 did substantially deregulate certain aspects of rail transportation, Congress also vested the ICC with the responsibility to ensure competitive, efficient and equitable rail transportation for shippers and communities dependent on rail service. Among the ICC's fundamental duties is ensuring that the statutory common carrier obligations of rail companies to all rail users are met.

Notwithstanding the vote by the House of Representatives to eliminate funding for the ICC, no steps have been taken to ensure that shippers' rights would be adequately protected. The U.S. Department of Transportation (DOT) is not an independent agency. DOT is engaged primarily in regulating safety matters and is not equipped to handle the economic regulation matters on which the ICC has substantial experience and expertise. Nor is it clear that any real long term budget savings will be achieved if the ICC's existing functions are merely transferred to DOT. Instead, it appears that eliminating the ICC will only save money if the DOT is not expected to enforce the important statutory duties now performed by the ICC. That is not a very appealing prospect for rail users and the public, who would be unable to take their grievances directly to court because of pre-emptive federal statutes. In contrast, an experienced, unprejudiced, independent agency that offers a level playing field for the resolution of disputes encourages the parties to discuss and voluntarily resolve their difference.[3]

CONTINUED NEED FOR RAIL REGULATION

The NGFA's members have no desire to roll back the deregulatory aspects of the Staggers Rail Act of 1980. Indeed, the NGFA was supportive of most provisions of that Act because our industry, so dependent on rail transportation, agreed that the pre-Staggers' provisions of the Interstate Commerce Act were not working well for rail users or the rail industry.

The NGFA continues to support the concepts embodied in the Staggers Act. We do not seek re-regulation of rail transportation or a return to the days when government determined the outcome in the marketplace. Yet, our industry recognizes that markets do not always function perfectly—especially rail markets where significant competitive barriers exist[4] and/or shippers are captive to a single rail carrier which they rely on almost exclusively as the means of shipping grain to users and export markets. Thus, our members support the shipper protections embodied in the Interstate Commerce Act and believe that the availability of selective regulatory intervention is still a necessity, to supplement sometimes inadequate market forces and to protect interests of transportation users, consumers and the public.

The grain industry is characterized by numerous small companies—country elevators—that make rail shipments. No other industry brings so many small businesses to the rail marketplace. Rail grain transportation issues have often been contentious because over 90 percent of country elevator grain volumes moved by rail are shipped from facilities served by a single rail carrier.[5] As a result, the availability of rail service to country grain elevators on a timely, predictable and reasonable basis is extremely important. When rail transportation is not reliable, both the

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[2] The NGFA also supports the role of the ICC in administering the provisions of the Interstate Commerce Act governing other surface transportation modes to the extent that regulation in these other areas is deemed necessary.

[3] If the Interstate Commerce Act is to remain federal law, then Congress has a responsibility to ensure that all parties—rail users, rail carriers and the public—have effective and timely adjudication of disputes. An ineffective agency, either because of a lack of expertise or financial resources, is a disservice to all affected interests. While eventual review of agency decisions would presumably be available in the federal courts, that should iiQL be considered an acceptable substitute for effective and timely administration of the Interstate Commerce Act in the first instance. In addition to delays, resort to the courts after experiencing the morass of an ineffective administrative process would result in substantially increased legal costs for parties seeking redress. Small shippers, with limited resources, would no longer have any "real" forum available for resolving issues.

[4] Rail transportation is unique from other modes of surface transportation because the carriers own and control the transportation rights-of-way. Even where private cars are permitted to operate on a rail carrier's line, the permission may be, revoked and is always subject to the rail carrier's rules on use, which vary among rail carriers. In contrast, trucks and barges operate on public rights-of-way where entry is essentially unrestricted.

[5] Dr. Kendell W. Keith, National Grain and Feed Association, Survey of Grain Transportation: Statistics for the U.S. and Major Grain Producing Regions (March 1983). The study showed that 53.4 percent of all country elevator grain volumes move by rail with 94.8 percent of these rail movements being shipped from a facility served by a single railroad.

country elevator and local producers suffer. The country elevator is unable to ship its inventories and may be in breach of contract with its buyer-customers. Farmers can also suffer economic damage, because the local cash market price for producers' grain usually declines when local rail transportation is not available.

While many of the changes wrought by the Staggers Rail Act of 1980 have been laudatory, it is also true that mergers and acquisitions have substantially lessened the number of rail carriers and increased their resulting financial leverage. There are now only 12 Class I railroads in the United States, compared with 61 only 20 years ago. Recently, the Burlington Northern Railroad—already the largest rail carrier of bulk grain—announced its intention to merge with the Atchison, Topeka & Santa Fe Railway Company. The NGFA has not taken a position on the merits of the merger, but it is clear that the combined entities will have enhanced market power to affect the economics of grain transportation. Thus, the shipper protections contained in the Interstate Commerce Act may be even more important now than when the Staggers Act was passed.[6]

Although trucking service normally is readily available, rail grain service continues to be scarce for substantial periods during each year. Trucks are not an economical substitute for long-distance rail service, and, except in very limited circumstances, trucks do not even offer an economically viable means of seeking alternative rail service.[7] The ICC continues to be called upon to resolve recurring disputes over the allocation of grain transport capacity.

The transportation of bulk grain by truck has been exempt from economic regulation under the Interstate Commerce Act since passage of the Motor Carrier Act of 1935, which subjected truck transportation to regulation. However, our membership includes many companies which also process or mill grain into other products which are subject to the existing statutory provisions governing truck transportation.[8] Thus, many of our members have been affected by the undercharge litigation involving the filed-rate doctrine. The ICC's continued administration of the Negotiated Rates Act for transactions subject to it remains extremely important.

The NGFA also supports efforts to reform government and to make it more efficient by eliminating unnecessary programs. We do not believe the ICC is an unnecessary program. We do, however. support positive changes which improve the Interstate Commerce Act or the ICC's administration of the Act.

We also believe the Secretary of Agriculture should be consulted regarding the effect of reforms on agricultural rail transportation matters. Congress has vested the Secretary of Agriculture[9] with several duties and responsibilities involving the transportation of agricultural commodities. Specifically, the Secretary of Agriculture is required:

> "To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, or other Federal or State transportation regulatory body, or the Secretary of Transportation, with respect to rates, charges, tariffs, practices, and

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[6] Bulk grain remains one of the principal commodities transported under rates established by tariffs filed by rail carriers. Whether that service takes place under tariff, as most does, or under contract, it is subject to ICC jurisdiction. In fact, grain transportation contracts are the only contracts which railroads must file with the ICC for review. Non-rate tariffs are also very important to grain shippers as illustrated by a recent case involving a car cleaning rule filed by a carrier which attempted to shift the liability for contaminated rail cars to shippers. The ICC, in a unanimous decision, reaffirmed a rail carrier's duty to provide shippers with clean covered hopper cars and found that the rail carrier's attempt to shift the burden of proof as to the cleanliness of railroad-supplied cars through a non-rate tariff was an unreasonable practice. See Liability for Contaminated Covered Hopper Cars, 10 I.C.C.2d 154 (May 25, 1994).

[7] The argument is sometimes made that a grain elevator can truck grain to another rail carrier when rail grain transportation is unavailable or too costly. There are two clear defects in this argument. First, truck transportation of a low-margin bulk commodity such as grain is not a viable economic alternative over long distances. Second, with the increasing consolidation of the rail industry, an alternative rail carrier with available rail grain transportation or a lower rate is simply unlikely to exist for most grain shippers.

[8] We believe that our members which produce products transported by truck, which are not already exempt from economic regulation under the Interstate Commerce Act, generally support the proposed Trucking Regulatory Reform Act, S. 2275.

[9] Why has the Secretary of Agriculture been vested with authority in this area? Agriculture remains somewhat unique. It is unlike other industries utilizing rail transportation that are mobile and, thus, have the opportunity to change location if market behavior by rail carriers is judged to be unreasonable. Agricultural production location is fixed and totally dependent on the competitive market circumstances in the region.

services, or by working directly with individual carriers or groups of carriers."—7 U.S.C. § 1622(j).

Consequently, it would be appropriate to consult with the Secretary of Agriculture regarding any changes in rail transportation regulation which affect agricultural commodities.

Thank you again for holding this oversight hearing and requesting our participation. I will be happy to answer any of your questions. Likewise, members of the committee and staff are encouraged to contact the National Grain and Feed Association if questions regarding the NGFA's testimony or position arise subsequent to today's hearing.

Senator EXON. Mr. Kaufman, thank you very much for your comments. I am particularly pleased with the organization you represent is so closely tied to our agricultural people out in Nebraska, and whom I am very proud to represent and continue to represent as best I can here trying to stop things such as what happened in the House of Representatives.

It is a good political move when you try and to eliminate an agency because people are for reducing Government agencies. But, when people find out what the elimination that would take place would do, I do not think they would be for it.

With that, let me go to Mr. McCurdy. Welcome, Mr. Curdy, and please proceed.

STATEMENT OF WILLIAM A. McCURDY, JR., LOGISTICS AND COMMERCE COUNSEL, E.I. DuPONT DE NEMOURS AND CO.

Mr. MCCURDY. Thank you, Mr. Chairman, Senator Hutchison. I am Bill McCurdy. I am logistics and commerce counsel with the E.I. DuPont de Nemours and Co. in Wilmington, DE. It is a pleasure to appear before you today to offer testimony and support for the continued funding of a reengineered and independent Interstate Commerce Commission, and recently proposed legislation, S. 2275, sponsored by yourself and Senator Packwood.

DuPont believes that for the most part the marketplace should be permitted to define the economic relationships which exist between shipper and carrier. However, DuPont also appreciates that the marketplace cannot in all circumstances ensure that such relationships will be fair, equitable, or serve the best interest of the United States or its consuming public.

In such situations, an impartial, independent arbiter is required. DuPont believes that the ICC has and should continue to fulfill this role.

DuPont and its principal subsidiaries, the Consolidated Coal Co. and Conoco, are significantly impacted by the ICC's regulation. However, for the purposes of these discussions we will confine our testimony to reconstruction of the ICC and the economic regulations which affect transportation of freight by rail and motor carriage.

The Department of Transportation, reflecting on change brought about by deregulatory legislation of the early and mid-1980's noted in its 1990 statement of transportation policy, "transportation providers have been released from many of the hobbles of Federal economic regulation, unleashing creative and competitive energies in the transportation industry on a scale not seen since the boom years when railroads, planes, and motor vehicles were new.

In the 1980's, previously regulated transportation companies across all modes have introduced innovations in service, routes,

systems, fares, and operating strategies unprecedented in modern transportation history.

They have become more efficient as they now have incentive and flexibility to pursue productive and profitable investments—investments to meet service demands and also to help make their operations safer. The process will continue as Federal, State, and local barriers to more efficient, service oriented transportation are eliminated.

One of the greatest opportunities for improving transportation efficiency and service in the future lies in allowing market forces to work, minimizing Government intervention, and increasing flexibility for the private sector.

DuPont believes, and the marketplace has clearly demonstrated, that the economic regulation of individual motor carrier rates, routes, and terms and conditions of carriage by the ICC or State public utility commissions are no longer necessary or appropriate.

Shippers have available to them in our largely deregulated and highly competitive marketplace a multitude of choices to transport their freight. Motor carrier service offerings have improved, costs have fallen, the consumer has benefited from the efficiencies born from the twin pillars of increased competition and deregulation.

The time has come to complete the job initiated in 1980. The filed rate doctrine has outlived its usefulness in the motor carrier industry. Its continued presence will only divert our attention from more important activities which are necessary to operate safely and survive in an increasingly competitive global marketplace. In short, the filed rate doctrine has become an expensive ornament of the past and should be relegated to the dust bin of history.

The ICC should be directed to refocus its energies and limited resources to ensuring that motor carriers maintain through appropriate Federal permitting requirements and enforcement high levels of safety, environmental protection, and financial fitness in their operations.

Significant financial savings, reportedly as high as $20 million annually for the Federal Government, and additional significant dollars in the private sector could be realized if the negotiated rate doctrine were repealed and the ICC were not longer required to maintain and file tariffs or contracts for individual carriers. Similar savings could result if the Federal Maritime Commission were provided with the same relief.

The oversight authority of the ICC, however, cannot be replaced by the marketplace in all cases and in all modes. Collective ratemaking, rail line abandonments, captive shipper scenarios, and rail mergers such as that posed by the recently publicized combination of the Burlington Northern and Santa Fe all require an impartial and unbiased arbiter to protect the public good, ensure fairness, and preserve a level playing field for shippers and carriers alike.

It has been suggested that these functions could be performed equally as well by the modal agencies within the Department of Transportation at significant costsavings. For the reasons set forth in our written testimony, DuPont does not believe this to be the case.

Rather, DuPont believes that greater savings and efficiencies would be gained by reengineering the ICC and its sister independ-

ent agency, the Federal Maritime Commission, and eliminating functions such as the individual tariff filing which are adequately policed by competitive forces in the marketplace.

Functions which are necessary to retain a healthy balance of interest between shipper and carrier, or to preserve and protect a level playing field for U.S. carriers in the international arena, or to maintain and protect public interest and safety could be preserved and performed by a new and more efficient reengineering Interstate Commerce Commission, or as was mentioned before, an intermodal commerce commission.

Finally, the elimination of duplicative functions and outmoded practices would, we believe, result in even greater savings than are currently projected by the elimination of the ICC alone.

The revised regulatory structure created by the transportation legislation of the 1980's has created many opportunities within the United States to implement new ideas and processes. The freedom and success which the U.S. industry and carrier community have derived from economic deregulation must now be extended.

Survival in the global marketplace in the future will depend very much on the strength and resilience of the emerging U.S. shipper, carrier, and Government partnership. Government, together with its laws and regulations, must be a partner and an aid, not a barrier in this evolutionary process if we as a nation of shippers and carriers are able to successfully compete and win in the global marketplace.

In this regard, I and DuPont would be most pleased to participate with the DOT and the ICC in their study of the merging of the ICC and the FMC under Section 10 of S. 2275.

In conclusion, DuPont urges this committee to preserve the ICC in a newer, more responsive and efficient form. We believe this can best be accomplished by restoring appropriate levels of funding for the ICC and passing S. 2275 during this Congress.

Thank you very much for your time. I would be happy to answer any questions.

[The prepared statement of Mr. McCurdy follows:]

PREPARED STATEMENT OF WILLIAM A. MCCURDY, JR.

Good morning, Mr. Chairman. Committee members. I am William A. McCurdy, Jr., Logistics and Commerce Counsel for E.I. DuPont de Nemours and Company (DuPont) of Wilmington, Delaware. It is a pleasure to appear before you today to offer testimony and support for the continued funding of a "reengineered" and independent Interstate Commerce Commission (the ICC) and the recently proposed legislation, S. 2275, sponsored by Chairman Exon and Senator Packwood.

E.I. DuPont de Nemours and Company is an integrated manufacturer and exporter of chemicals, polymers, textiles, pharmaceuticals, film, energy products (Consol—coal, Conoco—petroleum), consumer goods, and agricultural chemicals. It maintains its own private motor carrier fleet, owns or leases and operates in excess of 8,000 railcars, operates and maintains a large number of barges for use on this nation's inland waterways, and annually spends over $1.5 billion world-wide on logistics related activities. Clearly, DuPont has a vested interest in maintaining a healthy, competitive, and efficient national transportation system.

DuPont believes that, for the most part, the marketplace should be permitted to define the economic relationships which exist between shipper and carrier. However, DuPont also appreciates that the marketplace cannot, in all circumstances, assure that such relationships will be fair, equitable or serve the best interests of the United States or its consuming public. In such situations, an impartial and independent arbiter is required. The Interstate Commerce Commission has successfully fulfilled

this function since its inception in 1887 and, in a "reengineered" state, should be able to continue to do so successfully in the future.

Congress has, over the past century, seen fit to assign specific functions to the ICC in some 429 different code sections spread throughout eighteen separate titles of the United States Code. The most recent reference occurred in December of last year and is found in the Negotiated Rate Act of 1993. The majority of these assignments concern economic regulation and can be.grouped into nine categories. They include:

- Rail Freight Regulation
- Rail Passenger Regulation
- Motor Carrier Regulation
- Oversight of the Resolution of the Undercharge Issue
- Regulation of Household Movers
- Bus Regulation
- Transportation oversight associated with the North American Free Trade Agreement (NAFTA)
- Regulation of Inland Water and some Ocean (territorial) Carriage
- Regulation of Certain Pipeline Carriage

DuPont and its principal subsidiaries, Consolidated Coal Company and Conoco (oil), are significantly affected by the ICC's regulation in virtually all of the categories set out above. However, for purposes of these discussions, we will confine our testimony to the restructuring of the ICC and to those economic regulations affecting transport of freight by rail and motor carriage.

The decade of the 1980's will be remembered in transportation circles as one of great challenge. The passage and implementation of the Stagger's Rail Act of 1980, the Motor Carrier Act of 1980, and the Shipping Act of 1984 have brought about pervasive change for shippers and barriers alike. Competition—caused by partial deregulation, open markets, focused customer service and a newly recognized freedom to lawfully contract for transportation services, all took on new meaning and added significance in the eyes of the carriers and their customers. But change, for better or worse, has not been accepted with equanimity by all. Some carriers, intermediaries, and modes have adjusted better than others to change. Some have viewed the new environment with distrust, and have sought to turn back the hands of time; while others have embraced change as presenting new opportunities and have expanded their horizons to gain new business and greater profits.

The Department of Transportation, reflecting on the change brought about by deregulation, noted in its 1990 Statement of National Transportation Policy: "* * * transportation providers have been released from many of the hobbles of Federal economic regulation, unleashing creative and competitive energies in the transportation industries on a scale not seen since the boom years when railroads, planes, and motor vehicles were new. In the 1980's, previously regulated transportation companies across all modes have introduced innovations in service, route systems, fares, and operating strategies unprecedented in modern transportation history. They have become more efficient, as they now have the incentive and the flexibility to pursue productive and profitable investments—investments to meet service demands and also to help make their operations safer.

"* * * The process will continue as Federal, State and local barriers to more efficient, service-oriented transportation are eliminated. One of the greatest opportunities for improving transportation efficiency and service in the future lies in allowing market forces to work, minimizing government intervention, and increasing flexibility for the private sector." [1]

DuPont believes, and the marketplace has clearly demonstrated, that economic regulation of motor carrier rates, routes, and terms and conditions of carriage by the ICC or State public utility commissions are no longer necessary or appropriate. Shippers, both large and small, whether located in remote rural areas or in large metropolitan centers, have available to them, in our largely deregulated and highly competitive. marketplace, a multitude of choices to transport their freight. Motor Carrier service offerings have improved, costs have fallen, and the consumer has benefited from the efficiencies borne from the twin pillars of increased competition and deregulation.

The time has come to complete the job initiated in 1980. The "filed rate doctrine" has outlived it usefulness in the motor carrier industry. Its continued existence will only permit the gremlins of inefficiency to divert our carriers and shippers from the efficient performance of more important activities which are necessary to survive in

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[1] Moving America, New Directions, New Opportunities, A statement of National Transportation Policy, Strategies for Action, United States Department of Transportation, February, 1990—page 19.

an increasingly competitive global marketplace. The "filed rate doctrine" has become an expensive ornament of the past and should be relegated to the dustbin of history. The ICC should be relieved of its responsibility to accept, review and file tariffs for individual motor carriers and be permitted to redirect its energies and resources to ensuring that motor carriers maintain, through appropriate federal permitting requirements, high levels of safety, environmental protection, and financial security (i.e. insurance) in their operations.

Significant financial savings, reportedly as high as $20 million dollars annually for the federal government and additional significant dollars.in the private sector, could be realized if the negotiated rate doctrine was repealed and the ICC was no longer required to maintain and file tariffs or contracts for individual carriers. Similar savings would result if the Federal Maritime Commission received the same direction.

The oversight authority of the ICC, however, cannot be replaced by the marketplace in all cases. The ICC can and does provide a valuable check in cases where the public interest is or cannot be protected by marketplace mechanics alone or where an inordinate advantage is afforded to the carrier due to its monopoly position. Rail line abandonments, captive shipper scenarios, rail mergers such as that posed by the recently publicized combination of the Burlington Northern and the Santa Fee—all require an impartial and unbiased arbiter to protect the public good, ensure fairness, and preserve a level playing field for shippers and carriers alike.

It has been suggested that these functions could be performed equally as well by the modal agencies within the Department of Transportation (DOT) at significant cost savings. DuPont does not believe this to be the case. Further, DuPont, based on its past experience, does not believe that shipper interests will receive the same level of impartial treatment from an agency which is also charged with the promotion of the involved carrier community. We also question whether the DOT or any of its modal agencies currently possess the level of expertise necessary to properly adjudicate, on a timely basis, economic disputes type between the shipper and carrier communities. While we have no doubt that such expertise could be gained over time—we question the need to do so in light of the current performance of the ICC.

We believe that greater savings and efficiencies could be gained by "reengineering" the ICC and its sister independent agency, the Federal Maritime Agency (FMC) to eliminate those functions, such as individual carrier tariff filing, which are adequately "policed" by competitive forces in the marketplace. The functions which are necessary to retain a healthy balance of interests between shipper and carrier, or to preserve and protect a level playing field for United States carriers in the international arena, or to maintain and protect the public interest and safety could and should be preserved and performed by a new more efficient, "reengineered" Interstate Commerce Commission. The combination of the two independent agencies, elimination of duplicative functions and outmoded practices would, we believe, result in greater savings than are currently projected by the elimination of the ICC alone.

The revised regulatory structure created by transportation legislation of the 1980's has created many opportunities within the United States to implement new ideas and processes. The freedom and success which U.S. industry and the carrier community have derived from deregulation must now be extended.

One of the great challenges ahead for those who would participate in the feast of opportunity that exists in the global marketplace is the need to increasingly enhance the flexibility of our manufacturing information and distribution systems to respond to the changes in the marketplace.

Survival in the global marketplace in the future will depend very much on the strength and resilience of the emerging U.S. shipper/carrier/government partnership. Safety, service, and competitive pricing will continue to be very much in demand, but a willingness and ability to work together—to make necessary investments of time and understanding, will become increasingly more important. Finding the right "tools" and developing the attitudes necessary to reach beyond traditional roles and common-denominator performance to establish a constantly evolving "state-of-the-art approach" will certainly be the challenge well into the 21st century. Government and the laws and regulations it promulgates must become a partner and an aid, not a barrier, in this evolutionary process if we, as a nation and as shippers and carriers, are to successfully compete and win in the global marketplace. Implementing the changes which we, the Government Accounting Office, the National Industrial Transportation League, and other supporters of a "reengineered ICC" and S. 2275 have recommended in this hearing will provide us all with an excellent beginning.

DuPont urges this Committee to preserve the ICC in a newer more responsive and efficient form. This can best be accomplished by restoring appropriate levels of funding for the ICC and passing S. 2275 during this Congress. We cannot—and must not—delay.

Mr. Chairman, thank you for your attention. I would be pleased to respond to any questions which you or others on the Committee may care to direct to me or to DuPont.

Senator EXON. Thank you, Mr. McCurdy. Before I recognize our next witness I note that he represents Johnson & Johnson Hospital Services. I only would tell you, Mr. Velten, that we have broad jurisdiction in this committee but if you are here to talk about health care you are going to be ruled out of order very, very promptly. [Laughter.]

With that, Mr. Velten, let me recognize you, and thanks for being here, and thanks for your patience.

STATEMENT OF RICHARD G. VELTEN, DIRECTOR, DISTRIBUTION AND TRANSPORTATION, JOHNSON & JOHNSON HOSPITAL SERVICES; AS CHAIRMAN, FEDERAL GOVERNMENT AFFAIRS COMMITTEE, NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE

Mr. VELTEN. Thank you, Mr. Chairman, and Senator Hutchison. I guess I do not have the courage to get into the health care issue, so let me stay where I am.

Senator EXON. Or the time.

Mr. VELTEN. Or the time, so let me stay in an area in which I am an expert which is this area of transportation.

My name is Dick Velten and I am director of distribution and transportation for Johnson & Johnson Hospital Services, and my offices are in New Brunswick, NJ.

This statement is on behalf of the National Small Shipments Traffic Conference, the acronym is NASSTRAC, as well as the Health and Personal Care Distribution Conference which shares equal concern in this issue.

With me, behind me here, is Dan Sweeney who is general counsel to both of these organizations.

NASSTRAC and the Health Care Conference consist of about 500 shipper members who are located across the Nation, shipping primarily via regulated motor carriers. The membership includes large Fortune 500 companies such as Johnson & Johnson, as well as many smaller companies and businesses as defined under the Small Business Act, and companies in between.

These two shipper conferences are recognized as the leading spokesmen for shippers in the area of motor carrier regulation, and I will give Mr. Emmett a chance in a minute to dispute that.

We support full funding for the ICC to accomplish their statutory mandate. The ICC has been performing in an outstanding way for the shipping community, especially in the undercharge area, but also in its other regulatory functions as well. And the ICC is entitled to the highest marks for its initiatives and performance. And as Senator Packwood said this morning, they deserve an "E" for excellence.

The ICC's docket has been expanded by taking on more shipper filed cases than any other time in its history, with a staff reduced

to one-third of its size a few years ago. As Senator Burns said this morning they are lean and mean.

Its case load will increase as it implements the provisions of the Negotiated Rate Act of 1993. In order to fulfill the promise of the NRA, it is absolutely essential that the ICC remain in place in order to discharge the shipper relief functions entrusted to it.

Virtually every provision of the NRA requires implementation by the ICC on a case-by-case basis. The entire NRA would be frustrated and virtually useless unless the ICC remains in business to discharge its responsibilities under that statute.

In the rail area, the Commission also has responsibilities which are crucial to shippers. Many shippers are captive to a single railroad. Certainly the shippers in the State of New Jersey can appreciate that with the dominance of Conrail in our State.

And those shippers are subject to arbitrary ratemaking, or can be subject to arbitrary ratemaking. Reasonable rates can only be assured by continuing the ICC's review function over rail rates. Abandonment matters must be under the jurisdiction of this agency to protect communities which would be left without rail service.

These shipper conferences generally support the enactment of S. 2275 sponsored by yourself, Senator Exon, and Senator Packwood.

In regard to filed rates we support the provisions in the bill to terminate tariff filings and the filed rate doctrine. I have to interject here that in Mr. Clapp's testimony in the last panel he separated these two issues. Now, let me make the point that that would be disastrous in the area of undercharges for shippers were that to occur. We would be left at the mercy of the documents at the bankrupt carrier's organization. So, we see that as a very deficient proposal.

The principal use of filed rates is by undercharged auditors and collectors who seek to convert them into undercharge traps by narrowly reading tariff provisions.

In regard to exemptions, the shipper conferences that I represent here support section 5 of the bill which gives the ICC authority to exempt categories of motor freight from regulation in the future.

As far as licensing, we support the initiative in section 7 of the bill to simplify the process of issuing operating permits and licenses, and to remove the public convenience and necessity requirement.

We suggest modifications in the proposed section 7 of the bill so as to remove the provisions of subparagraph 4 for protesting applications and speeding up that process.

There is no provision in the bill which addresses the anomalous situation of groups of carriers collectively discussing rates in meetings convened under the auspices of antitrust immunity conferred by the ICC. It is the position of our shipper conferences that the statutory provision for antitrust immunity for collective ratemaking should be terminated at the earliest practicable date.

A prime example of this is the national classification committee. While it insists that it only makes classification ratings and not rates, a 50-percent increase in class ratings equates to a 50-percent increase in rates.

The NCC has used its immunity to progress contrashipper items such as penalties and ratings for DOT designated hazardous mate-

rials and changes to the bill of lading to facilitate the reduction of carrier liability for loss and damage.

The Candy Canes fiasco which was talked about here this morning and for which we understand the ICC is being blamed was brought about by the NCC to increase class ratings on candy canes in its tariffs.

As regards the ICC as a regulator, they have been doing an excellent job in fulfilling their statutory mandate. The ICC is open and responsive to the public interest, and well staffed with highly qualified people. It makes no sense to scuttle this agency merely to get rid of the name.

DOT, for example, does not have the same background and expertise in economic regulations, and has indicated here earlier that it does not look like it wants those functions.

Thank you.

[The prepared statement of Mr. Velten follows:]

PREPARED STATEMENT OF RICHARD G. VELTEN

My name is Richard G. Velten and my address is P.O. Box 4000, New Brunswick, NJ 08903. I am Director, Distribution and Transportation for Johnson & Johnson Hospital Services, Inc.

This statement is on behalf of The National Small Shipment Traffic Conference, Inc. (NASSTRAC) and The Health and Personal Care Distribution Conference, Inc. These two groups consist of approximately 500 shipper members which are located across the nation, shipping primarily via regulated motor carriers. The membership includes large Fortune 500 Companies as well as many which are small businesses as defined under the Small Business Act.

These Shipper Conferences are recognized as the leading spokesmen for shippers as to motor carrier regulatory issues.

ICC ACTIVITY AND FUNDING

The Shipper Conferences support full funding for the ICC. The ICC has been performing outstanding services for the shipping community, primarily in the undercharge area, and also as to other regulatory functions as well. The Commission has taken on hundreds of undercharge cases upon referral from the federal courts. And it has been heavily engaged in defending the public against court cases brought by nonoperating carriers to challenge and obstruct its jurisdiction over contested freight rates. It has taken the initiative against unjust undercharge campaigns in matters such as the Transcon and PIE bankruptcies.

The ICC is entitled to the highest marks for its initiative and performance in the critical arena of undercharges. Its docket has been expanded by taking on more shipper-filed cases than at any time in its history and it is striving heroically to cope with that caseload, with a staff reduced to one-third its size of a few years ago. Its caseload will increase as it implements the provisions of the Negotiated Rates Act of 1993.

In order to fulfill the promise of the NRA, it is absolutely essential that the ICC remain in place in order to discharge the shipper-relief functions entrusted to it under that Act. Virtually every shipper-relief provision in the NRA requires implementation by the ICC on a case-by-case basis. To name some of its responsibilities under the NRA.

- the ICC is designated by the NRA to determine whether a shipper had negotiated a rate with the carrier which now claims undercharges;
- a determination of negotiated rates by the ICC is critical to small businesses claiming no liability under the small business exemption of the NRA,
- a determination by the ICC is also critical to shippers claiming the right to settle undercharge claims under the NRA settlement percentages;
- as to undercharge claims for shipments made prior to September 30, 1990, claims can be declared an unreasonable practice by the ICC where the shipper produces written evidence of a negotiated rate;
- under the NRA, a shipper is entitled to defend against the collection of asserted undercharge claims on the grounds that the higher rates are unreasonable, but only the ICC can determine that rates are unreasonable;

• where a shipper understood that it was shipping under a contract and the validity of contract carriage is challenged, the NRA directs that the ICC determine that issue.

The entire NRA would be frustrated and virtually useless unless the ICC remains in business to discharge its responsibilities under that statute.

In the rail area, also, the Commission has responsibilities which are crucial to shippers. Many shippers are captive to a single railroad and subject to arbitrary ratemaking by the railroads. Reasonable rates can only be assured by continuing this agency's review function over rail rates. Similarly, abandonment matters must be under the jurisdiction of this agency to avert the destruction of companies and communities which might otherwise be left without rail service.

There is a public interest in maintaining regulatory control over the railroads, as they have been built upon public lands or on land acquired by authorizing them to condemn private property. If railroad deregulation is to be achieved, consideration should be given to opening up the railroads to mutual use by other carriers, as the presence of such competitors would probably alleviate the need for economic regulation and also result in a better and more efficient use of railroad plant.

SENATE BILL S. 2275

These Shipper Conferences generally support the enactment of S. 2275 sponsored by Senators Exon and Packwood.

Filed Rates. We wholeheartedly support the provision in the Bill to terminate tariff filings and the filed rate doctrine. Rate filing is an anachronism dating back to an era when there was a single set of rates for all carriers and shippers. Now that there is a choice of rates and carriers, with each shipper negotiating its rates with a carrier, no purpose is served by continuing the filed tariff requirement. In fact, the only use being made of filed rates is by undercharge auditors and collectors which seek to convert them into undercharge traps by narrowly reading tariff provisions.

While the NRA does much to help extricate shippers from undercharge traps after they are sprung, it did not liberate shippers from the constant barrage of new undercharge claims. For example, major nonoperating carriers, such as St. Johnsbury and Friedman's Express, are busily engaged today in issuing dunning letters for creative undercharges amounting to many millions of dollars. The filing of such claims, even where the shipper ultimately prevails under the NRA, disrupts the shippers' daily business, costs them money for legal fees, and quite commonly forces them to pay settlements to dispose of unjust undercharges.

Termination of filed rates is the only way to end the unjust undercharge campaign. We suggest that Section 6 of this Bill be amended to state flatly that the proposed Act shall not affect the application of the NRA to any undercharge claims. We would also suggest that the off-bill discounting provision of the NRA, which was bundled into the NRA to defeat discounts not included in filed tariffs, be repealed, as it would now serve no purpose. That provision is a nightmare for shippers and should be removed to avoid a whole new type of undercharges.

Exemptions. The Shipper Conferences support Section 5 of the Bill which gives the ICC authority to exempt categories of motor freight from regulation in the future.

Licensing. We support the initiative in Section 7 of the Bill to simplify the process of issuing operating permits and licenses and to remove the public convenience and necessity requirement. We suggest modifications in the proposed Section 7 so as to remove the provision in (4) for protesting applications, as that only infuses delay into the process. With that proviso removed, there could be added a provision requiring that the certificate or permit be issued within 30 days after an application is filed, provided that the safety and insurance prerequisites were met. Without these changes, it will still take 90 days to obtain an operating authority. Since there are, as a practical matter, no protests against applications, there is no reason to inject substantial delay, particularly since the objective of the Bill is to simplify and streamline licensing.

RATE BUREAUS—ANTITRUST IMMUNITY

There is evidently no provision in the Bill which addresses the anomalous situation of groups of carriers collectively discussing rates in meetings convened under the auspices of antitrust immunity conferred by the ICC under the Interstate Commerce Act. It is the position of these Shipper Conferences that the statutory provision for antitrust immunity for collective ratemaking should be terminated at the earliest practicable date. Historically, prior to competitive ratemaking among motor carriers, the rate bureaus served the purpose of establishing and maintaining a sin-

gle set of rates for all carriers in each region of the country. Now that there is individual carrier-to-shipper ratemaking and pervasive competition in this industry, the raison d'etre for collective ratemaking no longer exists. Yet the potential for mischief exists when carriers are allowed to consider and vote on rates collectively.

A prime example of this is the National Classification Committee. While it insists that it only makes classification ratings and not rates, a 50 percent increase in a class rating equates to a 50 percent increase in rates. In recent years, the NCC has used its immunity to progress contra-shipper items such as penalties in ratings for DOT-designated hazardous materials, changes to the uniform bill of lading to facilitate the erosion of the traditional carrier liability for loss and damage, etc. Even the Candy Canes fiasco for which we understand the ICC is being blamed by certain parties, was brought about by the NCC to substantially increase the class ratings on candy canes in its tariff.

The ICC did not perpetrate the Candy Canes fiasco and it is actively investigating that rate increase. Hopefully, if allowed to continue its jurisdiction it can correct that in a proceeding where NASSTRAC members and NASSTRAC itself have been participating.

Classification is a practice inherited from 19th century railroad ratemaking. It is not necessary or even desirable today. Leading shippers do not ship under the classification ratings. In my company, we ship freight at freight-all-kinds (FAK) rates and eschew the classification. Indeed, UPS, the largest and most successful motor carrier, does not use a classification.

With respect to the other rate bureaus, their membership has shrunk sharply as carriers turned to individual ratemaking in increasing numbers since 1980 and voted with their feet. Yet there are still a significant number of carriers which, faced with a sustained period of poor earnings, are concerned that the regional rate bureaus are still needed to serve as a vehicle for general increases. In due respect to their concerns, we do not request that antitrust immunity for general increases be terminated at this time. However, bearing in mind that within four years rate regulation will not be needed to implement the NRA's protection as to undercharges, there would seem by that time to be no need to preserve rate regulation only for the purpose of perpetuating rate bureaus.

ICC AS REGULATOR

Some suggestions have been made that, if the motor carrier regulatory provisions are preserved in substantial part, the ICC should be closed and its functions transferred to DOT or to FMC or to some as yet unnamed agency. As already noted, the ICC has been doing an excellent job in fulfilling its statutory mandate. It is open and responsive to the public interest and it is well staffed with highly qualified experts and attorneys. It makes no sense to scuttle the agency merely to get rid of the name. DOT, for example, has no background in economic regulation and has made it plain that it does not want those functions. Moreover, the downtime or lag time in starting up a new agency or sub-agency would be destructive of its functions. Shippers, and probably the courts also, could not tolerate the time lag it would take to get a new or restructured agency up and running.

Senator EXON. Mr. Lema.

STATEMENT OF JOSEPH E. LEMA, VICE PRESIDENT FOR TRANSPORTATION, NATIONAL COAL ASSOCIATION

Mr. LEMA. Thank you, Mr. Chairman.

Mr. Chairman and Senator Hutchison, I am Joe Lema, vice president for transportation of the National Coal Association. As the producers and suppliers of more than 600 million tons of coal annually which are moved by railroad from coal mines in the East, the Midwest, and the West, to utility and industrial plants and to ports from which our coal is transshipped by barges and/or ocean-going deep draft vessels to domestic consumers and international markets for U.S. coal, the U.S. coal industry is a principal stakeholder in the continued ability of our railroads to move freight in an efficient, economic, and competitive manner.

NCA holds the opinion that the Interstate Commerce Act, as amended by the Staggers Rail Act of 1980, represents a carefully

measured balance with regard to the purpose for railroad regulation and the relationships among rail carriers and shippers. We believe that present law with respect to economic regulation of the railroad industry is sound.

Further, we believe that the Interstate Commerce Commission has played an important role in the implementation of railroad regulatory reform as enacted into present law under provisions of the Staggers Rail Act of 1980, legislation in which NCA was a key player on behalf of railroad shippers in the course of passage of the Long-Cannon amendment by the Senate in April 1980, passage of the Eckhardt-Rahall amendment by the House in July 1980, and ultimate reporting of the compromise Staggers Rail Act of 1980 for signature by President Carter on October 14, 1980.

We believe, in the interest of captive rail shippers, including many coal shippers who collectively originate more than 600 million tons of coal freight by railroad annually, often without effective options to a single railroad for all or part of coal's journey from the mines, and with respect particularly to consumers, recognizing that coal is the fuel of choice for generating 56 percent of the Nation's electricity, that regulatory protection of captive shippers should be continued as provided in present law, and that an independent regulatory body should be entrusted with the implementation of railroad regulation.

The record of almost 1½ decades following enactment of railroad regulatory reform in October 1980 is positive. The coal industry believes that it is so, the railroad industry is on record with us in saying that this is so, and many other shipper industries agree with us in saying this is so. Therefore, we suggest it would be wise and in the public interest not to take actions that would change present law or sunset the body established to implement railroad regulatory provisions in present law with regard to rail carriers and shippers. Carriers and shippers are faring well under that law and its implementation.

We have not always agreed fully with decisions of the ICC on standards and guidelines in regard to rail carrier regulation. However, we have experienced a full and ample opportunity to be heard in its deliberations on such matters, and we recognize that the ICC has the requisite expertise in transportation law, economics, and adjudicatory procedures to administer present law effectively and without bias toward any parties, whether shippers, carriers, or executive branch units that have advocacy roles in transportation infrastructure development.

In conclusion, NCA believes that it is wise to continue without change the railroad regulatory provisions of present law and its implementation by a nonpartisan body, the ICC.

Mr. Chairman, I respectfully request that my full statement be placed in the record and, if I might add, I have a statement of Robert Lee Kessler, executive director and general counsel of the Western Coal Transportation Association, in which his association concurs in National Coal Association's statement. I also respectfully request that Mr. Kessler's statement be placed in the record.

[The prepared statement of Mr. Lema follows:]

PREPARED STATEMENT OF JOSEPH E. LEMA

Mr. Chairman and members of the subcommittee, my name is Joseph E. Lema. I am the vice president for transportation of the National Coal Association (NCA). Our member companies account for about three-fourths of the coal tonnage produced in the United States. Coal producers, suppliers, and shippers have a vital interest in the preservation of an efficient, competitive, and healthy network of railroads, which now carry approximately 600 million tons of originated coal freight each year from mines to utility and industrial plants and to inland and coastal ports engaged in transshipment of U.S. coal into waterborne domestic commerce and international coal trade,

NCA warmly appreciates this opportunity to appear before the Subcommittee with regard to oversight of the Interstate Commerce Commission (ICC). My testimony focuses on the ICC's responsibilities in rail carrier transportation, and in particular, is intended to show the continued necessity for rail regulatory provisions of the Interstate Commerce Act, as amended by the Staggers Rail Act of 1980, and the continued necessity for entrusting responsibilities for implementing such provisions with the ICC.

The Staggers Rail Act of 1980 Reformed Rail Regulation, Balancing the Needs of Carriers and Shippers, and Reduced Rail Regulation but Did Not Deregulate the Rail Industry

There are some who allege that the Staggers Rail Act of 1980 deregulated the railroads, suggesting that might be a factor in c6nsidering ICC's future. In fact, the 1980 Act did not deregulate the railroads; rather, the legislation as enacted on October 14, 1980 reformed rail regulation, balancing the needs of carriers and shippers as encompassed by provisions of the Interstate Commerce Act. We believe that the reformed rail regulation as provided for in present law has worked well, and should be preserved, noting especially the importance of enabling private contracts between carriers and shippers, while yet furnishing protection for captive shippers when they are unable to secure contractual services for particular movements where shippers are subject to railroad market dominance, which carries with it a potential for abuses in rail rates and transport services.

Rail Regulatory Responsibilities Should Be Entrusted To an Independent Agency Possessing Unique Qualifications in regard to Transportation Law, Economics, and Adjudication

The fact that railroad operations are working well under present law, which embodies the railroad regulatory reform legislation enacted in 1980, may be attributed to a number of considerations. The elimination of unnecessary regulations, the expediting of measures to reduce railroad costs, the adoption of improved methods for adjusting rail rates, the facilitation of private contracting for rail transport services, and retention of captive shipper protection are highlights of the 1980 reform. Coupled with the statutory provisions leading to that success, must be the performance of the ICC during the years following enactment of the 1980 legislation. Its decisions had a key role.

The ICC has streamlined its operations with regard to current regulatory functions, employing approximately 625 persons today compared with nearly 2,500 people in the early 1960s. We believe that the ICC's staff effort dedicated to its rail regulatory functions demonstrates unique expertise in the areas of transportation law, economics, and adjudication, among related fields, which is not found elsewhere, and should be maintained. Further, we believe that it is important for the rail regulatory responsibilities called for under the Interstate Commerce Act, as amended, to be placed in the hands of an independent agency, not vulnerable to partisan influence that otherwise could be felt.

In our view, the U.S General Accounting Office is right in concluding, in its June 9, 1994 testimony presented at a joint hearing of House subcommittees, that if important rail functions were to be transferred to the Department of Transportation and the Department of Justice, "there is the potential for the loss of independence in the decision-making process."

Railroad Freight Transportation Has Unique Characteristics

The delivery of railroad freight transportation services in the U.S. represents a major industry characterized by total annual revenues for Class I rail carriers of about $30 billion, of which coal freight traffic contributes approximately 24 percent. Rail carriers, in general, exhibit two facets of freight transportation which differ markedly from other transport modes, calling for special sensitivity in assuring that this crucial element of the U.S. economy will fairly and equitably respond to needs of the public and shippers requiring railroad services, while also securing adequate

revenues for the carriers to provide efficient, competitive services and remain viable private business entities.

First, in contrast with other freight transportation modes, railroads not only own, operate, and maintain transportation equipment and ancillary facilities required for rail operations, they also own and maintain private rights-of-ways over which an individual rail carrier operates its equipment and may allow other carriers to operate their equipment if the carrier which owns the trackage property is willing to sell trackage rights. Second, it is rare to find essentially parallel trackage owned by two or more rail carriers over substantial distances; rather, it is commonly found that a single rail carrier represents the sole source of railroad freight transportation services for many shippers whose mines, plants, and similar freight originating or terminating facilities are located in the service area of a rail carrier.

Thus, in many cases a single rail carrier holds market dominance over a particular freight movement within its service area, a circumstance often encountered by coal shippers with coal freight originations from mines located in coal-producing states, whether in the Appalachian Region of the East, in the Midwest, or in the West. Realizing the criticality of railroad services for many freight shippers, both coal and other commodities, and the existence of railroad market dominance in regard to some movements, the ICC carries heavy responsibilities for non-partisan, fair and equitable implementation of regulatory provisions in present law to balance needs of rail carriers for sufficient revenues to cover their costs and attract capital into the business, and needs of rail shippers for tinely transportation services at rates that are reasonable for the railroad services provided. Of course, the matter of reasonable rates becomes especially critical when a captive shipper can not successfully negotiate a private contract for particular services and the rail carrier holds market dominance over a movement at issue. For coal shippers, as well as for shippers of several other major railroad commodities like grain, chemicals, ores, and other items moved in large tonnages over long distances, rate reasonableness under situations where railroad market dominance exists is a serious concern. Much of the more than 600 million tons of coal moved by railroad each year is handled in circumstances where a single rail carrier represents the only effective source of transport services for all, or part, of the journey from the mine to the point of consumption or to a transfer port terminal.

The ICC, in general, has demonstrated that it can effectively implement railroad regulatory provisions of present law as it was reformed in 1980. For instance, in the first 10 years after railroad regulatory reform, while the Class I railroads collectively realized a gain of approximately 50 percent in average return-on-investment, rail rates on total railroad freight traffic dropped by about one-third, and overall coal freight rates fell by approximately one-fourth compared with pre-Staggers Act rates.

NCA, in our appearances before the ICC in regulatory proceedings with regard to regulatory standards and guidelines since 1980 has not always fully agreed with the ICC's rulemaking actions; however, the process is being conducted in an orderly manner. For example, while we disagree with the inclusion of product and geographic competition as factors in deciding the existence of market dominance, and with consideration of only a single criterion, i.e. return-on-investment, as the sole determinant of revenue adequacy, we have strongly agreed with the ICC in its decisions on the inclusion of railroad productivity in the calculation of the rail cost adjustment factor established quarterly by the ICC, and with the ICC's decision on grouping shippers contributions to cover rail costs on a particular line segment in the course of reaching decisions on railroad rate reasonableness, rather than to suggest that a complainant's rate reasonableness should be governed by its revenue contribution alone as if it were the only shipper utilizing a line segment in question.

Notwithstanding whether we have agreed or taken issue with decisions in ICC proceedings, two factors are especially relevant, to ongoing Congressional consideration of ICC's future. First, the ICC has been thorough in the process of conducting proceedings dealing-with the adoption of regulatory standards and guidelines, demonstrating in-depth knowledge and understanding of transportation law, economics, and adjudicatory elements bearing on balanced implementation of present law with respect to railroad regulation. Those regulatory standards and guidelines established by the ICC are of keen interest to NCA, recognizing that generally from one-third to one-half of coal's delivered price, and at times up to three-fourths of the price, represents the costs incurred in transporting coal from the mine. Also, it is noteworthy that filings and appearances before the ICC in regulatory proceedings on standards and guidelines have brought many parties into the ICC's deliberations, not only NCA and a variety of shipper groups and rail carriers, but also others including such Administration representatives as the U.S. Department of Transportation and the U.S. Departments of Energy and of Agriculture. Perhaps their pre-

vious participation in ICC's regulatory proceedings should underscore what we believe is a principal consideration with regard to determining ICC's future, i.e. the need to have an independent regulatory body, free of any partisan influences in its decision-making which might be attributable to shippers, carriers, or offices within the Administration, per se.

NCA believes that the expertise which now is in place at the ICC, and its ability to function as an independent, nonpartisan regulatory agency, have been important adjuncts to key provisions in present law on railroad rate regulation, mergers and consolidations, abandonments and acquisitions, and competitive access and new construction, and have been strategic assets with regard to the acquisition, interpretation, and reporting of railroad financial, cost, operations, and property and equipment data vital for analysis of the railroad industry.

The ICC's Railroad Regulatory Functions Continue To Require Independence for Unbiased Consideration of the Public Interest

In 1966, the enactment of legislation that created the U.S. Department of Transportation, and additional legislation to establish a new role for the federal government in motor vehicle and highway safety, represented a milestone in the placement of new priority for the development of the nation's transportation assets. As then a staff member of the U.S. Department of Commerce, Bureau of Public Roads, and subsequently moved into the new DOT's National Highway and Traffic Safety Administration that year, I knew firsthand the excitement resulting from the new DOT advocacy of improved transportation systems—highway and air transport, as well as railroad and marine transportation. In less than three decades the DOT certainly has made substantial progress, with the states, in advancing the quality of passenger and freight transportation.

That is recognized by NCA, and said now to assure that we are not perceived as being negative to programs of the DOT when saying that the railroad regulatory functions of the ICC continue to require its independence for unbiased consideration of the public iiiterest, and should not be transferred to the DOT and the D0J as has been suggested by some. In fact, in 1966 the Congress reaffirmed its belief that an independent agency was required to assure that the regulatory decision-making process was free from partisan influence; and therefore, declined to merge the ICC into the newly created DOT. Granted, the Staggers Rail Act of 1980 has eliminated unnecessary rail regulation which had been in effect thereby freeing railroads from unwarranted regulatory burdens and enabling the carriers to provide transport services in a more timely. efficient way. Yet, the 1980 Act has both preserved certain elements of rail regulation needed to assure the existence of a viable railroad network and to require fair and equitable treatment of railroad shippers, all in the public interest.

Thus, present law as set forth in the Interstate Commerce Act, as amended by the regulatory reform provisions of the 1980 Staggers Rail Act, both furnishes a foundation for balanced railroad regulation and places the responsibilities for the implementation of railroad regulation in the hands of the ICC. Just as Congress decided in 1966 not to turn over such regulatory responsibilities to the DOT, we urge the Congress today to continue to vest railroad regulatory functions with an independent ICC, free from partisan influences that otherwise might be encountered in the regulatory decision-making process. The ICC's status as an independent agency, in the words of the U.S. General Accounting Office presented in testimony before a House joint subcommittee hearing on June 9, 1994 "has led to the general perception that the agency is an impartial authority for resolving disputes and ensuring that *economic* policies affecting surface transportation are carried out fairly and equitably." (italic added for emphasis)

NCA concurs with that statement. This impartiality avoids the concern that moving essential railroad regulatory functions focused on decisions in the areas of transportation finance and economics with regard to our network of privately-owned rail carriers would jeopardize railroad regulatory decision-making that now is being accomplished by the ICC as an independent body not influenced by any undue and inappropriate pressures exerted by any specific carriers, shippers, transport modes, or units having advocacy roles for selected transport infrastructures.

In conclusion, Mr. Chairman and members of the subcommittee, NCA urges the Congress to support preservation of the railroad regulatory provisions of the Interstate Commerce Act, as amended by the Staggers Rail Act of 1980, and to continue entrusting such railroad regulatory functions with the ICC as an independent regulatory body. We believe that the public and rail carriers and shippers will be well served through your leadership in carrying out those objectives. Thank you for allowing NCA to appear at this hearing. I will be glad to respond to any questions.

Senator EXON. Without objection, those two requests by Mr. Lema are granted, and we appreciate your statement.
[The prepared statement of Mr. Kessler follows:]

PREPARED STATEMENT OF ROBERT LEE KESSLER, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, WESTERN COAL TRANSPORTATION ASSOCIATION

Mr. Chairman, members of the committee, the members of the association are most appreciative of this opportunity to express its collective views, in respect to the activities of the Interstate Commerce Commission and, indeed, the question of its very existence.

The association will celebrate its 20th anniversary this September. It has 80 member corporations across the entire country. These members either produce or consume coal that is mined west of the Mississippi River. Because of the economics of the mining of much of the coal produced in the west and because of the extremely low sulfur content of this coal, the membership of the association has grown far beyond the Western United States. Geographically, our membership extends from Portland General Electric in the Northwest; Los Angeles Department of Water and Power, Arizona Electric Power Cooperative, Arizona Public Service Co. and Salt River Project in the Southwest; Tampa Electric Co. and Florida Power and Light Co., in the Southeast; to Air Products and Chemicals in Pennsylvania in the Northeast. In our heartland you will find Horizon Coal Services, Western Energy Co., and Westmoreland Resources in Montana, together with Northern States Power and Minnesota Power, among others in Minnesota to the north and Houston Lighting & Power and Central & Southwest Services, among many others in Texas, with Entergy Services and Cajun Electric in Louisiana to the south. Our membership includes municipal power and investor-owned power companies as noted, along with public power districts, such as Omaha and Nebraska. Our headquarters are in Denver, CO, and because of the extraordinary interest in western coal our membership extends to CARBOEX (Endesa) in Spain. We would love to replace the Indonesian coal that is received in Hawaii with U.S. produced coal, but until the constraints of the Jones Act are alleviated, the transportation costs prevent that possibility.

The great open spaces of the Western United States are the heart of our concern. I just mentioned the transportation issue, in respect to the movement of coal to Hawaii. However, because of the mining techniques in the West, much of our coal comes with a relatively low cost of production. On the other hand, because of the distances and the locations of both mines and powerplants in remote areas, the use of western coal is critically transportation dependent therefore its cost, as all of you are fully aware, is primarily the cost of transportation. The primary transportation mode is the railroad.

Our membership supports the marketplace determination of supply and demand for goods and services. However it is also clear, that in our complex society, certain commodities and geographic facts of life commend some Government regulation to the market. Where fixed facilities, such as railroads exist for the transportation of commodities, such as coal, the true open market competitive forces do not always achieve a reasonable result.

Thus we have the Interstate Commerce Commission. The power company members of the association are, of course, regulated carefully in their costs by State and, in some cases, Federal regulatory agencies. This brings us back to the cost of rail transportation. The Congress has worked very hard over the decade of the 1970's culminating (we thought) with the passage of the Staggers' Rail Act in 1980 to rejuvenate the rail industry so that it could, once again, afford the country the critical transportation services upon which we depend. Of great importance to this resurrection, through legislation, was the specific authority to contract for railroad services. This enables utilities and coal companies alike to negotiate with the railroads for not only prices, but operational terms. All of this is done with the knowledge that the existence of the Commission affords the dependent shipper at least some ultimate fall back should undue advantage be taken by the railroad of its unique position geographically and through its fixed facilities (which generally discourage competitive construction of lines) in this negotiation. I have personally negotiated many such agreements and can testify that the railroads negotiate very strongly, on their own behalf and as relatively unregulated companies, to achieve the highest prices available for their services under the circumstances. Knowing that the shipper is regulated and, further, that ultimately, the requirement of the filing of a tariff and then a case before the ICC should the tariff prices be extraordinarily high, the railroads have, for the most part, negotiated within a reasonable realm.

This overlong story is meant to remind those of you who struggled, as we did, through the difficult years of the late 1960's and 1970's with the crisis in railroad economics, that there is indeed a great deal of complex history in the operations and economics of the railroads, and the legislation now has reached an unusual position in the implementation of legislation—"steadystate."

The complexities of the many railroad laws passed, together with many other transportation laws, is best known by the bureaucrats and Commissioners at the Interstate Commerce Commission. I do not say bureaucrats in the pejorative sense, but because those who are known as bureaucrats, generally are able to take well-seasoned rules and regulations and apply them quite easily and fairly in 90 percent of the cases to a just result. That application, however, is based upon a depth of knowledge and understanding of the nuances of the congressional intent as well as the language and, indeed, the fairness to both shipper and carrier that should result from the application of the rules. A continuation of that system is very necessary to the continuing health of the economic condition of the United States.

You are already aware of the testimony that suggests, that of the relatively modest budget of the Interstate Commerce Commission very little, if any, would be saved by the transfer of its duties and responsibilities to the Department of Transportation. Let me, however, indicate, through three examples, the weakness of the transference of such independent activity to the executive branch.

First, critical to the success of the authority to contract for railroad services enacted under the Staggers' Rail Act of 1980, is the confidentiality of the private contract. It is quite clear that under the tariff system, or open prices for standardized services, that the price not only rises, but rises to an equality at extraordinary heights. The prices for coal transportation, under this circumstance, necessarily must be passed on to the everyday ratepayer of electrical energy. Even that struggle, before State regulatory agencies, is complex and difficult. Some State agencies have indicated that unless you file a major law case at the Interstate Commerce Commission (very costly) the proof of efforts to contain transportation costs is lacking. There are several energy regulatory agencies within the Department of Energy. One of these has required that utilities file with it the delivered cost of coal to the powerplant. While this includes mine-mouth cost and transportation cost, other cost that are within the general scope of those two may also be included. At the same time, the agency has thought that it was important to its work to obtain the specifics of transportation contracts. To that end, it receives these contracts under a confidentiality agreement with those utilities that request such agreement. However, after a long siege of battering by the trade press and requests under the Freedom of Information Act, the agency now may well open these contracts, notwithstanding the confidentiality agreement, to all comers. This would destroy the usefulness of the Staggers' Rail Act of 1980 to our members. On the other hand, the resistance to such activity has much more strength in a quasijudicial organization, such as the independent Interstate Commerce Commission. Where the agency is subsumed within the executive branch, the activity is much more susceptible to political influence beyond the legalistics of the issues.

For many years after the founding of the Department of Transportation, in the late 1960's, the National Transportation Safety Board, an independent agency, was housed within the facilities of the Department of Transportation. The committee is well aware of the debate, in respect to the independence of the agency and its concerns, in respect to its location within the DOT. As a result, one can now find the NTSB located closer to the Department of Energy than the Department of Transportation.

In 1970 I had the privilege of serving as the chief counsel, then later as the acting Deputy Administrator and, therefore acting Administrator at the Federal Railroad Administration. This was at a time only shortly after the removal of the safety regulatory authority of the ICC and its transfer to the newly created Department of Transportation. As you all know, the Bureau of Railroad Safety was transferred, together with its authority and some of its people, to the Federal Railroad Administration. It is a well documented fact that many of the experts in this field (but not all) left Government upon this change. This was also the time when Congress' plate was full of railroad matters including the first omnibus Rail Safety Act (Federal Rail Safety Act of 1970); the creation of Amtrak; the later Regional Rail Reorganization Act of 1973, and the Emergency Rail Services Act of 1970, the early part of the rescue of Penn Central. The political pressures upon the rather short, but dedicated staff of the fledgling Federal Railroad Administration were enormous. Safety was now an independent regulatory function housed within and operated by the executive branch of Government. The cases were matters of serious concern about the safety of the employees and the equipment of the railroads. Because of the poor economic health of the railroads at the time, enormous pressure was brought to bear

upon those who were entrusted with the enforcement of these regulatory concerns to relieve the railroads of the burden of the fines.

The approaches from a policy side would never have been made to the independent Interstate Commerce Commission. Violations of the quasijudicial nature of the proceedings were well understood, particularly by lawyers for the railroads. It appeared that the ethical constraints did not hold so well when the agency was within the executive branch. I should indicate to you that we were able to pursue all of the claims in a normal, reasonable fashion, and resolve all of them quite properly. Indeed the newly merged and formed union, the United Transportation Union (UTU), a strong advocate of strong safety laws and enforcement, praised the Federal Railroad Administration at its first convention in August 1971 for this work.

Economic regulation, however, is a less exact art or science and involves itself necessarily in expert opinion testimony and analysis to regulate the merging or combining of railroads, the operations in certain areas and ultimately oversight on rates or prices. The nature of this authority commends itself much more to the attempted influence of policymakers in the executive branch than does safety regulation for which the basis is much more easily understood by many.

I will not go into the great difficulties I see with the handling of tariffs in the motor carrier industry because I believe that the National Industrial Transportation League, of which the WCTA is a member, can and will speak more directly and with more expertise on that subject. However, I would simply remind you that the reason there is less excitement in the railroad industry today, both from the railroads themselves and from the shippers, is because of the reasonable implementation by the ICC and the DOT, in their respective positions, of the acts of a reasonable Congress. Such a balance that affects national concerns should hardly be tinkered with legislatively, in respect to removing the authorization from an independent agency. There is much that can be done to encourage the Commission to reform its method of operation from within. In fact, the subcommittee should listen carefully to Chairman McDonald, as well as previous chairmen of the Commission when they describe the substantive activity of the Commission when the Congress evaluates the money it spends with this independent regulatory agency.

I respectfully request that this statement be incorporated within the record of these hearings.

Senator EXON. Next I am very pleased to welcome back once again an individual who has been before the committee on many, many occasions, Edward M. Emmett, a former member of the ICC, whose testimony is very important. I think maybe Senator Hutchison may have something to say. I know that the two of you have worked together on many transportation issues in the past. Do you have any comments you would like to make?

Senator HUTCHISON. Well, I would like to just say personally I am very pleased to see Mr. Emmett. He not only was a distinguished former member of the ICC but a distinguished former member of the Texas legislature and was one of the early proponents of transportation deregulation, and I am very glad that you are now in the real world, Mr. Emmett, and looking forward to hearing from you.

STATEMENT OF EDWARD M. EMMETT, PRESIDENT, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. EMMETT. Thank you, Mr. Chairman and Senator Hutchison—that has a nice ring to it, by the way, to say Senator Hutchison. I could go back far enough to say I was a constituent of Senator Hutchison when she was in the State legislature, but we probably do not want to go back quite that far.

I am Ed Emmett. I am here today representing the National Industrial Transportation League. The League was formed in 1907 following the passage of the Hepburn Act which strengthened the ICC and really for the first time brought shippers in to become in-

volved with the ICC. So, our history is inextricably tied to the Interstate Commerce Commission.

You have our written statement, and I certainly will not go into that, although I must comment that in the written statement I refer to the fable of the three blind men who were asked to describe an elephant. Today's testimony reinforces that. Each group sees a different piece of the ICC, and each group defines the ICC slightly differently. You are to be commended, you and the entire committee, for trying to make some sense out of all of these divergent viewpoints.

Chairman Exon, earlier this morning you commented that consumer protection is the bottom line of what we are trying to do here. I could not agree more. The League's perspective is that of consumers of transportation services. Transportation systems only exist to serve a need. If that were not true we would still have canals, we would still have wagon trains, and we would probably still have Pony Express. So, it is important that we reexamine constantly transportation systems to see, are they still serving the consumer's needs?

With that in mind, I would like to make two points. One: Rail functions are still needed because railroads are still a quasiutility, if you will. As has been pointed out this morning, you cannot just go build a new rail line. If service is abandoned a new railroad just does not crop up. Shippers have no choice in many cases. They are captive to a particular rail line. And what is interesting about the debate surrounding rail functions is everybody seems to agree.

The railroads, the carriers themselves, the shippers, I believe the labor unions, everybody who is associated with it agrees that the rail functions need to continue. It is the League's point of view that those rail functions need to be retained at an independent agency, and since the Interstate Commerce Commission has been doing that job and doing it seemingly well for these many years, it seems the logical place.

Trucking, however, is a totally different matter. It, too, was a quasiutility back in the 1930's and the 1940's. But since the Motor Carrier Act of 1980, trucking has become a service industry. If a shipper does not like a particular rate they do not have to come to a government agency to get relief, they can pick up the phone and call another carrier. And that has been done over and over and over, and in fact, it would be interesting to look and see, have there been any rate discrimination complaints lodged at the ICC with regard to trucking tariffs, and I suspect the answer is no.

The only folks who want to retain tariff filing and the vestiges of the quasiutility regulatory scheme are those who have a certain employment niche brought about by that scheme. And I understand that. None of us likes to lose our job. But nevertheless, you do have to look at the broader public policy.

As a result of those two viewpoints, the League strongly supports the concept of S. 2275, whether it is called the Exon-Packwood bill or the Exon-Packwood-Hutchison bill, and we applaud you, Mr. Chairman and Senator Packwood, for your leadership in that.

There have been several discussions of dollar savings this morning. I think it is somewhat shortsighted to talk of dollar savings only in terms of how much is the Government saving. How much

is the taxpayer saving? As I believe it was Mr. Schneider who mentioned earlier in his testimony, there are tremendous savings to be had in the private sector, too, if we do not have this tariff filing. That will save the truckers themselves a lot of money. It will save the shippers a lot of money because we would no longer have to invest in this grand scheme of having to keep up with tariffs that are on file with a Government agency. So, I do think that when you, hopefully, get to the Senate floor and are debating the merits of your measure, you will talk about the private sector savings that will result from S. 2275, also.

We do have some concerns, and I think they can be worked out, and that is the retention of antitrust immunity for rate bureaus. It is unclear to us as to whether or not rate bureau tariffs would have to continue to be filed. If they did, then we could have a situation where the shipper thinks he or she is operating under an individual motor carrier tariff which in fact some creative attorney later on decides was really supposed to be a rate bureau tariff and they should have paid the filed rate, and you understand where I am going with that. We have all lived through that for the past few years.

Senator EXON. It is the undercharge issue all over again.

Mr. EMMETT. That is right. So, we would like for it to be very clear, simple, and all-encompassing.

With that, again, I thank you for the opportunity to appear this morning. The League looks forward to working with you and the staff in any way we can to help pass S. 2275. So, thank you very much.

[The prepared statement of Mr. Emmett follows:]

PREPARED STATEMENT OF EDWARD M. EMMETT

Mr. Chairman and Members of the Subcommittee, I thank you for this opportunity. I am Edward M. Emmett I appear today as president of The National Industrial Transportation League, the nation's oldest and largest organization representing shippers of all sizes and products and using all modes of transportation. In fact, the League was formed in 1907 in response to passage of the 1903 Elkins Act which extended jurisdiction of the ICC to rail shippers as well as the railroads and the 1906 Hepburn Act which strengthened the authority of the ICC. Over the past 87 years, the League and its members have had constant contact with the ICC.

When asked to evaluate the ICC and its responsibilities regarding rail and motor carrier transportation, I must say it is a matter of perspective, much like the tale of the blind men who were asked to describe an elephant Each man touched a different part of the animal—one the leg, another the tail, and yet another the floppy ear. Their descriptions varied greatly. This animal called the ICC also produces a variety of descriptions, from dinosaur to sleek efficiency.

The League perspective is that of the consumers of transportation services. It is two-fold. In a simplistic sense, no transportation mode or system should exist without the support of shippers. If the consumers do not want or need to utilize a form of transportation, there is no reason for it to continue. Also, in circumstances where a shipper has no alternative but to use a particular mode, or perhaps even a particular carrier, there needs to be a referee to insure fairness. These two poles of shippers' perspective have led the league to adopt two long-standing policy positions which relate to the continuation of the ICC.

First, the League strongly endorses complete economic deregulation of the motor carrier industry, particularly the elimination of the filed rate doctrine and tariff filing. The motor carrier-related regulatory duties of the ICC are beyond unnecessary, they are now counterproductive, as all of us have witnessed in the sorry saga known as the "undercharge crisis." Prior to the Motor Carrier Act of 1980, motor camer5 were regulated like quasi-public utilities with limited entry. It was considered important, then, that individual shippers be assured of fair treatment. Thus, rates were regulated and they were required to be filed so that shippers and the govern-

ment could check them. In 1980, the Congress wisely realized that trucking, unlike railroads, were not constrained by route limitations. Therefore, motor carriers were freed to establish their own territories and ever since, shippers have had ample choices to move their products. As proof of the unnecessary nature of motor carrier tariff filing, not a single rate discrimination case has been filed with the ICC in recent memory. Worse yet, though, is the way the filed rate doctrine has become twisted from a shield to protect shippers into a spear in the hands of bankruptcy lawyers.

As one who has some experience at the ICC, I must add that very few shippers blame the Commissioners or staff for the onerous burden brought about by tariff filing. As an agency, it is implementing the statutes it has been directed to administer, and as an agency it receives good marks. This part of the job given to the ICC is, in our view, completely needless in today's or tomorrow's world and, as mentioned in the recent GAO report, a waste of taxpayers dollars. I must add, that no amount of money, equipment or personnel could ever make tariff filing from some 50,000 motor carriers word It is simply an antiquated vestige of the past that must be eliminated. Also, the ICC should be encouraged to quickly remove all ancillary regulations such as the prohibition on interlining between common and contract carriers and the requirement of a specific agency relationship between interlining carriers.

The second League policy relating to the matter at hand is our support of an independent regulatory agency to handle rail transportation issues. For better or worse, the world of rail regulation is arcane and has its own lexicon. Whatever body adjudicates disputes between and among railroads, labor and shippers has to be above reproach in terms of fairness and expertise. There has to be a comfort level. It is important to note that all parties involved have testified in favor of keeping the ICC in the business of railroad regulation. For example, issues relating to captive shippers, essential service and creation of short lines are important to the League and we feel the ICC is the proper forum for their adjudication. Anytime the railroads, their employees and their customers agree on something, it might be wise to listen.

When the House of Representatives voted to eliminate funding for the ICC, I and the rest of the League were surprised. Our position was, and still is, that it does not make sense to eliminate the agency and leave the underlying statutes on the books. Of particular concern to shippers is the final resolution of the aforementioned undercharge crisis through implementation of the Negotiated Rates Act. What would happen to all of the cases which are either pending at the ICC or winding their way through the courts? Other agency functions would be similarly left "up in the air."

While we would not have chosen this approach, there are many in Congress and industry who contend that the only way to achieve meaningful trucking reforms at the ICC is to threaten its overall existence. On balance, they are willing to accept uncertainty in other areas in order to remove the specter of tariff filing. Fortunately, there is an opportunity to achieve the best of all possibilities, the elimination of the filed rate doctrine and the retention of a restructured ICC to handle mainly rail concerns. That opportunity is embodied in S. 2275, the Trucking Regulatory Reform Act, introduced by Chairman Exon and Senator Packwood last week. The League enthusiastically endorses the intent and scope of that legislation and we look forward to working to achieve the inclusion of it in the Appropriations Bill. Ironically, the tumultuous appropriations process could produce the most far-reaching, beneficial transportation legislation in over a decade.

We do have some concerns about some of the specific language in S. 2275. There are places where we think it would be better to use straightforward language rather than multiple exceptions. And, we note that some remnants of the earlier regulatory regime remain untouched. For example, antitrust immunity for motor carrier rate bureaus is still in place, and it is unclear what their roles and responsibilities would be. Tariff filing for individual carriers is clearly eliminated but what about rate bureau tariffs. It is our hope that all motor carrier tariff filing will be eliminated, otherwise this loophole might be used by auditors and bankruptcy trustees to continue their disingenuous campaign of self-enrichment. In other words, a new chapter in the undercharge saga could result. And, if there is to be no tariff filing requirement, there is clearly no need to continue antitrust immunity for rate bureaus.

As stated earlier, the League would not have chosen this path for regulatory reform, but thanks to your leadership, Mr. Chairman, and that of Senator Packwood, in crafting S. 2275, American shippers and the entire transportation community stand to gain in efficiency and stability. The League looks forward to assisting you.

Senator EXON. Mr. Emmett, thank you very much. We have had a number of good suggestions this morning, and we will take them

into consideration. And regarding your comments on filed rates, we should clarify that because we do not want to get back into another undercharge issue. We had it tough enough finally working our way halfway successfully out of the problems we had before. Thank you for your comments.

Mr. Wytkind, I must say that you are last but not least, and our thanks goes out to you for all your patience. I am pleased to recognize you for your testimony at this time.

STATEMENT OF EDWARD WYTKIND, EXECUTIVE DIRECTOR OF TRANSPORTATION TRADES DEPARTMENT, AFL–CIO; ACCOMPANIED BY WILLIAM MAHONEY AND MARC FINK

Mr. Wytkind. Thank you, Mr. Chairman. I would only say I commend you for saving the best for last in this hearing. [Laughter.]

Senator Exon. You should say in all modesty. [Laughter.]

Mr. Wytkind. Accompanying me, before I begin, is William Mahoney, who is a counsel on rail matters, and Marc Fink, who is outside counsel for the International Brotherhood of Teamsters.

You already have my comprehensive statement which includes a recent study by the Economic Policy Institute which I have provided to your committee. I would urge all the members to take a look at that. I think it has some very insightful findings about the trucking industry.

Let me first highlight our views on the overall issue of the ICC. It bears emphasis to say that there are 29 affiliated unions under our umbrella, all of whom agree that deregulation has created a lot of problems for working people. We bring the worker perspective to this hearing, and we are thankful that you gave us this opportunity.

Transportation labor believes the ICC must be preserved because, as you believe, Mr. Chairman, this Agency fulfills very important regulatory functions in the surface transportation industry. Quite frankly, we adamantly oppose the proposals offered by some Members of Congress because they essentially are trying to destroy this Agency by dismantling it piece by piece or simply transferring its functions to the DOT without any sort of orderly process for reviewing the effects, not only on the industry and shippers but also on employees.

We believe also that it would be bad public policy to rush to enact too quickly S. 2275 with only today's hearing to review the issues relative to this bill. We in labor have lived through change in this industry. We have always been in the forefront of not only operating and maintaining the system but in debating with Congress and the executive branch agencies what the right level of Government regulation should be for the industry.

From our perspective, deregulation has paved the way for employers to exploit the lowest common denominator of wages, job opportunities, and benefits. Its impact has been felt by ordinary hardworking people who are overwhelmed by over a decade of Government policies that have destroyed over 400,000 jobs just in the truck and rail industry and have enriched a lot of corporations. From a Government policy perspective we have a problem with this transfer of wealth because a safety net has not been put in place

to take care of all of the concerns employees have when new Government policies are injected into the economy.

With respect to proposals to eliminate the ICC I offer the following observations.

We cannot ignore history when this issue is debated. A lot of people on the House floor did totally ignore history, and that history is over a century old. The ICC was created to protect the consumer from unsavory corporate conduct. History shows that without regulation corporate conduct is predatory in behavior and tramples upon the public interest and employee interests. That is what gave rise to original regulatory policies over a century ago and that is why they were expanded to motor carriers a few decades later.

While the marketplace for both rail and motor carriers has changed and has changed a great deal, we do not believe the interrelationship of the public interest and transportation policy has changed. Without a proper oversight role for Government, as we believe the ICC fulfills very well, the power of large shippers and carriers will be left unchecked to ravage people in the economy, whether it be workers, small businesses, or just ordinary consumers.

Regarding S. 2275, we believe it is reasonably clear to conclude that the enactment of this bill will eliminate all Federal economic regulation of the motor carrier industry. This will have a dramatic effect upon thousands of employees, and should not be done in haste and without careful analysis. I can say from our perspective, Mr. Chairman, that we appreciate not only the political position the Senate is in in light of the vote in the House, but more importantly we know that you are generally committed to trying to find a way to reform the ICC while still preserving its essential functions. We only want more time to fully review the effects S. 2275 will have on employees in this industry.

Elimination of tariff filing does away with the filed rate doctrine and permits common carriers to charge whatever rates they want. With no authority over or even knowledge of rates being charged, we believe discriminatory rates and predatory pricing would almost certainly become rampant, and in fact would become the prevalent pricing scheme in the industry.

Clearly, smaller shippers, consumers, and workers would suffer if the industries were left to govern themselves without any oversight from the ICC or the DOT or any other Agency. Today, the largest shippers exact great market power. That market power is at the core of the debate that was, as you know, very contentious over shipper undercharges, and as Mr. Simons, the Commissioner of the ICC, said, it had a lot to do with the lack of enforcement and many other issues relative to the ICC under previous regimes.

A final issue I need to raise today is the whole issue of employee protections. As you know, we are united behind legislation, S. 2264, to close a loophole in the Interstate Commerce Act that is used by carriers in the rail industry to effectively abrogate labor agreement rights, to evade statutory obligations to workers, and in the end, to cut wages and benefits. One of the real myths in the short-line debate has been that the short-line industry is a great jobs creator. Well, there may be some people earning a living off the short-line industry, but the part of the story rail carriers fail to tell is the

part about all the jobs that were replaced with lower wage jobs, fewer jobs, and little or no benefits. We believe it is a legitimate and reasonable legislative response to the short-line problem, and we urge its immediate enactment.

Another issue involving employee protection is granting such protections to motor carrier employees. One of the issues lost in today's hearing, and not just on this panel but on all the panels, is that Government policy as it is today, and as it would be if you further deregulated, has had dramatic impact on some 200,000 workers in the trucking industry. And those jobs were good jobs. They were not just part-time jobs, low-wage jobs, or jobs with no benefits. They are jobs that help people buy cars, buy boats, and pay house notes. We see no reason to deny workers in that industry the level of protections that we currently give, and that Congress has mandated, in the rail sector.

I would only conclude by saying that the current regulatory regime, from our standpoint, has caused a great deal of financial ruin to a lot of transportation companies, not just in the surface but also in the air sector. To continue down that path as some would advocate, by simply eliminating the ICC, would, as the Economic Policy Institute recently concluded, lead to the further degradation of the "institutional infrastructure of the entire transportation industry."

We agree with that statement, and we believe that before we rush to judgment to eliminate the ICC or eliminate some of its functions in the motor carrier industry that we have to have adequate time to debate the issue and to have an orderly process.

A final note is, there was some discussion earlier about the airline example by the distinguished House member from Ohio who discussed why we need to get rid of the ICC. But the problem with that example is that it is misguided to cite the airline industry. It has been a disaster. A lot of members on this committee, Mr. Chairman, know what a disaster it has been. Thousands of good jobs have been lost. There have been about 150 mergers and bankruptcies in the industry. The last so-called new entrant since airline deregulation was enacted is in business today—America West. It also is in bankruptcy. And in the end, we have a policy regime that we should not hold out as a solution for the rest of the transportation industry. We think we need to go elsewhere other than the airline mode to find the right policy regime to deal with the surface transportation problems this committee faces. Finally, I think it would be very devastating to eliminate the ICC in the manner the House did.

Thank you for the opportunity.

[The prepared statement of Mr. Wytkind follows:]

PREPARED STATEMENT OF EDWARD WYTKIND

My name is Edward Wytkind. I am executive director of the Transportation Trades Department, AFL-CIO (TTD), whose 29 affiliated unions represent several million workers in the airline, automotive, rail, transit, trucking and related industries. I thank the Subcommittee for allowing us this opportunity to express transportation labor's views on the need to preserve the Interstate Commerce Commission. Attached please find a list of TTD's affiliated unions. It bears emphasis that all 29 unions are in full support of the positions advanced in my testimony. Accompanying me today are William Mahoney, counsel on rail matters, and Marc Fink, outside counsel for the International Brotherhood of Teamsters.

Let me begin by stating our strong support for preserving the ICC as we share your belief, Mr. Chairman, that the Commission continues to fulfill important and necessary regulatory oversight of our surface transportation industry. We strenuously oppose proposals offered by certain members of Congress to wipe-out the ICC or dismantle it, piece-by-piece, by transferring some or all of its functions to the U.S. Department of Transportation and/or other executive branch agencies.

Let me also state up front our organization's deep concerns with proposals being considered to eliminate certain motor carrier functions currently carried out by the ICC. We believe a comprehensive review by the Senate of the Commission's functions—as you are doing today—is a worthwhile and necessary policy exercise. We do not, however, believe it is good public policy to wipe out ICC functions with only one day of hearings and with little or no time for meaningful deliberations over the serious ramifications of these proposals.

To attach these proposals to the FY95 Transportation Appropriations bill would in our view deny interested parties, including transportation unions, their right to study the proposals, participate in the debate, and offer alternatives for reform of the Commission. We would rather see this Subcommittee hold more days of hearings and not allow such important authorizing committee issues to become embroiled in a debate which we frankly believe was stirred up by certain House members whose motives were purely political and unsupported by sound public policy rationale.

We do, however, appreciate the Subcommittee allowing us to testify at this hearing. Transportation labor believes it is important for Congress to fully understand and appreciate the vital missions the Commission carries out and the chaos its elimination would cause in the transportation industry.

REGULATORY POLICIES

For more than a dozen years, the nation's surface transportation system has been in a state of economic upheaval. The regulatory regime currently in place has caused financial ruin for several thousand transportation companies and great economic harm to hundreds of thousands of workers.

It started with airline deregulation in 1978 and eventually was expanded into all the modes of transportation. The airline deregulation experiment has proven to be among the greatest public policy disasters in modern history. It produced almost immediately a myriad of new start-up air carriers. Within a decade of its existence, however, we had over 150 bankruptcies and mergers, destroying many well known carriers, including two of the pioneers of aviation—Pan Am and Eastern. Today, the deregulated airline industry is in the midst of the worst financial period in its history. Billions of dollars in losses, thousands of lost jobs, old aircraft, abandoned service in hundreds of communities, and unhealthy pricing and operating schemes are literally destroying everything that was great about this industry.

Similarly, the passage, in 1980, of the Staggers Rail Act and the Motor Carrier Act brought on many disastrous effects, not the least of which has been the loss of some 200,000 trucking and related jobs and 200,000 rail jobs. Massive mergers, bankruptcies and other transactions destroyed once-thriving transportation companies. Service has been abandoned in hundreds of towns, and safety standards have deteriorated because of the unhealthy operating environment inspired by deregulation.

The railroad industry is now largely controlled by seven major rail carriers—and more consolidation is coming as we now witness the proposed Burlington Northern-Santa Fe merger which will undoubtedly trigger other mergers. On the motor carrier side, we've seen unprecedented levels of bankruptcy and liquidation since the early 1980s. While there have been new motor carrier entrants, these generally are small "mom and pop" operations, often unable to survive in such an unstable operating environment. As a result, the market has become far more concentrated with a small number of companies controlling almost half of the less-than-truckload (LTL) cargo volume.

There are those who blindly argue that deregulation unleashed the power of the free marketplace and spurred a trucking and rail boom to the tune of thousands of new jobs. The problem with such a premise is that it ignores the disastrous employment trend (inspired in part by the emergence of smaller, lower-wage carriers) that has emerged in the deregulated truck and rail sectors. This trend has resulted in the replacement of good jobs (pre-1980) that offered good wages and secure health and welfare benefits with lower-wage jobs offering few or no benefits and little security.

For workers, deregulation has paved the way for employers to exploit the lowest common denominator in job opportunity, wages and benefits. Its impact has been

felt by ordinary, hard-working Americans who today are overwhelmed by the empty feeling that government has abandoned working people to help enrich Fortune 500 corporations. While these large companies have experienced lower transportation costs during the past decade, these revenue gains have not resulted in any significant expansion or new jobs. In fact, a recent study by the Economic Policy Institute (EPI) concludes that motor carrier deregulation resulted in the transfer of "wealth from trucking employees to manufacturers and shippers * * *" without any real "gains in efficiency." Moreover, experience shows that the added revenues have gone to pay higher salaries and to fund stock options for top management. This similarly disturbing "transfer of wealth" from employees to executives of large transportation companies is the part of the deregulation story the advocates of this misguided policy course conveniently fail to tell.

Today there are still those who defend the current regulatory regime despite its obvious flaws and failures. But we submit that the empirical evidence after more than a decade should compel Congress to reexamine this legacy with an eye towards correcting the obvious problems which resulted from what we continue to view as a failed public policy experiment. Lost in this debate has been the fact that the public interest and transportation policy are undeniably interrelated. For the federal government to blindly hand-off the duty of regulatory oversight to major shippers and carriers is bad public policy in its purest form as it totally ignores the history of our transportation industry and the important role government has always played to safeguard consumers and the public interest.

In the context of today's hearing, we now witness the efforts of certain members of Congress who, despite the many lessons learned from deregulation and the past century, want to tear down the last line of defense—the ICC. The proponents of abolishing the ICC ignore the reasons why the ICC was created and the important role it still must play in overseeing our surface transportation industry.

HISTORICAL PERSPECTIVE

During the post-Civil War era, virtually every element of the U.S. economy was affected by a single industry: railroads. In the late 19th Century, Henry Adams described how his generation had been "mortgaged" to that industry: "Society dropped every thought of dealing with anything more than the single fraction [of our national structure] called a railroad system."

The railroad's abuse of its enormous economic power was rampant. To protect themselves, many states enacted "granger" laws governing what railroads could charge shippers within their borders. An 1877 Supreme Court decision, *Munn* v. *Illinois,* upheld the right of states to pass "public protection" laws regulating the price railroads could charge for grain elevator storage. But nine years later the Court held that only Congress could regulate rates on commodities destined for interstate shipment. That decision, *Wabash, St. Louis and Pacific R. Co.* v. *Illinois,* rendered states nearly powerless against continually mounting railroad corporate abuses. Because the railroad industry was so vitally important to the nation's economic well-being, in 1886 the U.S. Senate's Cullom Committee held hearings around the country in response to the growing public outcry against railroad practices. The Committee's report, coupled with the Supreme Court's decision in the *Wabash* case, led to the enactment of the 1887 Interstate Commerce Act which created the ICC.

While the Commission was not expected to protect against all rail industry misdeeds, it was charged with curbing them significantly. The ICC provided the shipping and traveling public with a measure of security unknown before its creation. It provided pricing protection, prevented preferential treatment of shippers, administered safety laws, and generally had jurisdiction over all financial transactions affecting the structure of the national rail network. The ICC's ultimate mission was—and remains—to safeguard the consumer by ensuring the transportation network is safe, efficient, and protected from the unsavory conduct of the past. Eventually this regulated environment was extended to all modes of surface transportation. In addition to shielding the consumer, it also guarded against unreasonable discrimination among shippers and unreasonable pricing practices.

By the 1970s, however, many people felt that regulatory control was stifling incentive and hindering the efficient operation of the nation's transportation system. This led to the 1976 Railroad Revitalization and Regulatory Reform Act (4R) and, in 1980, the Staggers Rail Act and the Motor Carrier Act. Those laws sharply curtailed rail and motor carrier regulation and lifted restrictions on competition within the surface modes. Congress, however, did not eliminate all regulatory oversight, preserving the ICC to ensure railroads and motor carriers operated in the interest of the shipping public, consumers and the nation's economy.

ZEAL TO FURTHER DEREGULATE

But today there remain those who believe we should return to the 19th Century described by Henry Adams. They contend that unrestrained predatory corporate activity is simply part of a healthy competitive environment. They want the ICC abolished, with only a few "essential" functions transferred to the Department of Transportation (DOT). Others think the ICC is simply a do-nothing agency that should be abolished for fiscal reasons.

The latter criticism has some basis in fact, at least over the past decade or so, due mostly to an ideologically driven zeal to further deregulate even at the expense of trampling upon the very intent of Congress. Shortly after the enactment of the Staggers and Motor Carrier Acts, ICC membership began to change under the new administration. The new members apparently believed their actions should not be governed by either the Interstate Commerce Act or past precedent, but by the "spirit of deregulation." In other words, a governing majority of the Commission wedded itself to disarming the agency unilaterally despite existing congressional mandates and statutory obligations. The result was an ICC that aggressively and blatantly abdicated many of its responsibilities. Since this situation has persisted for more than a decade, some now believe the ICC has lost its relevance.

While in many ways the ICC has been less than responsible in carrying out its explicit statutory obligations, it has not been completely inactive. In FY 1993 alone the Commission issued almost 43,000 orders on the revocation or reinstatement of operating authority, decided more than 10,000 applications for authority, handled more than 21,000 litigation cases and 9,000 complaints resulting in the recovery of nearly $1 million, and responded to more than 171,000 inquiries about specific regulations. And it is significant to note that the ICC handled these duties with 76 percent less staff and less than half the budget it enjoyed in 1980.

The ICC has a far-reaching and significant public responsibility to ensure that those who operate rail and motor carriers are not only fit and able to do so, but also that they operate in a way that is fair to their users and competitors. That the ICC has not executed those responsibilities adequately in recent years makes them no less significant, nor does it justify their elimination as part of draconian budget cutting measures that will likely come before this Congress.

PROPOSAL TO TRANSFER ICC TO DOT

To argue that "essential" responsibilities of the ICC could simply be transferred to DOT is disingenuous. Unlike DOT, the ICC is an independent agency largely insulated from disruptive partisan pressures. It is made up of members (whose terms are staggered and therefore overlap presidential terms) from both political parties and is answerable only to Congress and the courts. In addition, the ICC performs quasi-legislative and quasi-judicial functions no other agency is equipped to assume.

What most distinguishes the ICC's mission from that of DOT is that the Commission adjudicates disputes between contending interests including carriers, employees, shippers, state regulatory bodies and even the federal government in its capacity as a shipper. By design, the Commission's regulations facilitate that dispute resolution mission. An executive branch agency not only is ill-prepared to handle this important responsibility, it hardly is suited to objective analysis to resolve disputes which constantly arise due to the nature of transportation. It is significant to note that the present DOT agrees with our conclusions.

Disputes are initiated by the filing of complaints and answers and are subject to procedural motions, hearings, and appeals within the ICC before resorting to the courts. The ICC decides what factors are included in the determination of rates, including questions such as whether to incorporate fuel and other cost increases. These functions are essential to the fair treatment of all involved in the industry including local communities and businesses. As DOT has noted, it neither has the experience nor the inclination to tackle these tasks, and certainly not in a cost-effective manner.

MOTOR CARRIER FUNCTIONS

When considering the ICC's future, it is important to understand the vital mission it is charged with fulfilling in the motor carrier sector. At present the ICC is empowered to act in a number of arenas vital to the well-being of the motor carrier industry, its employees, and the public it serves. The areas include:

- *Entry.* The ICC must review would-be operators to determine if they are fit and able to serve as motor carriers.

• *Insurance.* Federal law requires motor carriers to carry certain levels of insurance to protect the public from bodily injury and property damage. The ICC enforces insurance regulations by administrative and, if necessary, court action.

• *Rate Regulation and Tariff Filing.* The ICC can prohibit anti-competitive and preferential rate practices. Left unchecked in the 1980s, such practices gave rise to, among other things, divisive legislative and legal struggles over so-called shipper undercharges.

• *Hostage Freight.* Major disagreements over freight charges often develop among the nation's more than 50,000 motor carriers and shippers. The ICC can intercede to require the release and delivery of freight held hostage by such disputes.

• *Approval of Consolidations and Mergers.* The ICC is required to approve significant consolidations, mergers and acquisition of control of motor carriers.

A world without the ICC would be a dangerous place and would subject consumers and businesses to the types of carrier practices that precipitated congressional action some 60 years ago to expand ICC jurisdiction to the motor carrier sector. Anyone with enough capital to buy or lease a tractor and a trailer could provide motor carrier services. No one would have to demonstrate "fitness" or meet minimal levels of safety compliance. Safety on our nation's highways, already plagued by too many accidents due to congestion and far too many undercapitalized, "fly-by-night" operators, would badly deteriorate.

INSURANCE ENFORCEMENT

Practical experience compels us to conclude that without the ICC there would be no enforceable requirements for motor carriers to maintain adequate levels of insurance coverage. For over 50 years the Commission has required bodily injury and property damage (B.I. & P.D.) insurance for all regulated motor carriers as well as cargo insurance for all common carriers. These mandated levels of coverage—and their enforcement through a well established filing system—have provided businesses, the motoring public and injured parties a measure of protection. Among its many watchdog functions in this area, the Commission enforces minimum insurance requirements, protects motor carriers (and the public) from fraudulent insurers and shuts down motor carriers found in non-compliance.

Meanwhile, enforcement of insurance requirements for motor carriers no regulated by the Commission—a responsibility which rests at the DOT—to date remains unfulfilled because the agency does not maintain a system for meaningful enforcement and instead relies upon random safety inspections. The net result of the DOT's existing insurance policies, if they were expanded to all motor carriers, would be compromised safety standards due to the anticipated increase in uninsured motor carriers traveling on our highways.

In the absence of an enforcement mechanism to ensure adequate insurance coverage is secured by motor carriers, some carriers would undoubtedly reduce their coverage to improve their bottom lines in an industry already plagued with chronic financial instability. And as NAFTA enters into full force later this year, this responsibility takes on added significance.

RATE FILING OBLIGATIONS

As the debate over the future of the ICC continues, there are also proposals to eliminate motor carrier rate filing obligations, a proposal we believe deserves a more thorough examination, not merely a cursory review in the context of the FY95 Transportation Appropriations bill. After having little time to review these proposals, we conclude that the elimination of rate filing obligations presents serious public policy concerns deserving of more careful scrutiny.

Ending regulatory oversight of rates will undoubtedly lead to more bankruptcies and widespread discriminatory pricing practices. Our analysis leads us to the conclusion that smaller shippers, who today provide the bulk of jobs, would be hardest hit while larger shippers will posses the market power to exact even greater discounts than they already do today. Less powerful, smaller shippers would pay higher rates to essentially pay for the discounted rates (often below carriers' marginal operating costs) demanded by major corporations. The common carriage system of fair, reasonable and nondiscriminatory service would be wiped out, replaced by a system that lets large shippers effectively set rates unilaterally with no protections for the consumer. The largest jobs producers in the economy, small businesses, would face a system—already dominated by the mega-shippers—that allows discriminatory pricing to become the prevalent pricing mechanism in the marketplace. Clearly, consumers and workers will suffer if such a system emerges virtually free from government oversight.

For these general reasons, and as more fully described immediately below, the 29 unions affiliated with TTD including, of course, the International Brotherhood of Teamsters, opposes S. 2275 in its current form.

S. 2275—THE TRUCKING REGULATORY REFORM ACT

While we have not had much time to study S. 2275, it is reasonably clear to us that enactment of this bill would eliminate all economic regulation of the motor carrier industry. An action of this magnitude, which will have a major impact upon many thousands of people, including employees of trucking companies, should not be done in haste and without careful analysis.

S. 2275 was introduced less than two weeks and it appears to be designed to respond to mounting pressures for budget cuts and reforms. While we are sympathetic with and fully aware of such concerns, we are opposed to the substance of S. 2275 and the "rush to judgment" procedures in connection with its consideration.

This legislation would amend the Interstate Commerce Act to eliminate the obligation of motor common carriers (either individually or through rate bureaus) to adhere to and file their tariffs (i.e., rates and other service terms and conditions) with the ICC. The elimination of this critical and central requirement would do away with the filed rate doctrine and permit common carriers to charge whatever rates they wanted. While anti-discrimination and rate reasonableness provisions would still be part of the Act, they would have no meaning. No one would know what rates were being charged. A shipper or carrier would have no ability to obtain rate information and the ICC would not have any basis to make substantive decisions on discrimination or the reasonableness of rates. Discriminatory rates and predatory pricing would almost certainly become rampant.

Mr. Chairman, the elimination of the filed rate doctrine effectively terminates the notion of common carriage. A common carrier holds itself out to provide nondiscriminatory service to all shippers. With the changes provided for in S. 2275, there would be no "hold out". Common carriage, the cornerstone of motor carrier transportation for decades, thus would be ended.

Provisions of the recently enacted Negotiated Rates Act ("NRA"), which supposedly are reconfirmed in Section 6(g) of S. 2275, are rendered meaningless and/or senseless. For example, under the NRA motor contract carriers must comply with certain requirements in connection with their motor contracts. Common carriers, however, would have no tariff filing obligation and could therefore agree upon rates with no obligations. In effect, under S. 2275, contract carriage would become more regulated than common carriage.

It is important to recognize that eliminating tariff filing probably does not save significant dollars because there are user fees associated with tariff filing. While a certain number of ICC employees might be eliminated—a fate which also concerns us at a human level—those "savings" would be offset by the reduction in revenues resulting from die absence of user fees. Indeed, the only meaningful budgetary savings which appear to be reached by the enactment of S. 2275 arises from reducing the procedures associated with the issuance of licenses and permits to motor carriers. While we oppose those changes as a substantive matter, we recognize that, according to the General Accounting Office, they likely would reduce the ICC budget by $8.5 million per year.

This legislation would also grant the ICC broad exemption authority in the area of motor carriage. TTD opposes this provision because we believe Congress should decide what, if any, ICC functions should be changed or eliminated. This should not be delegated to the agency. Such exemption authority is particularly unnecessary since S. 2275 would require the ICC to consider additional reforms and report back to Congress in six months. Moreover, there clearly are no savings associated with this exemption provision.

TTD is prepared to work with this Subcommittee in order to improve the current regulatory process. We believe, in this regard, that tariff filing could be made more efficient and less costly. Rather than eliminating economic regulation of the motor carrier industry, as is done by'S.2275, we should find ways to make it a better system.

THE ICC AND RAILROADS

Railroads and their employees would be greatly affected by the demise of the ICC. The deregulation of rail was less far reaching than for the motor carrier, or airline industries, although the ICC in recent years has exercised its jurisdiction over railroads in the narrowest sense. A review of some of the Commission's responsibilities in railroad matters demonstrates why they remain vital.

• *Securities.* Rail carriers may not issue securities or assume obligations or liabilities related to the securities of another without ICC approval. The ICC may not grant approval unless it finds it is within the corporate purpose of the carrier, is compatible with the public interest, and will not impair the carrier's financial ability to provide service.

• *Combinations.* Carriers cannot combine to pool or divide traffic, services, or earnings without the approval of the ICC, which must find that it will provide better public service or a healthier economic operation and will not unreasonably restrain competition.

• *Consolidation, Merger, Acquisition of control.* Without prior ICC approval, a rail carrier may not consolidate or merge its properties with another to create one corporation. It may not purchase, lease, or contract to operate the property of another carrier nor acquire control of another carrier. And it may not acquire trackage rights or joint ownership or use of a railroad line owned or operated by another carrier.

In reviewing an application for approval of one of these otherwise prohibited transactions, the ICC must consider a number of public interest factors: 1) whether it will provide adequate transportation; 2) the effect of including, or not including, other rail carriers in the area involved; 3) the total fixed charges that result; 4) the interests of carrier employees involved; and, 5) whether the transaction would have an adverse effect on competition in the region.

A major consideration in affixing responsibility to others for these functions of the ICC is the disposition of the automatic exemption from labor, anti-trust, environmental, securities and other laws provided by Section 11341(a) of the Interstate Commerce Act to ICC orders approving these transactions. A non-independent agency, such as DOT, should not be responsible for determining whether an application or a merger should be approved thereby triggering the merged carrier's exemption from the Railway Labor Act and other laws as recently decided by the Supreme Court in *Norfolk & Western Ry.* v. *American Train Dispatchers Assn.* Indeed, TTD believes that regardless of who is given responsibility for approving these transactions, Congress should make clear that such approval does not immunize the carriers from future unlawful conduct simply because such conduct arguably impedes efficient transportation operations.

A railroad also needs ICC approval to construct, buy, or operate a new or extended line and to abandon lines. Again, the ICC can approve the construction and extension of lines if it finds it is in the public interest. But if it approves a line abandonment, it must impose minimum conditions to protect the interests of affected employees. The Interstate Commerce Act also contains some 52 provisions dealing with the highly specialized and technical subject of railroad rates, tariffs, and property valuation. These provisions include the ICC's duty to determine market dominance in rate proceedings.

EMPLOYEE INTERESTS

For almost 60 years the ICC has been imposing conditions upon railroad carriers to protect the interests of employees affected by mergers, abandonments, and other transactions. Since 1940 the imposition of such conditions has been mandatory in merger and control cases, and in 1976 Congress made them mandatory in line abandonment cases. The DOT has unfortunately exhibited hostility toward similar protections when Congress applied them to the funding of urban mass transportation projects. DOT has even sought their repeal. There is no reason to believe that such hostility would subside if DOT is given authority over railroad financial transactions.

Despite the new environment under Transportation Secretary Federico Peña, the prospect of DOT authority remains disturbing in light of an ongoing dispute over the ICC's authority to override employee rights. That issue began with the ICC's abrupt change of heart on preserving employees' collective bargaining agreement rights in 1982 and remains in litigation before the courts and the Commission. The employees' case against eliminating their rights by agency flat could be fatally affected if employee protections are transferred to DOT.

There currently are no such protections for motor carrier employees. Transportation labor sees no reason why motor carrier employees should not benefit from the same or similar protections. Similar to the industry changes which gave rise to rail employee protections some 60 years ago, providing a safety net for motor carrier employees would be a reasonable response to, and would soften the blow of the massive restructuring the trucking industry has experienced since government policies were changed radically and abruptly in 1980.

SHORT LINE SPINOFFS

A related issue we would like to address is the need to enact legislation that closes an anti-worker loophole in the Interstate Commerce Act that has subverted congressional intent relative to the treatment of employee interests in connection with the massive downsizing of the industry that Congress allowed with enactment of railroad deregulation legislation in 1980. This problem has manifested itself in the Commission's review of proposed short line sales. The railroads now appear to have been a bit too zealous in their downsizing as incidents of railroad undercapacity are reported in the press.

As plans to downsize the industry evolved, it was always recognized that rail workers would bear the brunt of the economic pain and injury associated with this massive restructuring and thus Congress subjected the transactions to regulatory scrutiny, including the consideration of the "public interest." And as a matter of policy, so recognized by the Supreme Court, employee interests were treated as an element of that public interest. Since the 1940s, Congress has mandated that any railroad transaction—including sales, mergers, and leases—must be "consistent with the public interest," expressly defining that to include protection of the interests of affected employees.

But for the last decade, in defiance of congressional intent and 40 years of history, railroads have been using so-called "short line" transactions to abrogate labor agreements at a significant cost to employees' jobs, their standards of living and the financial stability of an important segment of the rail industry. Seizing upon the cooperation exhibited in the 1980s and early 1990s by a majority of the Interstate Commerce Commission, the railroads took advantage of the Commission's anti-regulation zeal.

In what it termed the "spirit" of deregulation, the ICC began in the early 1980s to exempt certain rail transactions from regulation. It also used a provision of the Interstate Commerce Act (Section 10901) that was intended to apply only to existing rail carriers, to permit paper corporations created by, or subsidized by, existing railroads to rid themselves of portions of their railroads that they could not abandon. The ICC began by approving virtually all applications filed by these "new" paper corporations, even when it was apparent that the proposed financial transactions were structured by the existing railroads for the principal purpose of scrapping collective bargaining agreements and ridding themselves of union represented, contract employees.

Railroads quickly spotted this new loophole and drove through it. Ever since, they have been using the ICC's tortured misuse of this provision as an opportunity to effectively void union contracts, wipe out thousands of jobs, evade statutory obligations to employees, and cut wages and benefits by spinning off, not only short lines, but entire regional rail systems. Most of these spun-off lines were held totally captive to the seller. By creating subsidiaries disguised as "non-railroad entities" to buy rail lines, railroads have been allowed to transfer work from existing, unionized carriers to newly minted, non-union short lines, with the blessing of the ICC.

Former ICC Commissioner Paul Lamboley for a time provided a voice of reason on an otherwise hostile Commission: "Line sales and other line transfers have become liable more than sham transactions structured to rid existing carriers of the labor costs associated with certain lines, while preserving for themselves or their affiliated entities the benefits of the traffic associated with those lines."

The subterfuge has not been lost on the courts confronted with line sales disputes. The Court of Appeals for the Seventh Circuit recognized that the distinction the carriers were exploiting was "hypertechnical," and acknowledged that a proposed short line transfer was "functionally, practically, and therefore * * * legally the same as a Section 11343 [protected] transaction. The only difference can be found in their effect on the rail employees." This is not at all what Congress or the Supreme Court had in mind for the rail industry and its employees. As the statute explicitly states, railroad employees are an element of the public interest, and the public interest is paramount to the economic interest of any particular carrier and the region it serves.

To remedy this perversion of policy, Congress must now amend the Interstate Commerce Act to make its intent clear to rail carriers and the ICC. S. 2264 and H.R. 3866 would do just that. This legislation would close the loophole in the Act by prohibiting rail carriers from engaging in short line transactions without first addressing employee interests in the event workers might be displaced or otherwise harmed as a result of the transaction. Consideration of employee interests would be extended to any transfer of a rail line, regardless of whether the new operator is an existing carrier, a "non-carrier," or a new manifestation of an existing carrier.

Closing this anti-worker loophole would restore confidence in a regulatory process that unfortunately, over the past decade and more, has deemed the public interest subservient to a philosophy that said less government is better government regardless of its effects upon those who must pay its cost. Transportation labor believes that the record since the early 1980s shows it is time to even the playing field and give working people a fighting chance in a regulatory process created over 100 years ago and often reviewed by Congress but always with the explicit goal in mind of protecting consumers and workers from unsavory corporate practices.

FINAL THOUGHTS

Clearly, despite some of our differences with the policies of the ICC in the past decade and more, the Commission is an important agency that must be preserved to give working men and women and the general public a right to have their concerns dealt with before an independent government agency. While we believe H.R. 3866/S. 2264 should be enacted to address a serious injustice in the rail sector, and while we believe congressional action is needed to address deregulation's adverse impact upon motor carrier employees, that does not lead us to believe that the Commission should be done away with.

In fact, quite the contrary. The experience of transportation unions in representing employees leads us to the conclusion that surface transportation carriers free from government oversight would actively seek to undermine the rights of workers while paying no attention to the public interest. History teaches us that without an independent ICC workers would be ravaged in the politically charged environment of an executive branch agency as they have in other sectors of the economy.

The elimination of the ICC would also leave in its wake an enormous "information gap" which as the EPI concludes, creates serious problems both for shippers and consumers. "One of the biggest problems with today's regulatory system is the shipper's lack of information," EPI writes. Citing the need for more information—stored in an ICC central database—for shippers and all interested parties including employees, EPI adds, "Efficient, private service based on publicly available data will enhance the market, and a properly funded and directed ICC is best equipped to collect, manage, and operate such a database." On the overall issue of the importance of a properly funded ICC with a clearer "direction and mandate" from Congress, EPI states that absent a strong, well-defined regulatory presence by the ICC, "we can expect the institutional infrastructure of the entire transportation industry to continue to degrade." For the record I am submitting a copy of the EPI study.

For more than a century, the ICC has protected the public interest and the rights and well being of surface transportation employees. Today, that remains a vital task that only the ICC is suited to perform. We urge rejection of any proposals to eliminate the ICC. And we must oppose S. 2275 in its current form as we believe its impact would cause great harm to the industry and its employees.

Thank you for providing us this opportunity to express our views.

[The EPI Study may be found in the committee files.]

Senator EXON. Mr. Wytkind, thank you very much. I am glad you drew the parallel to airlines. I was thinking about it earlier when it was discussed. I remember when we were talking about deregulation of the airline industry. It was a given at that time, if you remember, that it might not be good for the smaller carriers but it sure would to be good for the big carriers like United. Well, there was Delta, there was United, and there was American. Those were the three that were going to do extremely well.

Well, none of them have done well, and as you know, there probably is going to be a buy-out by the employees of United today. I heard some news about that last night. Even some of the people such as mechanics and pilots, who supposedly were going to get rich by buying out United Airlines, are now having some second thoughts. Now, where are some concerns that there may be more labor unrest. When labor owns the airline, then what do they do?

I want to thank each of you for your contribution here. As I said earlier, the Exon-Packwood bill is not written in stone. Senator

Hutchison has indicated that she wants to talk to me. I think that, in the end, we are going to have some pretty broad bipartisan support for this measure. We will take into consideration very seriously all of the suggestions that have been made by this panel and the others today.

Thank you for being here. I will forgo any questions now due to the lack of time. I do have some questions for the record for each of you.

Thank you for coming, and we are adjourned.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

APPENDIX

Question Asked by Senator Hollings and Answer Thereto by Mr. Kruesi

ELIMINATION OF THE ICC

Question. If one agency handled all of the motor carrier safety functions, would it be possible to consolidate the "overlap" in motor carrier safety functions performed by both the Interstate Commerce Commission and the Department of Transportation?

Answer. No answer was supplied.

Questions Asked by Senator Exon and Answers Thereto by Mr. Kruesi

Question. Does DOT have the expertise and experience to handle ICC functions?

Answer. For certain functions, yes. For example, both the Department of Transportation and the ICC regulate the safety of motor carriers with ICC operating authority. DOT and ICC carry out some of their safety functions differently. For example, DOT checks whether a carrier has insurance when DOT staff conduct on-site reviews of the company's overall operations and records to ensure compliance with Federal safety regulations; whereas, the ICC requires the insurance company to file information on the carrier's insurance status and level of financial security or responsibility. If DOT were to assume ICC's safety functions, we would initiate rulemaking to determine how best to meld the safety functions of the two agencies given the available resources. In order to carry out the insurance functions in a similar manner as ICC does now, DOT would likely need additional resources.

In other areas, such as administrative support and general legal functions such as litigation, we have the expertise. If motor carrier entry policy is changed to one that relies solely on a showing of safety fitness and insurance, as in the Exon-Packwood bill, we could manage that.

We do not have as much expertise or experience as the ICC in such matters as rail regulation and shipper undercharge litigation. However, there may be merit in maintaining these functions in an independent agency, or, if these functions are transferred to DOT, we expect that experienced personnel would transfer with them. These matters require more study.

Question. When the Department of Transportation (DOT) was created in 1966, Congress chose not to merge the Interstate Commerce Commission's (ICC) quasi-judicial responsibilities with the promotional and political agenda of the DOT. Are there any duplicative functions between these two government agencies, and have the Congressional merits of keeping these agencies separate changed since 1966?

Answer. Clearly the motor carrier safety and insurance functions of the ICC overlap with those of DOT. There may be others. That would certainly be a major focus of the DOT study called for in the Exon-Packwood bill. Another focus would be whether there continues to be significant merit to keeping ICC and DOT separate.

As to where transferring functions and employees would go in the Department, we would have to develop a detailed plan to absorb and continue the ICC functions, just as we did ten years ago to plan for sunset of the Civil Aeronautics Board.

Question Asked by Senator Packwood and Answer Thereto by Mr. Kruesi

Question. Sunset proponents maintain that DOT could absorb the ICC's approximately 620 FTE's if the ICC's functions and personnel were transferred to DOT, given that DOT has annual attrition of 3,000 FTE's. However, the vast majority of DOT's civilian employees are in the FAA and Coast Guard, and most of the attrition comes from those agencies. Further, DOT is subject to the same deficit reduction pressure and overall budget cuts as the rest of government. If the ICC's personnel were transferred to DOT, where would they go within the agency? What would be

the effect on existing DOT personnel and functions in FHWA, FRA, and the Secretary's Office?

Answer. The Department of Transportation is making a serious effort to reduce spending and employment in response to both Congressional and Presidential directives. Although those efforts and normal employee attrition rates could, together, make a sufficient number of "slots" available in the Department-wide employment ceiling over the next year, it would be very difficult to absorb the large number of ICC employees who could possibly transfer if the ICC were to sunset. This number could be as large as 620, the present employment level, or as few as 426, adjusting for changes in two bills, the FY 95 appropriations bill and S. 2275, which would eliminate some of the ICC's trucking responsibilities.

Moreover, each of the Department's component agencies has its own budget and employment ceilings, and most of the attrition and resulting slots would probably occur in FAA and the Coast Guard, as your question indicates. In order to accommodate the large number of ICC employees and place them organizationally where their functions make the most sense, we would need to work with Congress to provide authorization to adjust budget and employment ceilings among several of our agencies such as the Federal Highway Administration, the Federal Railroad Administration, and the Office of the Secretary, the most logical places for the transferring functions and employees.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MS. MCDONALD

Question. A number of observers contend that the sunset of the Civil Aeronautics Board and the transfer of its remaining functions to the Department of Transportation has worked. Would the same hold true for any transfer of Interstate Commerce Commission functions, and if not, why not?

Answer. The sunset of the Civil Aeronautics Board (CAB) occurred after much debate and studied consideration of the regulatory functions performed by the CAB. Before actual sunset, a great deal of the CAB's regulatory authority was repealed in the Airline Deregulation Act of 1978. That legislation also provided for the sunset of the CAB only after a 5-year transition period.

During that 5-year period, a great deal of discussion took place as to exactly which of the remaining CAB functions would be transferred to the Department of Transportation (DOT), the Justice Department (DOJ), and the Federal Trade Commission, and what the terms of transfer should be. When the CAB was finally merged into DOT, some 350 employees were absorbed by DOT to perform functions that continued after deregulation.

Even so, the impact upon the airline industry was enormous. That impact may be seen in airline merger activity. Between 1985 and 1987 some 20 American airlines merged. None of these mergers were challenged by DOT. A number of the mergers created monopolies at certain hubs. The 5 largest U.S. airlines carried 58.9 percent of domestic U.S. scheduled route passenger miles in 1978; 70.6 percent in 1987; and 73.5 percent by 1993. Alfred Kahn, father of airline deregulation, has severely criticized the handling of airline mergers by DOT.

There are pending before the agency three major rail merger proposals, and others may be filed in the near future. Action on these proposals will determine the shape of the rail industry for the foreseeable future. Under existing law, the Commission, with the participation of DOJ and DOT, if they so desire, will take into account many factors in determining whether these proposals should be approved, including:

- the effect on adequacy of transportation services;
- the effect on competition among railroads in the region;
- the financial viability of the consolidated carrier;
- the effects on carrier employees;
- whether other railroads should be included in the transaction; and
- any other public interest considerations.

The Commission will also consider whether to impose conditions upon its approval to ensure the continuance of adequate services and competition, as it did in the Union Pacific/Missouri Pacific/Western Pacific merger in creating an alternative competitive route by requiring the merging carriers to give trackage rights to certain other carriers.[1] In addition, the Commission will impose and monitor labor conditions to protect adversely affected employees while at the same time ensuring that

[1] Union Pacific—Control—Missouri Pacific; Western Pacific, 366 I.C.C. 462 (1982), aff'd sub nom. *Southern Pacific Transportation Co.* v. *ICC*, 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985).

the approved transaction can go forward without protracted bargaining or the threat of a strike.

This regime, administered by the Commission since 1940, has served the country well. The Commission over the years in its approval of innumerable proposed rail consolidations (and occasional denials of approval) has ensured that the public continues to receive adequate rail transportation service, that competitive restraints within the industry are preserved, and that employees are afforded appropriate protection. I believe that it would be a great shame and a disservice to the railroads, their shippers and employees, and the country as a whole, to abandon at this crucial time a system that has served all of them so well.

Questions Asked by Senator Exon and Answers Thereto by Ms. McDonald

TARIFF REQUIREMENTS

Question. If S. 2275, the Trucking Industry Regulatory Reform Act of 1994, is passed, tariff requirements previously the responsibility of the Interstate Commerce Commission (ICC) will be eliminated. What tariff filing functions will remain and what staffing levels will be required to carry out those function?

Answer. For the fiscal year 1995 budget process, the Commission estimated that 100.3 FTE's would be devoted to all motor carrier rate regulation functions, including tariff-filing. One of the provisions of S. 2275 would eliminate tariff-filing requirements for most freight motor common carriers. Tariffs would continue to be filed by rail and water carriers and by motor household goods and passenger common carriers. We estimate that the elimination of tariff-filing functions under S. 2275 would allow for the reduction of 58.1 FTE's, yielding first year savings, not including the cost of separating any Commission employee, in excess of $4 million. To orderly reduce a larger number of FTE's associated with motor carrier rate regulation, other functions would have to be eliminated.

LABOR PROTECTIONS FOR SECTION 10901 LINE SALES

Question. Legislation has been introduced in the Senate by Senator Dorgan and others which will mandate New York Dock requirements for labor protections to § 10901 line sales to non-rail entities. Does the ICC have and official position on this legislation, and if so, please provide the Committee with the ICC's views on this bill?

Answer. The Commission has not taken an official position on the proposed legislation. I do not support the statutory imposition of labor protection on line sales to noncarriers. The Commission's policy of encouraging the preservation of economically marginal lines through transfer of those lines to local organizations and other noncarriers is sound and in the public interest. This policy can be advanced most effectively by retaining with the Commission the ability to assess the particular facts of each proposed line sale and impose labor protection as appropriate.

The imposition of labor protection, uniformly, on all line sales to noncarriers would undoubtedly result in the abandonment of rail lines in those instances where the seller determines that the cost of labor protection threatens the economic viability of selling the line. The public's interest in preserving our nation's rail transportation system and encouraging fair wages and safe and suitable working conditions in the railroad industry is better protected through the Commission's weighing, on a case-by-case basis, the benefits of each proposed transaction and the projected harm to labor.

ETHICS

Question. A recent Journal of Commerce piece questioned the ethics and legality of certain communications between Commissioners and representatives of the trucking and railroad industries after the House vote to zero-fund the ICC. Have you as Chairman or have any of your colleagues communicated with industry representatives soliciting their support for the ICC and do you believe these activities violated either the code of ethics or any statutory requirements forbidding such activities?

Answer. In the ordinary course of business, my colleagues and I frequently communicate with industry representatives. After the House vote, the fate of the ICC inevitably was and remains a prominent topic in nearly all such conversations. In these conversations my colleagues and I were candid about the seriousness of the current challenge to the ICC and its mission, and we welcomed support from any quarter. These activities in no way violated either the letter or the spirit of any code of ethics or statutory requirement. This is confirmed by the agency's General Counsel and the Designated Agency Ethics Officer.

ELIMINATION OF ICC

Question. There is the suggestion that the Department of Transportation (DOT) be assigned the ICC's rail responsibilities. Does DOT have the personnel and expertise to carry out those responsibilities?

Answer. We agree with the General Accounting Office's (GAO) and the U.S. Department of Transportation's (DOT) assessment that DOT would have to incur significant personnel expenses to handle ICC functions, were they transferred to DOT, because DOT does not currently have the personnel and expertise to carry out the ICC's rail responsibilities.

As Kenneth M. Mead, Director of GAO's Transportation Issues Resources, Community and Economic Development Division stated in his prepared testimony for this hearing, "any (cost) savings from changes in organizational responsibility for ICC's rail activities are likely to be small."[1] Because, "FRA officials told us they would need additional staff to gain the necessary expertise [to] * * * handle the increased workload if FRA were to assume ICC's existing rail responsibilities."[2] As a result, "[d]epending on how many of ICC's staff would need to be absorbed or replaced by DOT and DOJ, the budget savings could be small and largely limited to reductions in administrative or overhead costs."[3] Furthermore, according to GAO, there would also be no significant cost savings if the Department of Justice (DOJ) were to assume some of the ICC's functions, in addition to DOT. "If ICC's rail responsibilities and functions are transferred to DOT and DOJ, both agencies will * * * need to acquire the necessary staff and expertise * * * to handle these duties. * * * "[4] Finally, DOT Assistant Secretary for Transportation Policy Frank E. Kruesi, agreed with GAO's analysis, when, he stated that an increase in personnel would be required at DOT for it to assume ICC's rail oversight functions.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MS. PHILLIPS

Question. Since the Staggers Act of 1980 largely deregulated the railroads, why is the Interstate Commerce Commission (ICC) needed?

Answer. The Staggers Rail Act of 1980 removed cumbersome regulation at a time when the economic health of the rail industry was seriously threatened. Nevertheless, the ICC's regulatory role in rail regulation remains significant. Congress included safeguards in the Staggers Act to protect the public interest and entrusted their implementation to the ICC. The ICC continues to balance the often-conflicting concerns of railroads, States and local communities, shippers, and our national defense in rail transportation matters in the following areas.

Rate regulation. Most railroad rates today are subject to competition from other railroads or modes of transportation. The ICC retains jurisdiction to regulate only those rates that are not subject to effective competition and where no contract exists between the shipper and the railroad. This occurs most frequently with respect to shippers served by a single railroad for whom alternative types of transportation are not available (i.e., "captive" shippers). The ICC applies uniform standards to determine which rates are subject to its oversight and adjudicates their reasonableness using Constrained Market Pricing. This standard protects shippers from unreasonably high transportation charges while allowing railroads to achieve revenue adequacy by earning sufficient revenues to assure the continuation of a sound and efficient rail system.

Mergers, consolidations, and other intercarrier transactions. The ICC's prior approval is required for mergers, consolidations, and other transactions involving the combination or control of railroads. The ICC approves only those transactions for which it finds that the potential public benefits will exceed any anticompetitive effects that may result. Thus it considers and can impose conditions to address the concerns of States, the federal agencies charged with antitrust enforcement, other railroads, and all other affected parties.

Transfer, lease or use of rail lines. The ICC also conducts prior review of agreements between carriers for the transfer, lease, or use of rail lines and resolves disputes between carriers over leases and trackage use arrangements. This function protects the public interest and maintains a well-functioning, competitive national

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[1] Interstate Commerce Commission Oversight: Hearing Before the Subcomm. on Surface Transportation of the Senate Committee on Commercel Science. and Transportation, 103rd Cong., 2nd Sess. 3-4 (July 12, 1994) (statement of Kenneth M. Mead, Director Transportation Issues, Resources, Community and Economic Development Division, General Accounting Office).

[2] Id. at 14.

[3] Id. at 12.

[4] Id. at 14.

rail system. ICC policies in this area have encouraged the formation of hundreds of short-line railroads that continue to provide service on lines that otherwise would have been abandoned.

Abandonments. The ICC's review of proposals to abandon rail lines prevents loss of necessary functioning rail lines, while ensuring that continuing service over unprofitable lines does not undermine the railroads' financial condition. The ICC weighs the financial interests of the individual railroad, the service and development needs of local shippers and communities, and public interest considerations, and imposes labor protective conditions to protect employees of abandoning railroads as well as other conditions in the public interest (e.g., environmental, historic preservation).

Rail car supply. The ICC retains authority to ensure an adequate supply of railroad cars. In April 1994, for example, the ICC acted as a facilitator as all parties representing the broad range of interests affected by periodic imbalances in the supply of grain cars met in Omaha, Nebraska to address this problem. The ICC also has continued its efforts to obtain a competitive market for cars that ensures the proper number of cars will be in the rail system by loosening its regulations on the ch1arges that railroads assess each other for the use of cars.[1]

Service orders. The ICC may issue orders to ensure continued rail service in emergencies or where a financially distressed railroad is unable to operate its entire system. In an emergency, the ICC can order a railroad experiencing a disability on its own lines to operate over the lines of another railroad to the extent necessary to relieve the disability. When a railroad is unable to operate over its entire system, the ICC can direct another railroad to provide service over that system. In the event of either a partial disability or a complete inability to operate, the ICC can assure continued movement of through traffic by ordering its rerouting over lines of other carriers.

Constructions. During the 1990's, the ICC has seen an increase in the number of carriers and shippers seeking to construct new rail lines. Rail construction has been proposed most frequently by utilities seeking to gain competitive access to coal sources. Rail construction also has been proposed to improve the efficiency of rail operations, to obtain access to competitive service, improve access to industrial facilities, and to provide high-speed passenger service. The ICC often exempts proposed constructions from regulation, but its continuing jurisdiction has ensured that these proposals are subjected to a thorough environmental review in compliance with the National Environmental Policy Act.

Question. Do the Department of Transportation (DOT) and the ICC have duplicative safety functions?

Answer. While DOT has primary responsibility for motor carrier and rail safety, the ICC implements important, complementary safety responsibilities.

Motor carrier safety fitness ratings are assigned by DOT. The ICC relies on safety fitness information provided by DOT to make decisions on whether to grant applications for motor carrier operating authority. Specifically, 49 U.S.C. 10922 and 10923 require, inter alia, that the ICC make a finding that a common or contract carrier applicant is fit, willing, and able to provide the transportation to be authorized and to comply with the statute and ICC regulations. For both types of applications, the "fit, willing, and able" criterion has been interpreted by the ICC to be proof of insurance and compliance with Federal safety regulations.

Section 215 of the Motor Carrier Safety Act of 1985 (Public Law 98-554) directed DOT, in cooperation with the ICC, to establish procedures for determining the safety fitness of owners and operators of commercial motor vehicles. Before granting an application for operating authority, the ICC checks with DOT on the applicant's safety fitness rating. As provided by Congress in the Motor Carrier Safety Act of 1990 (Public Law 101-500) and the Hazardous Materials Transportation Uniform Safety Amendments Act (Public Law 101-615) (HMTA), only those motor carrier applicants assigned an "unsatisfactory" safety fitness rating are unable to receive ICC authority to operate. Motor carrier applicants possessing a "satisfactory" or "conditional" safety fitness rating, or those applicants that have not received a safety fitness rating at the time their application is under review, are eligible to receive ICC operating authority.[2]

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[1] Joint Petition for Rulemaking on Railroad Car Hire Compensation, 9 I.C.C.2d, 1090 (1993).

[2] The ICC has tried to enforce stricter safety standards in the past. The Commission revised its motor carrier licensing policy in 1988-1989 to provide that only applicants with "satisfactory" DOT safety fitness ratings could receive operating authority. Applicants with "conditional" safety fitness ratings and unrated applicants were granted one-year operating authority. If such applicants failed to upgrade their DOT safety fitness rating to "satisfactory" during the one-year

Continued

The ICC also is responsible for taking steps that could lead to revocation of operating authority if a motor carrier is found by DOT to be unsafe. The ICC's Office of Compliance and Enforcement (OCE) and DOT's Office of Motor Carriers operate under a working Protocol initiated in 1993 to exchange information concerning carriers that present safety fitness problems and to establish a mechanism for instituting formal proceedings before the Commission against carriers that pose a safety threat to the public. The Protocol establishes a program to institute show-cause order proceedings against carriers that have safety problems without conflicting with DOT's ongoing safety audit and enforcement program. DOT is responsible for identifying carriers that pose the greatest threat to public safety and requesting the ICC to institute appropriate proceedings.

ICC and DOT enjoy a good working relationship on safety matters. For example, the ICC/DOT Safety Task Force meets periodically to discuss issues of concern. This task force was an ICC creation, designed to enhance communication between the two agencies on safety and insurance matters, and has been successful in achieving that goal. In addition, DOT and ICC are working on integrating their computer systems to improve the ICC's access to DOT safety data and DOT's access to the ICC's insurance information.

Question. What insurance-related functions does the ICC perform, and are those functions duplicative with those of DOT?

Answer. As is the case in the safety area, the ICC and DOT perform complementary functions with respect to motor carrier insurance.

As noted in the response to the previous question above, proof of insurance is a component of the "fit, willing, and able" criterion used by the ICC in granting applications for operating authority. Once an application has been approved, the carrier's certificate and/or permit will not be issued and the carrier may not operate until it has come into compliance with the ICC's insurance regulations, which require that carriers have their insurance companies file proof of insurance directly with the ICC and that carriers designate agents for service of process.

Insurance Levels. Both the ICC and DOT maintain an identical three-tier system of minimum insurance levels, which are determined by DOT, for vehicles weighing more than 10,000 pounds GVWR. Those required levels are:

- $750,000 for the transportation of non-hazardous freight;
- $1 million for the transportation of consumer hazardous materials; and
- $5 million for the transportation of ultra-hazardous materials.

The ICC also has the following additional minimum insurance requirements:

- $300,000 for small freight vehicles weighing less than 10,000 pounds GVWR that carry non-hazardous freight; and
- for cargo liability, $5,000 for loss of or damage to property carried on one motor vehicle and $10,000 for multiple losses of or damages to property.

The ICC will only accept a certificate of insurance from an insurance company. DOT, by contrast, requires only that the motor carrier maintain proof of insurance at its principal place of business.

Scope of Insurance Monitoring. The ICC is responsible for monitoring insurance compliance for the approximately 60,000 ICC-regulated motor carriers. DOT monitors insurance coverage for more than 260,000 entities, which include private carriers not regulated by the ICC.

The ICC maintains a comprehensive automated system of all regulated carriers that have on file proof of financial responsibility, which enables the ICC to continually monitor regulated carriers to ensure that they maintain sufficient levels of financial responsibility.

If the insurance status of an ICC-regulated carrier has changed (e.g., the company has canceled the carrier's insurance), the insurance company notifies the ICC directly. For carriers that have lost their insurance, the ICC has in place procedures that begin immediately the process of revoking that carrier's ICC operating authority. Upon receipt of the cancellation notice from an insurer, the ICC notifies the carrier by letter of the immediate necessity to file evidence of replacement coverage. If a new certificate of insurance is not received within two weeks of the expiration

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period, their authority was not renewed. Applicants with "unsatisfactory" safety fitness ratings automatically were denied authority.

Unfortunately, DOT did not have sufficient resources to audit all of the unrated applicants and those with "conditional" ratings and also do its routine carrier audits. As a result, the ICC revised its licensing policy in 1991 and eliminated the one-year authorities for unrated applicants and those with "conditional" safety fitness ratings. At approximately the same time, Congress provided in the HMTA that only those applicants for bus or hazardous materials authority with an "unsatisfactory" DOT safety fitness rating must be denied ICC operating authority. The ICC continues nevertheless to deny operating authority to applicants with "unsatisfactory" ratings.

of the 30 days' advance notice, a reminder is sent to the carrier. At the same time, the ICC regional office with jurisdiction over the carrier is notified by computer message of the impending cancellation. At this point, the field staff contacts the carrier to discuss the need for the carrier to file evidence of replacement coverage or to determine whether the carrier plans to discontinue operations.

If evidence of new coverage is not filed before the cancellation date, OCE initiates enforcement action. If the carrier declines to sign a consent agreement or otherwise indicates its intention to conduct uninsured operations, OCE obtains a court order prohibiting the carrier from operating. In addition, the carrier's operating authority is revoked for lack of insurance. If the carrier obtains new insurance and applies for reinstatement of its authority, the ICC reviews the carrier's DOT safety fitness rating, denying reinstatement to carriers with "unsatisfactory" ratings.

According to OCE data, a total of 39,510 revocation decisions were served during the first ten months of fiscal year 1994. During the same period, OCE took the next step of revoking the operating authorities of 5,374 ICC-regulated entities, 3,185 of which were involuntarily revoked for failure to have insurance or other acceptable evidence of security on file with the ICC in the required amounts. During the same period, OCE reinstated the operating rights of 526 entities.

Other monitoring of insurance occurs if a State law enforcement official stops an ICC-licensed carrier to conduct a roadside inspection or for other purposes. If that official wants to know if that carrier's insurance is current, he or she has computer access to a "bulletin board" in Chicago that is updated daily and lists carriers that no longer have insurance as of midnight the previous night. The Chicago bulletin board is a recent addition to the ICC's continued efforts to monitor effectively the carriers it regulates.

Another avenue by which ICC-licensed motor carriers are monitored for their compliance with insurance regulations is the base-State insurance registration system.[3] Under this system, motor carriers licensed by the ICC must file proof of insurance with their base State; this insurance information is available to the other States that participate in the system and in which the carrier operates.

In short, the ICC's insurance system functions well. We rely on the insurance companies to keep us up-to-date on a daily basis with respect to carriers' coverage. If a carrier loses its coverage, we move *immediately* to implement our authority revocation procedures and to notify the public of that fact. By contrast, if a DOT-monitored carrier loses its insurance coverage, DOT would be unlikely to know unless it happened to uncover this information at a random roadside inspection or a routine safety audit of the carrier's business.

Question. What cost savings would the enactment of S. 2275, the Trucking Industry Regulatory Reform Act of 1994, provide in the first year and in succeeding years?

Answer. In testimony before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on July 12, 1994, the General Accounting Office (GAO) estimated that elimination of the ICC's motor carrier rate and entry regulations would result in savings of approximately $17 million per year. GAO estimated initial annual savings of $19 million if all of the ICC's motor carrier responsibilities were eliminated. GAO projected that annual savings under such a scenario would increase to $32 million within four years after terminated employees had received all of their compensation.[4]

S. 2275 as introduced would eliminate the "filed rate doctrine" for general freight trucking companies (including tariff filing requirements), streamline the ICC's entry process for trucking operating authority, and expand the ICC's current rail exemption authority to include general freight trucking companies. The ICC's regulation of household goods carriers and intercity bus companies would remain unchanged. I would, therefore, estimate annual savings from enactment of S. 2275 as introduced to be approximately $10 million. This would include salaries, benefits, and rent costs associated with those personnel who perform motor carrier tariff functions that would be eliminated by the bill. (Some motor carrier tariff personnel would be needed as the ICC completes work on undercharge cases as provided in the Negotiated Rates Act of 1993 and continues to process required tariff filings by rail and water

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[3] In May 1993, the ICC adopted regulations for implementation of the single-State insurance registration system for ICC-regulated carriers, which replaced the previous multi-State motor vehicle registration system, also known as the "bingo stamp" program. The adoption of those regulations was in accordance with the mandate of section 4005 of the Intermodal Surface Transportation Efficiency Act 9f 1991 (Public Law No. 102-240).

[4] Statement of Kenneth M. Mead, Director, Transportation Issues, Resources, Community, and Economic Development Division, United States General Accounting Office.

carriers and by household goods carriers and intercity bus companies.)[5] Some of the individuals with duties related to processing of motor carrier entry applications could be eliminated, given S. 2275's major simplification of the entry process.

The savings from this legislation would be offset in the first year by severance and related costs associated with reducing the ICC staff. In the first and subsequent years, the savings also would be offset by reduced user fee collections due to S. 2275's elimination of tariff filing. The magnitude of the first year savings also would depend on the point during the fiscal year at which the staff reductions and related cost reduction measures were implemented. In the out years, however, the savings from S. 2275 could well increase, depending on the ICC's utilization of the motor carrier exemption authority provided in the bill and continued streamlining of the ICC's motor carrier functions.

QUESTIONS ASKED BY THE COMMITTEE AND ANSWERS THERETO BY MR. SIMMONS

ELIMINATION OF ICC

Question. What are the downsides, if any, to eliminating Interstate Commerce Commission Motor carrier responsibilities?

Answer. Since I came to the Commission in 1982, the Interstate Commerce Commission has been reduced in size by almost 1000 persons. This indicates that Congress in its wisdom may have decided that regulatory oversight of the surface transportation industry will not be required in the not to distant future. I sincerely hope that is not the case.

Downsides Regarding Rates

Let me just say at the outset that I believe that there may come a point in time when congressional regulatory oversight, *through the Interstate Commerce Commission,* of the surface transportation industry will no longer be required. And I venture to say, that I, more than any other member of this Commission, am certainly politically astute enough to realize that that time may be now, or in the not too distant future.

On the other hand, I would be less than candid with Congress and myself if 1 did not consider and stress to you that tariff filing requirements are but one element of a universal regime to protect the public and foster economic vitality in the motor carrier industry. We can take any aspect of the ICA, isolate it, view it in a vacuum, and conclude that it is no longer needed. By contrast, however, there is more, for example, to the ICA's rate filing requirements than what meets the eye. On balance it serves as the cornerstone for scores of statutory provisions designed to protect the public from abusive motor carriers and to ensure a safe and competitive motor carrier industry.

But as I sit here and contemplate the long range effects or consequences of the pending congressional proposals regarding tariff filings, I cannot help but conclude, that it is just not that simple. Sure, it sounds great to, in effect, repeal the file rate doctrine. But in reality, are we mis-reading the spirit of downsizing and streamlining government by, in the case of the file rate doctrine for example, cutting off our administrative noses to spite our faces?

One is only left to ponder this issue when you consider that historically, Congress charged the ICC to administer the file rate doctrine to make certain that shippers will be placed on notice of applicable rates for available transportation services, and to ensure further that all shippers are guaranteed the same common carrier rates, *without discrimination,* for the same services over the same routes. Today, considering the hundreds of undercharges cases the threat of carrier abuse is no less than a reality.

In my opinion, one need only look a little bit further beyond the surface to perceive the *downsides to eliminating the Commission's motor carrier responsibilities.* If Commission oversight over this aspect of the industry is eliminated, who then will monitor reparations regarding overcharges and duplicate payments to ensure that shippers are reimbursed regarding overpayments. Certainly, Congress does not intend to imply, in relieving a motor common carrier of its rate filing requirements, that such a carrier need no longer be fearful of the Commission's enforcement of regulations, implementing the file rate doctrine, that on balance, prevent unscrupulous or negligent carriers from refunding overcharges and duplicate payment. Stated

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[5] S. 2275, as passed by the Senate on August 11, 1994, retains tariff filing requirements for rates established through the collective ratemaking system. As a result, savings associated with elimination of tariff filing would be reduced.

another way, how is a shipper going to challenge an overpayment or duplicate payment without a filed rate to measure a questionable payment by?

The downsides may become even more prevalent. Consider, if you will, that by eliminating this Commission's Motor Carrier responsibility, the agency may no longer be able to ensure a level competitive playing field between common carriers through oversight efforts to prevent such carriers from "buying freight" through special inducements (a.k.a kick-backs, rebates, or concessions) to traffic managers of shippers in order to secure a larger share of a shipper's traffic.

Downsides Regarding Licensing and Safety

This Commission Requires carriers to show fitness to hold interstate authority by demonstrating that it has the economic resources to shoulder transportation responsibilities, *which includes the ability to obtain the requisite insurance to protect the public prior to commencing operations.* DOT requires carriers to file a MCS-150 w/n 90 days after beginning operations. DOT has a safety inspection program, and can impose penalties on motor carriers that do not comply, and can take some or all of the equipment of a carrier out-of-service where necessary. However, DOT cannot prevent an ICC carrier from trip-leasing, under its authority, other motor carriers which do not have ICC authority and that are unsafe. Significantly, unlike the ICC, DOT does not have independent authority to go to court to prevent an unsafe carrier from operating, and it must refer the case to the Dept. of Justice for presentation and handling. *But since it now appears that pending trucking reform legislation requires less ICC scrutiny over license applications, the ICC will no longer have the personnel to screen carriers applying for authority to conduct interstate motor carrier (for-hire) operations in order to reject applications of carriers having an unsatisfactory DOT safety rating, or that have a history of state safety violations.*

What will be disrupted (*a downside*), as a result of further erosion of the Commission's oversight of the motor carrier industry, is a scheme whereby together the ICC and DOT, (each carrying out congressionally assigned responsibilities based on their respective expertise), provide substantial protection to the public. In my opinion, if the ICC's general oversight of the motor carrier industry is removed as a player, DOT would be powerless to halt the operations of an unscrupulous carrier owner, whose equipment has been taken out of service, from trip leasing with other carriers or by illegally operating as a broker of loads it would otherwise carry. Moreover, DOT would have to go to the Dept. of Justice to halt a carrier from conducting operations in violation of its out-of-service order. *Currently, DOT need only make a referral to the ICC for complete relief; i.e. revocation or suspension of authority and an injunction. By contrast with ICC removed from the playing field, DOT, to protect the public, will need new statutory authority to (a) seek injunctions to halt unsafe operations; and (b) halt operations of carriers through the use of trip leasing or brokerage type activity.*

Downsides Regarding Significant Miscellaneous Regulatory Oversight

And there are still other regulatory/enforcement aspects of the Commission's responsibilities that, if eliminated, will leave the public and smaller carriers at the mercy of unscrupulous carriers and brokers.

Predatory Practices. Historical and current business practices in the industry have demonstrated that ICC oversight is required to protect the public in general from predatory pricing practices; to protect small carriers (*usually headed by minorities and/or women*), from the effects of predatory pricing by larger carriers; and to guard the public and smaller carriers from the effects of ill-advised mergers and acquisitions.

Rate Bureaus. Eliminating the ICC's general oversight of the motor carrier industry, threatens the agency's ability to monitor carrier compliance with rate bureau agreements under which rates are collectively set. Although Robinson-Patmen (Clayton 2) does not apply to carriers because they supply service rather than commodities, the same protection, available under the antidiscrimination provisions of the Elkins Act, will be lost if the agency's responsibilities over this aspect of motor carrier activity is eliminated.

Mergers and Acquisitions. If the ICC's responsibilities over the motor carrier industry is eliminated, then its responsibility for mergers and acquisitions must be transferred to DOJ or the FTC, where some expertise in this area already exists. But the budgets of those agencies will have to be expanded so that they can create some mechanism to approve and monitor compliance with rate bureau agreements or to address the widespread discrimination in rates that surely is to occur with the removal of the ICC from the playing field.

Loss and Damage Claims. Not to be forgotten is the void that will be created by eliminating the ICC's responsibilities over the motor carrier industry regarding loss

and damage claims. Specifically, by virtue of its licensing of motor carriers and prescription of cargo insurance, the Commission is able to promulgate regulations for the timely processing, investigation and payment of loss and damage claims. *However, eliminating agency funding, in the spirit of "downsizing government", may prove to be shortsighted regarding this important regulatory function, inasmuch as Commission staff contact carriers regarding complaints by shippers relative to the failure of the carriers to comply with the regulations, and staff manages to favorably resolve hundreds of complaints annually.* With the elimination of the agency's responsibility here, *and corresponding staff years,* who will make certain that the public's loss and damages will be properly addressed. In short, the statutory authorities and budgets of agencies that may inherent this aspect of ICC's motor carrier responsibilities, will have to be expanded to enable such agencies to assist the public in obtaining relief from carriers regarding complaints for compensation for loss or damage to cargo being transported. Such agencies would need, independent authority, similar to what the ICC presently has in Section 11702, to seek injunctions. DOT, for example, would have to also start requiring and enforcing the need for cargo insurance as a prerequisite for for-hire transportation of property.

Owner operators—Truth-in-Leasing. Lastly, but most important, what also will be lost if the ICC's responsibilities over the motor carrier industry are eliminated, is the agency's promulgation and implementation of its leasing regulations which mandate that carriers fully disclose all deductions from the owner-operator's settlement. These regulations minimized the likelihood of unscrupulous carriers taking advantage of the owner-operators, while insuring the timely payment of the settlements to the owner-operators. Where carriers violate the leasing regulations, the Commission brings an injunctive action to stop the violations, if a settlement cannot be reached. Who, however, and at what costs, will lead this important charge if Congress, in the spirit of cost-cutting, deprives the agency of this critical function. For example, special legislation will be required to give DOT authority to sue in its own name to enforce regulations similar to the ICC's owner-operator protection regulations at 49 C.F.R. 1057 regulations.

NAFTA. Lastly, Congress, pursuant to NAFTA, has just conferred significant regulatory responsibilities on the Commission regarding the licensing and overall entry requirements of Mexican based property and passenger carriers. In this regard, under the present regulatory scheme, the Commission has gone to great lengths, under its authority, to eliminate unsafe Mexican passenger van operations. These unlicensed and uninsured operators are dangerous. Indeed, accidents resulting in fatalities have occurred. It is only the Commission that has the independent prosecutorial authority to take immediate action to halt these operations.

TRUCKING AND REGULATORY REFORM

Question. What Motor Carrier Functions Other Than Rate and Entry Regulation Does the Commission Perform?

Answer. Believe it or not, there are 429 discrete responsibilities assigned to the Commission (located in over 18 titles of the United States Code, as well as a few provisions that are uncodified). An exhaustive exposition of these areas of responsibility is not necessary. However, critical to the motor carrier industry are the following few areas of regulatory concern:

Safety Fitness; Duplicate Payments; Abusive Practices of Brokers of Auto-Transp.; HHG regulation; Abusive Practices of Property Brokers; Self-Insurance Compliance; Owner-Operator Abuses; and Insurance Scams.

Question. What is your view of S. 2275, The Trucking Regulatory Reform Act of 1994?

Answer. I want to begin this response by taking this opportunity to express my gratitude, inasmuch as you and the committee have been concerned enough about the Commission's continued existence for now, to take the time, pursuant to S. 2275, to refocus the Commission's mission. For that I thank you!

I certainly regard S. 2275 as a vital step in streamlining the agency's functions and making its oversight of the surface transportation more efficient and useful. On the other hand, as with any deliberations, we must always make certain that in planning our theoretical objectives we take head of the realities in achieving the target.

The spirit of S. 2275 is certainly a good beginning. But as aforementioned, there is more to this Commission than what meets the eye. For example, while it may become more expedient for the industry to eliminate licensing restrictions and require the ICC to axiomatically grant authority, we must not lose sight of the real underlying public interest concerns that have led to the present "state of the art" in interstate motor carrier licensing.

Congress put the Commission in this business over one hundred years ago. Since that time to the present, there have no doubt been hundreds of thousands of instances of unsafe carriers, predatory pricing practices, ill-advised motor carrier mergers, abusive freight brokers, shippers' whose loss and damage claims have gone unheeded, and owner-operators at the mercy of unscrupulous licensed carriers. S. 2275 amends the Commission's exemption authority under Section 10505 to now include motor carriers. *The Commission must be assured that it will be permitted to exercise its expertise, without interference, to use that exemption authority wisely. The agency has been quite successful in the past and present in utilizing this exemption authority in the rail area. The same should hold true for motor carriers.*

It certainly has been no mistake that the ICA, with its motor carrier oversight provisions, has evolved into its present composition. Congress certainly has responded positively to the aspirations of the pubic in making certain that the surface transportation playing field is level, safe, fair, and competitive.

It has taken decades for the protection of the public's interest, guaranteed by the ICA in its present incarnation, to evolve as it is today. We should not, just for the sake of streamlining government, act to slash by the stroke of a pen what has taken decades to develop.

The Interstate Commerce Commission has done, and is doing its part to eliminate wasteful and burdensome government regulatory practices. It has, over the years, been sensitive to the notion of "improving the economies of government". In my opinion, the ICC, more than any other agency, has continually re-evaluated its mission, reconciled its resources, and streamlined its operations. Indeed, the fact is that the ICC has already cut more than two-thirds of its work force over the years. On the other hand, it has left itself only with required amounts of critical personnel, to carry out thoroughly reoccurring significant legislative tasks. Is there still a need for its presence as the ultimate purveyor of the public interest? You bet there is!

S. 2275 should serve as no more other than a carefully considered beginning at re-focusing the Commission's mission to serve better the pubic interest. It should not, however, be used by some as a license to prematurely eliminate *yet still vital agency functions.*

Question Asked by Senator Hollings and Answer Thereto by Ms. Morgan

ICC AS AN INDEPENDENT AGENCY

Question. Please provide the Committee with reasons why the Interstate Commerce commission's functions should remain the responsibility of an independent agency.

Answer. As an independent agency, the Interstate Commerce Commission (ICC) has various quasi-judicial and quasi-legislative functions entrusted to it by Congress. These functions include decisions concerning, for example, rail mergers, abandonments, line constructions, and line sales and rail rate reasonableness. As an independent regulatory agency, the ICC makes these decisions by balancing many competing interests based on an open record, with impartiality and necessarily without the degree of political influence present at executive branch departments. These decisions are also made by a bipartisan body of Commissioners who arrive at decisions through debate and an exchange of ideas in an open forum. Furthermore, as an independent agency, the ICC has developed significant and specialized expertise in deciding these matters on the record. Implementation of these functions by an expert independent agency helps to ensure that the law is carried out as Congress intended.

Questions Asked by Senator Exon and Answers Thereto by Ms. Morgan

ELIMINATION OF THE ICC

Question. If the Interstate Commerce Commission (ICC) is eliminated, what is the prospect for those shippers who rely on the ICC to relieve them of burdens that came about as a result of the "undercharge" controversy?

Answer. Under the Negotiated Rates Act of 1993 (NRA), the ICC has important responsibilities to resolve undercharge disputes. For example, it has responsibility to determine issues of rate reasonableness and unreasonable practices in cases before the bankruptcy courts. It also has responsibility for facilitating the resolution of disputes through the various settlement mechanisms provided in the law. Furthermore, it has the responsibility to defend the NRA in court against challenges by bankruptcy trustees.

If the ICC were eliminated, and no other action were taken, this dispute resolution authority would remain in law but with no agency to carry it out. Its implementation would have to be transferred elsewhere, and other resources would have to be allocated in order to ensure that the undercharge crisis is resolved as Congress intended when it passed the NRA.

Answer. In any transfer of NRA responsibilities to another agency, the expertise which the ICC has developed in handling these undercharge cases would necessarily be lost, and any resulting disruption in NRA implementation could frustrate the resolution of these undercharge disputes and the intent of Congress in passing the NRA.

Question. Please provide the Committee with reasons as to why the ICC should not be eliminated and the functions transferred to Department of Transportation. In other words, what significant responsibilities does the ICC have at this time?

Answer. The ICC continues to have rail and motor carrier responsibilities entrusted to it by Congress. Over the last 15 years, Congress has passed several significant reform measures affecting the economic regulation of surface transportation. Nevertheless, several important functions remain at the ICC. For example, it has significant authority with respect to rail mergers, abandonments, line constructions and line sales, and rail rate reasonableness. It also has important authority with respect to motor carrier safety fitness and insurance, truck undercharge claims, intercity bus regulation, the household goods industry, brokers, and freight forwarders.

There are approximately 650 cases pending at the ICC covering these and other areas of responsibility, including three important rail merger and acquisition of common control cases. The ICC has developed significant expertise in handling these matters and as an independent agency is particularly well-suited to arrive at fair and impartial resolutions that balance the many competing interests in these matters.

Question. In your view, what, it any, "savings" would be gained from the elimination of the ICC?

Answer. Those who support the elimination of the ICC argue that this action would result in important budget "savings." If the ICC were eliminated, but its statutory functions remained, it is unclear how savings could be achieved, as some entity would need to continue to carry out these functions with personnel assigned to them.

Efficiency savings also have been cited as another benefit of elimination. However, one must question whether there would be any efficiencies gained in eliminating the ICC but retaining its functions, which would need to be implemented elsewhere. Furthermore, such a change could cause unnecessary disruption in policy implementation and case resolution that would outweigh any potential efficiencies.

Any discussion of savings from the elimination of the ICC must include an examination of any resulting detriments to the implementation of surface transportation policy as envisioned by Congress, and whether these impacts outweigh the benefit of whatever savings might accrue. Given the independence of the ICC and the expertise that it has acquired, Congress should be careful not to take any precipitous action that could harm the expeditious and impartial resolution of issues entrusted to it by Congress.

Questions Asked by Senator Packwood and Answers Thereto by ICC

Question. Proponents of ICC sunset point to the success of the sunset of the Civil Aeronautics Board (CAB) to support their view that the ICC also could be eliminated. How do you view CAB sunset as opposed to the ICC sunset proposal now under consideration?

Answer. The sunset of the CAB occurred after much debate and studied consideration of the functions previously performed by the CAB. Before actual sunset, a great deal of the CAB's regulatory authority was repealed in the Airline Deregulation Act of 1978. The legislation also provided for the sunset of the CAB only after a 5-year transition period.

During that 5-year period, a great deal of discussion took place as to exactly which of the remaining CAB functions would be transferred to the Department of Transportation, the Justice Department, and the Federal Trade Commission, and how they should be transferred. When the CAB was finally merged into DOT, some 350 employees were absorbed by DOT to perform functions that continued after deregulation.

By contrast, current ICC sunset proposals eliminate ICC funding before considering which of the almost 500 statutory functions contained in the Interstate Com-

merce Act and 18 other titles of the U.S. Code currently performed by the agency should be continued, and whether they should continue to be performed by an independent agency. The action apparently envisioned by the House of Representatives floor action on June 16, 1994, would simply transfer all functions and employees to the Department of Transportation, and leave up to the Secretary the question of what statutes he would enforce, and which employees he would retain to do so.

S. 2275, if enacted, would start the sort of process necessary to make a reasoned decision on these subjects.

Question. Proponents of ICC sunset charge that the ICC's voting process is not an open process. For example, they note that the ICC conducted only 10 public voting conferences in 1993. Please explain the ICC's voting process. To what extent is it an open process?

Answer. During the 12 months of 1993, the Commission disposed of 867 substantive decisions. Each of these cases was "open" in that the public had an opportunity to participate in the process by submitting relevant evidence or comments. Properly submitted evidence and comments make up the evidentiary record upon which the Commission bases its conclusions and findings. Every vote taken by each Commissioner is public information. 49 U.S.C. 10306(d). Moreover, after voting on each decision is complete, the decision is released ("served") to the public.

Because of the large number of cases, the Commission votes the majority of cases by "notational voting." Under this procedure, Commission staff prepares draft decisions and circulates them to the Commission. Each Commissioner submits her or his vote in writing to the other Commissioners by a specified date. After all votes are in, they are counted and a final disposition of the case is made. As explained above, these cases have an open evidentiary record and each Commissioner's vote is public information. In many instances, the Commission prepares a press release to notify the public of the outcome.

Often (usually, at least, monthly), instead of deliberating in writing, the Commission will discuss and vote on cases at a voting conference open to the public. Cases chosen for the voting conferences are usually important cases of great interest to the transportation community. Since the beginning of 1993, 22 voting conferences have been held, at which nearly 100 cases have been decided. Official transcripts of each conference are made available to the public for a fee.

In addition to voting conferences, the Commission also holds special conferences or meetings open to the public, often with public participation. Two examples of such conferences during 1994 include a public conference in Omaha, Nebraska, on grain car supply issues (attended by three Commissioners) and an oral argument hearing, held in Washington, D.C., in a significant rate case before the Commission. Last year, in the merger proceeding involving the Union Pacific and Chicago and North Western railroads, the full Commission sat for an oral argument hearing in Washington, D.C., and dispatched its Chief Administrative Law Judge to the Midwest to hold five public hearings in four cities. Transcripts for such special conferences are also available to the public for a fee.

The Commission also has several specialized employee boards that issue decisions on a wide range of matters within the agency's jurisdiction. Votes of these boards are also made public. 49 U.S.C.10306(d).

Question. How does merger analysis conducted by the Department of Justice differ from that of the ICC? (a) Do you think the current DOJ process would allow for consideration of the various transportation policy factors currently considered by the ICC in rail merger proceedings? (b) How are mergers of industries regulated by other independent agencies handled at present?

Answer (a). The Department of Justice (DOJ) analysis of rail merger cases focuses solely on competitive impacts. When two companies with more than $5 million in assets wish to merge, under the Hart-Scott-Rodino amendments, they must notify the DOJ and the Federal Trade Commission (FTC), and supply information. DOJ or FTC will then conduct an antitrust analysis and let the parties know (within 30 to 50 days) whether it will oppose the merger (by seeking a court injunction). DOJ/FTC bases this decision solely on a mechanical antitrust analysis. The relevant product and geographic markets are defined. Then the Herfindahl-Hirschfeld Index (HHI) is computed to measure industry concentration. As the General Accounting Office (GAO) recently confirmed in testimony before Congress, if given responsibility over rail mergers, DOJ would only apply its traditional antitrust standards for assessing mergers.

Pursuant to the Interstate Commerce Act, prior review and approval by the ICC of railroad consolidations, on the other hand, ensures that the public will continue to receive adequate transportation services, that competitive restraints will not be destroyed, and that employees will be afforded appropriate protection. For smaller consolidations, the ICC approval is given unless there are anticompetitive effects

that outweigh the transportation benefits and such effects cannot be adequately ameliorated by the imposition of appropriate conditions. But for a major consolidation (involving two large railroads), the ICC considers many factors in addition to simply assessing concentration within the industry, including:

- effect on adequacy of transportation services;
- effect on competition among railroads in the region;
- financial viability of the consolidated carrier;
- effects on carrier employees;
- whether other railroads should be included in the transaction; and
- any other public interest considerations.

The DOJ process would not take into account these various transportation policy factors.

The ICC can impose access conditions to ensure adequate services and competition—as it did in the 1982 merger of the Union Pacific Corporation with the Missouri Pacific Corporation and Western Pacific Railroad Company by creating an alternative competitive route through trackage rights conditions.[1] The ICC also imposes and monitors labor conditions to protect adversely affected employees. This authority ensures the ability of the rail industry to implement significant structural changes without the delay of interminable bargaining or the crippling effects of strikes. The DOJ process would not permit the imposition of either access or labor conditions.

Answer (b). The mergers of entities in a number of other industries are subject to approval by independent regulatory agencies:

- The Federal Reserve Board reviews acquisitions and mergers of banks or bank holding companies, considering financial and managerial resources of the institutions, antitrust considerations, and the public interests of the communities to be served.
- The Federal Energy Regulatory Commission (FERC) reviews acquisitions of electric utilities and gas pipelines, applying a public interest standard and considering competitive issues (but leaving administration of the antitrust laws to DOJ and FTC). FERC has broad conditioning powers.
- The Federal Communications Commission (FCC) reviews the sale or transfer of radio or telephone company licenses, applying a competition and public interest analysis, and common carrier mergers under the Clayton Act. The FCC can impose conditions on its approval.
- The Securities and Exchange Commission reviews acquisitions between affiliated investment companies. The considerations in review are the public interest and investor protection.
- The Office of Thrift Supervision does a fast-track review of mergers of savings and loans with insured depository institutions focusing on competition, using HHI calculations.
- The Comptroller of the Currency reviews mergers involving national banks and other depository institutions, looking at competition, the needs of the community served, financial history, financial condition, insider transactions, and disclosure of terms. It can also assess the purchase price.

In contrast to ICC rail merger regulation, the statutes of none of these other agencies explicitly confer immunity from the antitrust laws or any other laws for approved transactions, as does the Interstate Commerce Act at 49 U.S.C. 11341(a).

Question. What has been the ICC's experience with use of its rail exemption authority? Do you believe there is a need for the trucking industry exemption authority in S. 2275 to be made more specific, as suggested by some witnesses at the hearing?

Answer. We believe that the rail exemption authority is one of the most beneficial legislative reforms enacted by the Congress. It has enabled the Commission to use its experience and expertise to channel its resources effectively into overseeing activities that require regulatory review and to forgo issuing thousands of unnecessary regulatory rulings. In addition, any exemption granted by the Commission may be revoked. This authority guarantees that, if a need for renewed regulation is shown for any reason, it may promptly be met.

We believe that the proposed exemption authority in S. 2275 would be most effective in the form in which it was introduced and recommend enactment of that language without modification. The implementation of section 10505 of the Interstate Commerce Act has proven to be workable in the rail area and is time-tested. We

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[1] Union Pacific—Control—Missouri Pacific; Western Pacific, 366 I.C.C. 462 (1982), aff'd sub nom. *Southern Pacific Transportation Co.* v. *ICC,* 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985).

see no benefits in enactment of more specific standards and criteria in the trucking area when existing ones have worked.

Question. If the House-passed zero funding provision were enacted, what exactly would happen on October 1, 1994, with respect to the cases pending before the ICC and the ICC's staff?

Answer. Eliminating all funding for the ICC would not eliminate the agency or the cases pending before it. The agency is a creature of the Interstate Commerce Act, and its elimination only could be effectuated by an amendment to that Act. Furthermore, the elimination of the ICC's funding would not operate to dismiss the cases pending before the agency.

Approximately 650 requests for action are pending before the agency. The Commission would be unable to complete action on most of them before October 1, 1994, and between 70 and 80 additional cases are expected to be filed each month before then. Without legislation providing for the transfer of Commission functions or the disposition of existing cases, those cases would be left in limbo. In the absence of such legislation and with no appropriated funds, employees would be separated from the Commission.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY GAO

Question. If all of the Interstate Commerce Commission's (ICC's) functions were transferred to the Department of Transportation (DOT) and/or the Department of Justice, what would be the likely result in budget savings?

Answer. The potential budget savings by moving ICC's rail responsibilities to DOT and/or DOJ would likely be small since neither agency is positioned to assume these duties. Officials at DOT's Federal Railroad Administration said they would need additional staff to gain the expertise needed to handle ICC's rail responsibilities and workload. Although DOJ officials said they could assume ICC's merger and acquisition authority without additional resources, they acknowledged they would not consider the noncompetitive effects, such as impacts on railroad labor, of these transactions. If consideration of such effects is to continue as part of the merger and acquisition approval process, then we believe DOJ will need additional staff to perform these functions. Depending on how many of ICC's staff would need to be absorbed or replaced by DOT and/or DOJ, budget savings could be limited to administrative or overhead costs. ICC's administrative and overhead costs amounted to about $7.6 million in fiscal year 1993.

We believe ICC could save approximately $17 million per year (32 percent of ICC's fiscal year 1995 budget) if its motor carrier rate and entry regulations were repealed. These functions are currently mostly a formality and are not needed in today's competitive trucking environment. Certain ancillary functions, however, such as consumer protection for household goods movements, appear to have value and would need to be transferred to other federal agencies. As with rail, budget savings associated with transferring ICC's motor carrier functions to DOT would depend on how many of ICC's staff would be absorbed or replaced by DOT and DOJ. Again, the savings could be limited to administrative and overhead items since DOT would need additional staff and expertise to handle ICC's motor carrier responsibilities.

There may be opportunities for budget savings in the review of motor carrier insurance and safety. ICC reviews these as part of its entry application process and DOT as part of its authority to ensure motor carrier safety. Any savings would likely depend on the number of staff DOT would need to assume ICC's responsibilities. We have found in our previous work that DOT staff are stretched-thin in reviewing motor carrier safety and assuming ICC's workload would be difficult at best.

In fiscal year 1995, ICC expects to devote approximately 54 staff-years to these functions.

Question. Does DOT have the expertise in rail issues to perform ICC rail functions?

Answer. For the most part no. FRA is primarily responsible for regulating railroad safety. As such, it issues rules and regulations on rail safety and performs inspections of railroad track, equipment, signals, and facilities to ensure safe railroad operating conditions and practices. FRA does not maintain staff or expertise in railroad economic regulatory matters. Nor does it adjudicate disputes involving railroad economic issues. FRA officials told us that they would need additional staff to gain the necessary expertise and handle the increased workload if FRA were to assume ICC's existing rail responsibilities.

Question. That would be the cost savings if the ICC were transferred to DOT as an independent agency?

Answer. We do not believe there would be any meaningful cost savings by transferring ICC's functions to DOT as an independent agency. Although such an action would allow ICC to retain its status as an independent federal agency for regulating and adjudicating railroad issues, it would continue to operate much as it does today, presumably with similar staffing levels. The Federal Energy Regulatory Commission (FERC)—an independent regulatory agency responsible for overseeing the natural gas industry, electric utilities, hydroelectric power projects, and oil pipeline transportation—operates under a similar arrangement. Similar to ICC, FERC has both regulatory and adjudicatory responsibilities. However, FERC is officially a part of the Department of Energy (DOE). According to a FERC official, there were few, if any, cost savings in making FERC a part of DOE. The integration was a simple transfer of functions with no reduction in staff or budget. A similar situation could apply if ICC were made a part of DOT. By law, neither the Secretary of Energy, nor any DOE employee, may direct or control FERC activities.

Question. Is the independence of the ICC important to the industries the agency regulates?

Answer. Yes. Representatives of both rail and shipper groups we spoke with expressed serious concerns about the loss of independence that could occur if ICC's rail responsibilities were transferred to other agencies. They cited the need for an independent, unbiased forum to air their concerns and to have disputes over such things as rates and services adjudicated. They believe this forum could be lost if ICC's responsibilities are transferred. They said elimination of ICC could particularly hurt small railroads and shippers. While large railroads and shippers may have the resources to take their cases to court if they do not like the results of adjudicatory decisions made by other agencies, financial and other constraints may limit the ability of small railroads and shippers to do likewise. Both industry and shipper groups we contacted believe ICC offers equal access for both large and small railroads and shippers to be heard.

Question Asked by Senator Hollings and Answer Thereto by Mr. Donohue

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the American Trucking Associations (ATA) and its membership, and what would ATA's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. There are several reasons why an independent Interstate Commerce Commission (ICC) is important to the trucking industry. First, and very basically, is that proposed decisions by the Secretary of Transportation are circulated among the various modal administrators. As I have so often pointed out, there is no motor carrier modal administrator. As a result, decisions that would be affecting trucking would be unduly influenced by parties that rather then being concerned with the best interest of the trucking industry or its users, would be primarily concerned with the interests of those that may be at odds with the trucking industry—the railroads, airlines and maritime industries.

This is not the only reason, however, that ATA believes an independent Interstate Commerce Commission is necessary. Your question itself highlights one of the major reasons—"INDEPENDENCE." The concept that economic decisions should be made by an independent agency; the consistency of action over a period of years that normally goes with the independence of the agency: the absence of political influence in the decisions, the expertise that develops in the agency's senior management when it does not change every four or eight years; these are all major factors why the maintenance of an independent ICC is important to the trucking industry.

While some of the responsibilities and duties of the Commission may be eliminated or transferred, those that require an independent mind, free of the undue influence of competing modes, should remain at the ICC.

Questions Asked by Senator Exon and Answers Thereto by Mr. Donohue

ELIMINATION OF ICC

Question. What would be the effects on the American Trucking Associations (ATA) and its members if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. There are several reasons why an independent Interstate Commerce Commission (ICC) is important to the trucking industry. First, and very basically, is that proposed decisions by the Secretary of Transportation are circulated among the various modal administrators. As I have so often pointed out, there is no motor carrier modal administrator. As a result, decisions that would affect trucking would be unduly influenced by parties that rather then being concerned with the best interest of the trucking industry or its users, would be primarily concerned with the interests of those that may be at odds with the trucking industry—the railroads, airlines and maritime industries.

While the Department of Justice does not have modal administrations, it lacks the ICC's expertise on the trucking industry. DOJ may have the best antitrust, criminal, immigration and civil rights attorneys, but DOJ's staff's collective as well as individual lack of expertise in the transportation area and specifically, the trucking area, could result in irrational and harmful decisions to both suppliers and users of transportation services.

Question. Please provide the Committee with ATA's view on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. Besides the reasons stated in response to the prior question, ATA believes an independent Interstate Commerce Commission is necessary. The concept that economic decisions should be made by an independent agency; the consistency of action over a period of years that normally goes with the independence of the agency; the minimal affect of political influence in the decisions; the expertise that develops in the agencies senior management when it does not change every four or eight years: these are major factors why the maintenance of an independent ICC is important to the trucking industry.

While some of the responsibilities and duties of the Commission may be eliminated or transferred, those that require an independent mind, free of the influence of competing modes, should remain at the ICC.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. There are some administrative functions that could be transferred to the DOT. However, to be successfully and effectively performed, the transfer would also require the transfer of personnel, records and equipment. For instance, the insurance filing function of the ICC could be transferred to the DOT. But, in spite of having parallel jurisdiction over the subject matter, DOT over the years has declined to require those carriers subject to its jurisdiction to actually file evidence of insurance. DOT has instead relied on post-accident or investigation enforcement of its insurance responsibilities. The post-facto enforcement of the insurance requirement does not protect the public as effectively as requiring carriers to file and maintain evidence of insurance. The allow carriers to self-insure. Currently the ICC has authorized over 45 motor carriers to self-insure. The ICC, through the use of reports and other requirements maintain a vigilance over these carriers to ensure that they continue to meet the standards set for self-insurance. This is an important and essential process the DOT has declined to adopt in the past, although it already possesses the authority to do so.

An option to transfer to the DOT is the review and approval of rail mergers. DOT already performs this function with respect to airlines and could easily expand its jurisdiction to include railroads.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. There are many useful roles that the ICC does and can continue to play in the transportation industry. First, recognizing the unique interstate nature of trucking and railroads, ATA believes it essential that there be some federal agency with the expertise and authority to set uniform national rules on such matters as: filing and disposition of claims; uniform bills of lading; reasonable practices of carriers (e.g. extension of credit, liability limitations); oversight of the financial stability of the industry; and approval and policing of the ability of carriers' to self-insure; other valuable functions currently performed by the agency include acting as a forum to resolve certain disputes between carriers and shippers, both individually and on an industry wide scope. The ICC also recently created an aggressive program to reduce lumper abuses. Further, the ICC provides a federal agency with expertise and authority involving the transportation of household goods, an industry which

involves the individual consumer. Unlike the business shipper, the consumer may not become involved with a trucking company more than once or twice in a lifetime.

Question. What is ATA's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. ATA supported the recent enactment of the Trucking Industry Reform Act of 1994. That Act eliminated the tariff filing requirements for individual rates of motor common and contract carriers as well as revised the entry standard for non-household goods carriers. The new law, however, retains many of the essential aspects of the former "filed rate" doctrine, such as: ICC jurisdiction over motor carrier rate reasonableness; requirement that carriers must collect their freight charges; requirement that carriers must make their rates, rules, etc. available to the shipper; and prohibition against rebates and concessions off of the applicable rate. Further, ATA believes that collective tariffs such as classification and mileage guides, as well as general rate increases, should continue to be filed with the ICC.

SECTION 211

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on ATA and its members?

Answer. The enactment of Title VI—Intrastate Transportation of Property of the Airport Improvement Program Act, has no direct effect or relationship to the budget of the Interstate Commerce Commission. The ICC regulates only interstate transportation by motor carrier. However, one provision of Title VI does establish the rules and regulations of the ICC as the standard that the states must follow in those areas of economic regulation which the states may continue to exercise. Therefore, for purposes of national uniformity it is even more important to maintain the ICC and its national standards.

One aspect of the Interstate Commerce Act that could and should be eliminated is the provision authorizing the states to assess ICC regulated motor carriers an annual flat per vehicle fee of up to $10. The program, administered by the ICC, serves no purpose. The insurance filings on which this program is based are duplicative of the ICC's insurance filing requirements. The ICC information is readily available to both individual and state authorities. Further, the ICC data is up-to-date, while the information filed with the states may be out-of-date as soon as it is filed. The program constitutes no more than a per-vehicle tax by the states on the motor carrier industry and an artificial means by which the states may continue to regulate the operations of motor carriers. If Congress revokes this grant of authority to the state, it must be careful to prohibit the states from replacing with another registration or fee program.

In addition to the points made above about the need to retain the independence of the ICC, the worst possible result would be to eliminate the ICC's budget and leave its laws and regulations unchanged. This would freeze collective rate filings at the ICC and prevent larger mergers and acquisitions. This would not be pro-regulation or anti-regulation—it would be anarchy.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect ATA members' everyday business decisions?

Answer. The undercharge crisis involved claims by the estates of bankrupt or otherwise defunct carriers against shippers. No active members of ATA were, to our knowledge involved in that fiasco. The way the crises effected the everyday operations of our members was that it created distrust between shippers and carriers. The provisions of the Negotiated Rates Act, and even more so, the provisions of the recently passed Trucking Industry Reform Act of 1994, have done much to restore this trust. The elimination of the ICC's budget would be detrimental to this improvement in relations and would probably cost shippers millions in claims from defunct carriers which would be settled by the bankruptcy courts. The courts have notoriously favored the estates of the carriers over the shipper.

TARIFF FILINGS

Question. Explain to the Committee what merits ATA sees in maintaining the filed rate doctrine, particularly tariff filings.

Answer. ATA supported and was instrumental in developing the provisions of the Trucking Industry Reform Act of 1994 which eliminated the tariff filing requirement for individual rates of non-household goods carriers. However, ATA believes it essential that the tariff filing requirements for collect tariffs, both rules and rates, be maintained at the ICC. Furthermore, because of the involvement of unsophisticated consumers in the household goods industry, ATA believes it important that the ICC maintain its existing jurisdiction over HHG rates and practices.

Question of Senator Hollings and Answer Thereto by Mr. Schneider

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the Schneider Trucking Company (STC), and what would STC's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. Schneider National, Inc., a/k/a Schneider Trucking Company ("STC") does not believe that the continued existence of an independent Interstate Commerce Commission is necessary per se. STC believes that elimination of the ICC without elimination of outmoded statutes and regulations will, however, create a void likely to be filled by the states or by civil litigants. For example, simply unfunding the ICC without eliminating the requirement that acquisition of financial control of a motor carrier (currently found at 49 U.S.C. 11343) would result in no motor carrier being able to acquire another since the ICC would not be in a position to grant the requisite approval. STC's point is not to preserve the ICC; rather, it is to eliminate unneeded underlying statutes and regulations simultaneously with elimination or reduction of the ICC's role.

Questions Asked by Senator Exon and Answers Thereto by Mr. Schneider

ELIMINATION OF ICC

Question. What would be the effects on Schneider Trucking Company (STC) if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. Mere elimination of the ICC coupled with transfer of all of its existing responsibilities to the Department of Transportation and Department of Justice will have little, if any, effect on STC, except to the extent that DOT or DOJ, because of their other responsibilities, feel less compelled to continue financial reporting or other such activities for the own sake to justify continued funding.

Question. Please provide the Committee with STC's views on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. STC's main concern relates to insurance. While STC generally believes that the various agencies require too many filings, STC supports a requirement that motor carriers (indeed all vehicle operators) be required to provide proof of insurance. While currently DOT has parallel jurisdiction with the ICC, it has not adopted procedures to allow carriers to self insure, and relies primarily upon post facto proof of responsibility rather than review of ICC insurance filings. STC does not object to a transfer of these functions from the ICC to DOT, but wishes to preserve both insurance filings and self insurance procedures.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. STC believes that, in addition to the transfer of current ICC insurance filings, many rail related functions, such as approval of rail mergers, could and should be transferred to DOT.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. While the ICC may play a useful role in other transportation modes, and while STC does not object to the existing ICC rules regarding uniformity for bills of lading and extension of credit, STC does not believe that ICC oversight of the freight motor carrier industry is required. STC believes that oversight of the house-

hold goods industry, which affects primarily consumers, may be appropriate, although such oversight could be properly placed with the DOT.

Question. What is STC's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. STC favored elimination of the filed rate doctrine. The undercharge crisis was a direct result of allowing the filed rate doctrine to continue in existence long after the ICC ceased any meaningful review of rates.

SECTION 211

Question. On June 16, the Senate passed Section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on STC?

Answer. The Airport Improvement Bill has no direct effect or relationship on the budget of the ICC. The ICC's regulation of motor carriers is limited to those engaged in interstate transportation.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without change sin its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect STC's everyday business decisions?

Answer. STC has not been directly affected by the undercharge crisis. The distrust between shippers and motor carriers arising as a result of the filed rate doctrine and its application in the undercharge crisis will be largely eliminated by the elimination of the filed rate doctrine.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. FOLEY

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the National Motor Freight Traffic Association, Inc. (NMFTA) and its membership, and what would NMFTA's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. The existence of an independent ICC is critical to the goal of administering the National Transportation Policy established by the Congress. In the narrow sense, in the context of the question as to NMFTA and its members, an independent ICC is the only practical forum for effecting economic regulation of for-hire trucking in interstate commerce.

Expertise is required in the implementation of the statutory provisions and the applicable regulations. That expertise is not in residence at any of the Executive Branch departments. The meat axe approach of the House is destructive. The House action is founded on flawed theories that there are duplications of programs that can be eliminated by simply transferring people. The fact is that these two organizations are not machines with interchangeable working parts. Eliminating the ICC in that totally disorganized fashion would create a mass of confusion and chaotic conditions into which NMFTA's motor common carrier members would be plunged without any meaningful opportunity to plan and prepare for it.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. FOLEY

ELIMINATION OF ICC

Question. What would be the effects on National Motor Freight Traffic Association (NMFTA) members if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. Eliminating the ICC and dividing its functions between the Executive Branch departments would have serious negative effects on NMFTA's members. If the transfer of the ICC's functions contemplated simply moving the ICC's Commissioners and the agency's staff to the buildings housing the Department's, the effect on NMFTA's members would perhaps be minimal. However, that is not what is contemplated under the House action, as I understand it. For example, DOT has testi-

fied that it has no FTE ceiling in which to absorb the functions or the personnel. The results of the House action, in that circumstance would be destructive in those areas of economic regulation which are significant to NMFTA's members: rate and tariff matters; mergers; and Negotiated Rates Act issues, to name a few.

Question. Please provide the Committee with NMFTA's views on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. In our view, adoption of the House action would have seriously disruptive and negative affects. First, there is the lack of timely notice and reasonable opportunity to prepare for massive disruption. There simply is no reasonable notice and preparation time available to the industry. Second, there is the matter of the substantive provisions of the Interstate Commerce Act which will be lost in the shuffle.

Significant sections of the law and regulations will still apply to the carriers, but the administrators of those regulatory provisions will be gone. Almost as bad would be that the person(s) to whom the former ICC function has been assigned in the "new" department, will be unable to answer or investigate the inquiry or complaint. Enforcement would collapse. Expertise on transportation matters would evaporate. Politics would eventually permeate the regulatory system, which under the mandate of the Congress, is to be administered impartially.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. NMFTA's members have not formulated an official policy on this, but I can offer my personal view—one based on 31½ years service at the Commission, both prior to and subsequent to the creation of DOT on April 1, 1967. As a practical matter I believe the answer is, no. In the sense that the Congress could enact legislation which transfers responsibilities, then such an action would be "legitimate." But that begs the question as to how the transferred duties would be administered by the transferee department. Under the House action, the administration of the ICC's duties by DOT could not, in my view, be done effectively, efficiently, or timely.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. The Commission is the creation of the Congress, specifically designed and mandated to administer the Constitutional prerogatives of the Congress in regulating the for-hire surface transportation in interstate commerce. It is an important role, but the usefulness of the Commission depends on its functions. If the Congress removes the Commission's duties and responsibilities over the economic regulation of for-hire trucking, there is hardly any useful role for it to play in that field.

Some of NMFTA's members have significant intermodal rail partnerships. The Commission could have a useful part in that aspect of the business, but it has exempted TOFC/COFC operations all away except Plan I (and wants to exempt Plan I, too)

Question. What is NMFTA's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. NMFTA opposes elimination of the filed rate doctrine. The very essence of that doctrine is to protect the person responsible for paying the freight charges. Lately, of course, shipper's representatives have been calling for the elimination of the filed rate doctrine because of the undercharge problem, even though Congress resolved that problem with its enactment of the Negotiated Rates Act of 1993. Elimination of the filed rate doctrine will not magically end disputes between shipper and carrier as to the proper freight charges, but it will eliminate recourse to the Commission for the resolution of rate reasonableness and rate applicability questions and leave all the parties subject to the decisions of various courts throughout the U.S.

NMFTA's members are all certificated motor common carriers, folding operating authorities from the ICC as well as state regulatory commissions. NMFTA never had a policy of opposing motor carrier operating authority applications. As many interested persons have done, NMFTA's members have observed the Commission's change of policies with respect to the statutory burden for an applicant. In recent years the Commission has been granting well over 99 percent of the applications. The procedure has become basically a matter of the applicant's "registering" with the Commission and showing itself to be fit from the standpoint of safety and insurance. Even now there is practically open entry. NMFTA supports the provisions in

S. 2275 which essentially codify into law what has been happening for several years in the licensing arena.

SECTION 211

Question. On June 16, the Senate passed Section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on NMFTA and its members?

Answer. NMFTA supports the restoration of the ICC's budget—all of it. Eliminating the ICC's budget for motor carrier economic regulation would not save money for taxpayers, motor carriers or shippers. The taxpayer gets no break when the government transfers employees from one building to another. Moreover, the regulated motor carriers and their shipper customers are plunged into an environment in which the expertise of the regulator—the agency to which both carrier and shipper turn for expert advice and informal resolutions of problems, is gone. The resolution of differences in the formal setting moves from the agency to the court rooms all around the country; and at no cost savings, to understate the point.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect NMFTA members' everyday business decisions?

Answer. Thankfully the undercharge problem is no longer a crisis, thanks to the action taken by the Congress in enacting the Negotiated Rates Act of 1993 (NRA). However, there will be a return to the deplorable and rampantly unlawful environment of the off-bill discounting scams again if tariff filing is eliminated and if the Commission has inadequate funding and personnel to enforce the full disclosure provisions of the NRA. Further, there will be no practical way to enforce the tariff integrity provisions of the NRA, concerning secret account codes and range tariffs, if the Commission funds are eliminated.

NMFTA vigorously supported the enactment of the NRA. The members welcomed relief from the enormous pressures imposed on them for kickbacks and rebates via schemes and practices which were called "off-bill discounting." However, they are very concerned now, fearful that the elimination of the ICC's funding will erase the gains made via the NRA and plunge them back into the morass of wanton and reckless demands made on them in off-bill discounting.

RATE REASONABLENESS DETERMINATIONS

Question. In prepared testimony, NMFTA indicated that public tariff filings with the ICC are necessary to effectuate rate reasonableness determinations. Please explain.

Answer. The principal goal of public tariff filing with the Commission is to enhance competition via the medium of making the price for any given trucking service available to the shipping public and competing carriers. A secondary goal is simply to enable the Commission to determine—on complaint or on its own motion—the reasonableness of a filed rate. Again, the filing is informational whether the information is to the public, to the industry or to the agency. The Commission, as a practical matter, has no efficient or effective way to determine the reasonableness of an unfiled rate. Frankly, it will be almost impossible for the Commission to do so with the budget cuts that are contemplated.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. HARPER

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the Association of American Railroads (AAR) and its membership, and what would AAR's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. The ICC was established by Congress as an independent regulatory agency to ensure as much as possible that regulatory decisions pertaining to rail transportation would be made in a neutral, non-partisan manner. Thus, Congress insulated the ICC from the changing political make-up of the Executive Branch and guarded against politicization of the decision-making process by providing for a

board of independent Commissioners appointed by the President from both political parties.

In its action on the Fiscal Year 1995 Department of Transportation Appropriations Bill (H.R. 4556), the House of Representatives voted to eliminate all funding for the ICC. The House action, however, did not eliminate the ICC's significant rail regulation functions, but merely contemplated that these functions ultimately would be transferred to the Department of Transportation (DOT).

However, no orderly process was provided for to ensure that existing cases would not have to begin anew. Further, how and what function would be transferred was left unexplained. AAR and its membership would have been confronted with procedural chaos.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. HARPER

ELIMINATION OF THE ICC

Question. Much of the debate over funding for the Interstate Commerce Commission (ICC) relates to reform of motor carrier regulations and practices. But, how does the House proposal particularly affect the Association of American Railroad (AAR) members as it pertains to the ICC's rail regulation functions?

Answer. The House action seeking to sunset the Interstate Commerce Commission (ICC) merely contemplates the ultimate transfer of the ICC's existing rail regulatory functions to the Department of Transportation. AAR sees no public policy benefits from a mere transfer of authority from the ICC to DOT. A reduction in regulatory activity, not a mere shifting of the jurisdictional base, should be Congress' objective.

Question. What would be the effects on AAR members if the ICC was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. A transfer of existing rail regulation functions from an independent agency such as the ICC to Executive Branch agencies such as DOT and DOJ would sacrifice the benefits of the existing organizational structure established by Congress to ensure independent and non-partisan decision-making with respect to rail regulation. Moreover, at present the ICC possesses expertise in railroad economic regulation that no other federal agency—including DOT and DOJ—possesses. A transfer of rail regulation authority from the ICC to DOT and DOJ would thus result in a significant loss of government expertise in rail economic regulation matters.

In respect of rail mergers, the ICC need not be controlled by competitive considerations; they are to be taken into account in terms of the general public interest. It is not known how DOJ would interpret this mandate of the Interstate Commerce Act.

In addition, DOT administers federal funds for Amtrak and some may challenge DOT's impartiality with respect to Amtrak compensation issues that are currently under ICC jurisdiction.

Question. Please provide the Committee with AAR's views on how shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. See answers to previous questions above.

In addition, the House action sunsetting the ICC has the potential to create serious uncertainty and administrative chaos unless provision is first made for the actual transfer to DOT of ICC functions and the handling of pending ICC proceedings. At a minimum Congress must ensure that, if it decides to sunset the ICC, the action is taken in orderly fashion and provision is made for the handling of pending cases.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. AAR's testimony and concerns pertain only to rail regulation matters. AAR takes no position on trucking regulatory reform issues.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC plan in the transportation industry?

Answer. AAR takes no position on trucking regulatory reform issues.

Question. What is AAR's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. AAR takes no position on trucking regulatory reform issues.

SECTION 211

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on AAR and its members?

Answer. AAR takes no position on trucking regulatory reform issues.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect AAR members' everyday business decisions?

Answer. AAR takes no position on trucking regulatory issues such as the Negotiated Rates Act of 1993.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER BY MR. CLAPP

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the Roadway Services, Inc. (RSI), and what would RSI's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. Our concern was that the funding for the agency was eliminated without having dealt with the requirements of the Interstate Commerce Act itself. To the extent that the requirements of the Interstate Commerce Act are to remain, we believe the most suitable agency to administer the Act is one that is independent and which has expertise in the area, the Interstate Commerce Commission.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. CLAPP

Question. What would be the effects on Roadway Services, Inc. (RSI), if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. We cannot predict with any confidence what the impact would be if the jurisdiction over Roadway Services were to be shifted from the Interstate Commerce Commission to the Department of Transportation and the Department of Justice. This uncertainty is one of the reasons for our opposition to that move.

Question. Please provide the Committee with RSI's views on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. Some aspects of ICC jurisdiction are quasi-judicial. We believe such responsibilities are best placed in an independent agency, not an agency of the Executive Branch such as the DOT or DOJ. We believe the transportation industry would be adversely affected by this loss of assurance of impartiality.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. It is reasonable to assume that DOT could assume responsibility for granting operating authority, which is essentially a licensing function, to the DOT. However, we also see no particular advantage to be gained by this transfer of function.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. There should be a free market in transportation. There should be a minimal set of rules which govern the conduct of the business (as indicated in our testimony) and the ICC is the logical agency in which to vest authority to maintain compliance with the rules. It is our contention that in the absence of this authority, it will be assumed by one or more state, federal or local agencies such as state attorneys general or the FTC, etc.

Question. What is RSI's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. We believe the filed rate doctrine should be retained to the extent that it would require notice of the rate to be charged in writing prior to the transaction, with the right of reliance of both parties on the rate thus disclosed.

SECTION 211

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on RSI?

Answer. Since the elimination of intrastate regulation by section 211 does not deal with interstate transportation, RSI would be adversely affected by the elimination of the ICC's budget without corresponding elimination of the regulatory requirements of the Interstate Commerce Act.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect RSI's everyday business decisions?

Answer. Most of the "horror stories" which led to the passage of the Negotiated Rates Act resulted from undercharge claims asserted by trustees of bankrupt motor carriers. Roadway Services is not affected by the provisions for resolutions of issues arising under this Act which are vested in the ICC. Clearly, however, thousands of shippers are affected. The related considerations which govern RSI business decisions are to insure that all rates are properly published in advance of their application and that the provisions governing off bill discounting are complied with.

MARKET-BASED SYSTEM

Question. What are RSI's reasons for supporting a market-based system In the motor carrier industry and what role would the ICC play in such a system?

Answer. Our country has evolved since the Motor Carrier Act of 1980 into an essentially market-based system. It is our view that the statute needs to be updated to reflect today's business reality. The minimum rules necessary to govern such a system should be overseen by the ICC in order to provide the advantage of a uniform scheme which would apply throughout the country.

Question Asked by Senator Hollings and Answer Thereto by Mr. Trout

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to Cornhusker Motor Lines, Inc., and what would Cornhusker's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. As I stated, we are fearful that the ICC could become another "political" agency and lose its consistency and objectivity. Our life is in this truckline and it is absolutely necessary that we have stability and long-term rules to live by. I truly believe all of that would be lost under the direction of the DOT or another similar "political" agency. Again I state that if the ICC is eliminated, there must be a way that the "uniformity" issues remain intact.

Questions Asked by Senator Exon and Answers Thereto by Mr. Trout

ELIMINATION OF ICC

Question. What would be the effects on Cornhusker Motor Lines, Inc. (CML), if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. A major concern that Cornhusker had was the tariff filing. However, this concern has now been eliminated by the Exon-Packwood proposal and becomes a non-issue to us. I believe it is a vital necessity to maintain the independent status

of the ICC. I see problems by giving the DOT those responsibilities and foresee the DOT handling such matters based on political decisions rather than independent, objective decisions. I think the superior idea is Senator Exon's suggestion to merge 2 or more independent agencies, such as the ICC and the Federal Maritime Commission. Bottom line, it is imperative that the "uniformity" issues[1] remain intact so that our ability to travel throughout the 48 states remains consistent and void of the bureaucratic roadblocks of each individual state.

Question. Please provide the Committee with CML's views on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. By taking the responsibility for the transportation industry out of an independent agency such as the ICC, and putting it into the hands of a "political" agency such as the DOT, the long-term stability of our industry is taken away. The trucking industry will lose consistency and objectivity and will be subject to the ever-changing politics of different administrations.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. I believe that what little bit of safety regulations the ICC currently handles could be successfully transferred to the DOT's supervision, as well as any insurance matters the ICC presently handles.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. a) NAFTA oversight; b) Oversight of Intermodal activities; c) Oversight of the Negotiated Rates Act—There is a strong need for an agency to oversee ALL modes of transportation (air, land, rail and water); and d) Rate reasonableness—which consists of those matters affecting collectively formed class rates, classification publications, route guide publications and general increases.

Question. What is CML's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. YES!!! We agree and applaud wholeheartedly the elimination of the filed rate doctrine!

SECTION 211

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If a intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on CML?

Answer. My main concern, again, is the "uniformity" issues. It would severely hurt Cornhusker if those issues were not protected.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect CML's everyday business decisions?

Answer. No oversight would mean that a lot of innocent shippers and carriers could be bilked out of millions of dollars, as was the case prior to the Negotiated Rates Act. This is a problem which affects the "less than truckload carriers" more. Presently, Cornhusker's business is 99 percent individual contracts between us and our shippers. With this new action of Congress, will move immediately to 100 percent contracts, so ultimately it will have no bearing on our operations.

[1] Uniformity Issues are: Contractual relationships between shippers and carriers; Contractual relationships between carriers and owner operators; Generally accepted credit and collection practices; Implementation of NAFTA; Regulation of the role and function of brokers; Regulation of claims; Regulation of lumping practices; Appropriate complaint procedures; Resolution of undercharge issues; and Financial fitness, including insurance and self-insurance matters.

EXEMPTION AUTHORITY

Question. In prepared testimony, CML expressed some concerns about granting the ICC too broad an exemption authority. What exemptions does CML support, and why?

Asnwer. We support the exemptions that were proposed in Senator Exon's bill, however we object to any additional exemptions. The reason behind this is because in our business, we must plan at least 2 to 3 to 4 years in advance. If the ICC were to have too broad an exemption authority, some of our long-range plans could be affected by changes created by a whim. We can live with most rules—we just want those rules defined for a long period of time and then not changed. As I stated in earlier responses, we are fearful that the ICC could become another "political" agency and lose its consistency and objectivity. Our life is in this truckline and it is absolutely necessary that we have stability and long-term rules to live by. I truly believe all of that would be lost under the direction of the DOT or another similar "political" agency. Again I state that if the ICC is eliminated, there must be a way that the "uniformity" issues remain intact.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. DOLAN

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to Union Pacific Railroad (UPR), and what would UPR's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. The ICC is an independent, largely adjudicatory agency of the Federal government. This type of agency provides insulation from Executive Branch politics. Additionally, the staggered terms of the Commissioners and the fact that the Commissioners are appointed from both political parties promotes non-partisan public interest decisions.

The House action of eliminating funding for the ICC would create chaos in the transportation industry. Union Pacific as a rail and motor carrier would still be bound by all applicable rules and regulations associated with the Interstate Commerce Commission. However, under the House action, no agency would exist. Pending cases would be left in limbo and all on-going and future actions would be suspended. For instance, the decision on our Union Pacific/Chicago & Northwestern control case is due in early 1995. The Commission is statutorily required to make a ruling on this case within 31 months of the application being filed. The House action did nothing to change this requirement, yet there would be no ICC to make the decision. Additionally, Overnite Transportation Company, UP's motor carrier subsidiary, might file a rate with the ICC on September 30, 1994. Under the House action, Overnite would not be able to change that rate as rate changes are required to be filed at the ICC.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. DOLAN

ELIMINATION OF THE ICC

Question. Much of the debate over funding for the Interstate Commerce Commission (ICC) relates to reform of motor carrier regulations and practices. But, how does the House proposal particularly affect Union Pacific Railroad (UPR) as it pertains to the ICC's rail regulation functions?

Answer. The ICC performs certain key rail functions which, it is generally agreed, must continue to be performed by some governmental agency. These include passing on rail mergers and control transactions, deciding whether to permit railroad line abandonments, setting terms for railroad joint facilities when the parties cannot agree, and maximum rate regulation in the limited situations where effective competition does not exist.

The House action of eliminating funding for the ICC would create significant problems for Union Pacific. Union Pacific Railroad would still be bound by all applicable rules and regulations associated with the Interstate Commerce Commission. However, under the House action, no agency would exist. Pending cases would be left in limbo and all on-going and future actions would be suspended. For instance, the decision on our Union Pacific/Chicago & Northwestern control case is due in early 1995. The Commission is statutorily required to make a ruling on this case

within 31 months of the application being filed. The House action did nothing to change this requirement, yet there would be no ICC to make the decision.

Question. What would be the effects on UPR if the ICC was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. The ICC Is an independent, largely adjudicatory agency of the Federal government. This type of agency provides insulation from Executive Branch politics. Additionally, the staggered terms of the Commissioners and the fact that the Commissioners are appointed from both political parties promotes non-partisan public interest decisions. As a cabinet level agency, the Department of Transportation does not meet this standard, nor does the Department have the staff with the necessary expertise to carry out the functions of the ICC.

An example of the conflicts of interest that could occur Is Amtrak. Other than the Northeast Corridor, all Amtrak trains operate over freight rail lines, and compensation questions are decided by the ICC. Because the Executive Branch has a direct interest in assuring that Amtrak's expenses are reduced to the maximum extent possible, DOT would have a built-in bias in resolving contract issues between Amtrak and freight railroads.

Moving oversight of rail mergers to the Justice Department or the FTC is also no answer. The Interstate Commerce Act establishes a multi-factor public interest standard for rail mergers. This standard is different from the standard for mergers in general under antitrust laws. This same test could be transferred to DOJ or the FTC; however, getting Justice or the FTC staffed up to learn this area would simply waste resources and duplicate expertise that already exists at the ICC.

Question. Please provide the Committee with UPR's views on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. The recently passed House provision eliminates funding for the ICC. The expectation is that all ICC functions would be transferred to the Department of Transportation. UP has a number of concerns with such a transfer. First and foremost is that the ICC is an independent and adjudicatory body. These features are necessary to arrive at sound public policy outside the vagaries of Executive Branch politics. However the transfer is structured, it wouldn't change the fact that the DOT is a Cabinet-level agency reporting directly to the President, not an independent agency. Simply moving the ICC jurisdiction to the Department of Transportation would achieve no cost savings and makes no sense to Union Pacific.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. We believe the study proposed in the Exon/Packwood bill on whether or not ICC responsibilities could be administered by DOT is the best approach right now. We look forward to participating in that study.

Question. In light of the various arguments supporting further deregulation of the motor carrier industry, what future useful role could the ICC play in the transportation industry?

Answer. We are satisfied with the layout set forth in the Exon/Packwood bill.

Question. What is the UPR's view of the elimination of the filed rate doctrine in addition to elimination of the public convenience and necessity standard with respect to new applicants?

Answer. We applaud the elimination of the filed rate doctrine and the general approach to these issues set forth in the Exon/Packwood bill.

SECTION 211

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any would elimination of the ICC's budget have on UPR?

Answer. The passage of the Federal Aviation Authorization Act of 1994 will have little effect on the Union Pacific Railroad. The intrastate deregulation measure only applies to the trucking industry.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statu-

tory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect UPR's everyday business decisions?

Answer. The undercharge crisis arose because trucking companies and shippers agreed on a rates that were not filed at the ICC. A number of these trucking companies subsequently went out of business and their creditors went to the shippers to recover the difference between the last filed rate and the rate on the trucking company's books. As a rail carrier and the fourth largest less-than-truckload motor carrier in the country, the undercharge problem did not, and does not, affect our everyday business decisions.

S. 2275

Question. As a representative of a Class I railroad and a large, less-than-truckload motor carrier, please provide the Committee with UPR's views on how like companies currently are affected by the ICC, and make any comments UPR may have about the reforms in S. 2275, the Trucking Industry Regulatory Reform Act of 1994.

Answer. In the early 1980's the rail and motor carrier industries were largely deregulated, and the ICC has done a good job of implementing these reforms. Union Pacific supports deregulation and decreased spending, and we welcome initiatives that further both these goals. We believe S. 2275 is an excellent first step toward reinventing the ICC. It is clearly time to do away with many of the motor carrier functions at the ICC. We also look forward to participating in the studies to identify additional areas at the ICC that can be streamlined.

QUESTION ASKED BY SENATOR PACKWOOD AND ANSWER THERETO BY MR. DOLAN

Question. Senator Exon and I have introduced S. 2275. This bill eliminates a number of motor carrier functions at the Interstate Commerce Commission. If you would, please submit for the record a list of additional functions that you believe can be eliminated or reduced. Your submission need not be limited to railroad functions.

LETTERS FROM JAMES V. DOLAN, VICE PRESIDENT—LAW, UNION PACIFIC RAILROAD CO.

SEPTEMBER 7, 1994.

The Honorable BOB PACKWOOD,
U.S. Senate,
Washington, DC 20510–3702

DEAR SENATOR PACKWOOD: Please accept this as my response to your post-hearing question pertaining to my testimony before the Senate Committee oversight hearing on the Interstate Commerce Commission.

We support S. 2275 and the study of ICC functions that it requires. We believe there may be several functions now required of the ICC either by statute or its own practice which could be eliminated or modified. The ICC has begun the study process required by S. 2275, and Union Pacific is participating in that effort through its membership on the AAR group considering the entire range of ICC activities.

Instead of identifying here specific functions that could be eliminated we would rather continue with the current process as we want to take advantage of the participants collective knowledge and experience. We believe that the rail industry will develop a comprehensive list of revisions in the very near future and would be willing to share that list with the Senator as soon as it is available.

Sincerely,

JIM DOLAN.

SEPTEMBER 30, 1994.

The Honorable BOB PACKWOOD,
U.S. Senate,
Washington, DC 20510–3702

DEAR SENATOR PACKWOOD: In my September 7 letter to you regarding your post-hearing question about the ICC functions which could be eliminated or modified, I indicated that Union Pacific was participating in an Association of American Railroads effort to identify such functions.

That effort was recently completed, and the AAR recently filed extensive comments with the ICC on behalf of the rail industry in Ex Parte No. 522, Report on Interstate Commerce Commission Functions.

Enclosed is a copy of that AAR filing. Union Pacific endorses the recommendations made in the filing, which include both regulatory changes appropriate for the ICC and, in Section IV, additional changes in statute which would require Congressional action. We urge your consideration of this document.

Sincerely,

JIM DOLAN.

[Comments of the Association of American Railroads and Its Member Railroads, Ex Parte No. 522, may be found in the committee files.]

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. BARRETT ON BEHALF OF MR. KAUFMAN

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the National Grain and Feed Association (NGFA), and what would NGFA's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. The grain industry is comprised of thousands of grain sellers and buyers, many of which are small, country elevator businesses, which are highly dependent on rail service and almost entirely captive to a single railroad. These small, rail-dependent shippers, usually located in remote, rural areas, are structurally and financially ill-equipped to become entangled in the bureaucratic web of a huge Cabinet-level agency in order to resolve disputes with rail carriers.

The grain industry relies on the presence of an independent regulatory agency, responsive to Congress, to try to balance the interests of small shippers and large railroads. Often, the mere existence of this type of independent agency acts to deter predation before predatory thoughts mature into predatory acts. In large measure, that is so because the independent agency is not only accessible, but has a tradition of equity which generally manages to rise above the particular politics of the moment and to persevere over time, thus lending helpful stability to carrier-shipper relationships.

Should the ICC be eliminated and its responsibilities over rail service transferred to DOT, the resolution of disputes between shippers and carriers, as well as the establishment of policy through rulemaking, almost inevitably would become far more subject to political influence than at present. Where transportation issues are concerned, that is not a specter which appears advantageous or desirable to the average grain shipper. Giant railroads still control the lion's share of agricultural transportation and are represented in Washington by teams of full-time lobbyists. Grain companies are not in the transportation business and do not have transportation lobbyists. Indeed, most grain companies employ no lobbyists, not to mention a Washington, DC lobbying corps.

The Department of Transportation was designed to be responsive to the needs of the transportation industry, and not to the needs of shippers. Included within DOT are modal administrations to advocate and develop policy related to highways, airways, seaways, and railroads. Shipper concerns were to be voiced elsewhere, and that remains the structure of DOT. DOT no doubt is proficient at what it does, but the grain industry has serious concerns regarding DOT's ability to provide a continuum of even-handedness when it comes to balancing the interests of carriers and shippers.

Neither DOT nor DOJ is structured to provide knowledgeable, prompt regulatory responses of the type necessary to implement the Interstate Commerce Act. For example, the Interstate Commerce Act provides that carrier tariffs which appear to violate the law and be harmful to shippers can be suspended before they become effective if a proper request is made and supported by affected shippers. Agency responses in such circumstances must be extremely prompt in order to meet statutory deadlines, and the ICC complies with those deadlines through a combination of delegated staff authority and expedited appeals, where necessary, to members of the agency. In DOT and DOJ, however, decision-making normally requires a series of inputs, including political. The grain industry unfortunately believes that administration of the Interstate Commerce Act by Cabinet agencies not only would politicize the decisional process, but, through untimely action, could deprive shippers of all effective remedies under the Interstate Commerce Act.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. BARRETT ON BEHALF OF MR. KAUFMAN

Question. What effect would the House's proposal to transfer jurisdiction of duties from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) have on shippers in the transportation industry?

Answer. So long as there is federal legislation regulating rail transportation, agricultural shippers requiring resort to formal dispute resolution are bound to pursue that resolution under federal statutes and may not do so in state or local courts. Transferring jurisdiction over those federal statutes from the ICC to DOT would shift the forum to which small grain shippers must apply for relief from an independent agency, responsive to Congress, to the Executive branch and to a Cabinet agency that was established to promote the interests of transportation modes, rather than transportation customers. Rail shippers would find themselves in the unprecedented position of being compelled to seek dispute resolution from an arm of government which has developed a close working relationship with the railroad industry, and then possibly forced to pursue costly judicial appeals.

Question. How would the National Grain and Feed Association (NGFA) members' business practices generally be altered, if the ICC were to be eliminated and the statutory requirements remain in the Interstate Commerce Act?

Answer. Members of NGFA could find themselves in a no-man's land if the ICC were eliminated but the Interstate Commerce Act retained. The Interstate Commerce Act confers exclusive and plenary jurisdiction on the Interstate Commerce Commission to resolve certain types of disputes between shippers and rail carriers, such as those involving rate discrimination, unreasonably high rates, unreasonable practices, discriminatory contracts for the transportation of grain, freight car supply and distribution, and the common carrier obligation to provide rail service on reasonable request. So long as jurisdiction over these matters is conferred on a government agency, courts are powerless to act. With no ICC, no entity would have jurisdiction to resolve such disputes. The result would be a free hand for carriers to trample the rights of all customers, especially captive customers.

Question. What would be the effects on NGFA members if the ICC was eliminated and its responsibilities were divided between DOT and the Department of Justice?

Answer. Neither DOT nor DOJ is structured to provide knowledgeable, prompt regulatory responses of the type necessary to implement the Interstate Commerce Act. For example, the Interstate Commerce Act provides that carrier tariffs which appear to violate the law and be harmful to shippers can be suspended before they become effective if a proper request is made and supported by affected shippers. Agency responses in such circumstances must be extremely prompt in order to meet statutory deadlines, and the ICC complies with those deadlines through a combination of delegated staff authority and expedited appeals, where necessary, to members of the agency. In DOT and DOJ, however, decision-making normally requires a series of inputs, including political. The grain industry unfortunately believes that administration of the Interstate Commerce Act by Cabinet agencies not only would politicize the decisional process, but, through untimely action, could deprive shippers of all effective remedies under the Interstate Commerce Act.

Question. If Section 211 of the Airport Improvement Act seeks to deregulate the motor carrier industry by eliminating certain intrastate regulations, what would be the further impact of the House's ICC sunset proposal on NGFA members' daily operations?

Answer. The transportation of bulk grain by motor carrier is not subject to economic regulation under the Interstate Commerce Act or, generally, under state statutes. NGFA, does not have a position on Section 211 of the Airport Improvement Act.

Question. Do NGFA member have any concerns regarding sunset of the ICC in the wake of the enactment of the Negotiated Rates Act of 1993?

Answer. Some members of NGFA, who make motor carrier shipments of agricultural products subject to economic regulation, have been ensnared in the undercharge trap. The Negotiated Rates Act offers an orderly means of disposing of undercharge claims.

Question. How do the operations of the ICC protect the numerous small companies in the grain industry without unduly burdening the rail industry?

Answer. The existence of an experienced regulatory body, capable of rendering timely decisions, when necessary, to resolve shipper-carrier disputes acts in many instances to deter discriminatory or unevenhanded carrier practices, and thereby narrows the need for litigation between shippers and carriers. Where an industry is aware that its customers' grievances will not receive timely or objective hearing,

some segments of that industry could be ill-inclined to pursue equitable practices and could have a propensity to take advantage of regulatory lapses in order to impose their will on those customers without effective market options. Through its decisions, the ICC has made it known to the carriers that plainly improper actions on their part will be blocked or reversed. By and large, the rail industry has prospered under this regime of enlightened regulation.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. MCCURDY

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the E.I. du Pont de Nemours and Company (DuPont), and what would DuPont's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. An independent ICC provides the best forum for fairly and rapidly adjudicating differences between shippers and carriers on an individual as well as a community level. History has indicated that the ICC reacts far more quickly to shipper concerns and appears to be less affected by the political implications of its decisions than the Department of Transportation. Moreover, the degree of functional expertise which currently resides within ICC could not be duplicated by the Department of Transportation in the short term. Further, shippers and carriers are familiar with the ICC procedures and precedent. The DOT's lack of expertise, procedures and established precedent will introduce great uncertainty within the shipper and carrier communities over their respective responsibilities under the Interstate Commerce Act and will, in the short run, significantly impede the rapid and equitable adjudication of disputes.

In addition, should the ICC be eliminated and its functions suspended, DuPont and shippers would be unable to enter into new lawful transportation contracts with railroads and existing contracts with railroads could not be lawfully amended to provide for new rates, routes and commodity movements. New tariffs for motor carriers and railroads could not be filed and therefore, would not be effective. Proposed mergers between key railroads in the east and west would not be reviewed, thereby injecting uncertainty and further complicating on-going commercial negotiations with shippers for transport services. Prevailing negotiated rate matters (overcharges) under the Negotiated Rate Act of 1993 would not be resolved, and, in addition, resolution of many issues involving the cross border movement of goods under the North American Free Trade Agreement would remain unresolved. In short, the movement of goods for DuPont and many other shippers would be curtailed, commerce would be adversely impacted and the consumer would face increased prices and perhaps product shortages.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. MCCURDY

ELIMINATION OF THE ICC

Question. What effect would the House's proposal to transfer jurisdiction of duties from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) have on shippers in the transportation industry?

Answer. The Department of Transportation lacks sufficient functional expertise to adjudicate disputes between individual shippers and carriers and between the shipper and carrier communities in general. Further, procedures which have been developed over time by the ICC and which have proven to be both fair and efficient would have to be recreated in any new agency. This would create unnecessary disruption and greater opportunity for error, uncertainty of result, and confusion among transporters and shippers alike. Finally, history has demonstrated that the ICC acts in a more rapid fashion and with less political interference than has been the case with the DOT. In summary, the short-term impact would be significant and adversely impact the movement of goods within the United States to the detriment of both the economy and the consumer.

Question. How would E.I. DuPont de Nemours and Company's (DuPont) business practices generally be altered, if the ICC were to be eliminated and the statutory requirements remain in the Interstate Commerce Act?

Answer. Should the ICC be eliminated and the statutory requirements remain in the Interstate Commerce Act, DuPont and other shippers would be unable to enter into new and lawful transportation contracts with railroads, existing contracts with railroads could not be lawfully amended to provide for new rates, routes and com-

modity movements. New tariffs for motor carriers and railroads could not be filed and therefore, would not be effective. Proposed mergers between key railroads in the east and west would not be reviewed, thereby injecting uncertainty and further complicating on-going commercial negotiations with shippers for transport services. Prevailing negotiated rate matters (overcharges) under the Negotiated Rate Act of 1993 would not be resolved, and, in addition, resolution of many issues involving the cross border movement of goods under the North American Free Trade Agreement would remain unresolved. In short, the movement of goods for DuPont and many other shippers would be curtailed, commerce would be adversely impacted and the consumer would face increased prices and perhaps product shortages.

Question. What would be the effects on DuPont if the ICC was eliminated and its responsibilities were divided between DOT and the Department of Justice?

Answer. Again, the Department of Transportation and the Justice Department lack sufficient functional expertise to adjudicate disputes between individual shippers and carriers and between the shipper and carrier communities in general. Further, procedures which have been developed over time by the ICC and which have proven to be both fair and efficient would have to be recreated in any new agency. This would create unnecessary disruption and greater opportunity for error, uncertain result and confusion among transporters and shippers alike. Finally, history has demonstrated that the ICC has reacted in a more rapid fashion and with less political interference than has been the case with the DOT. In short, the short-term impact would be significant and adversely impact the movement of goods within the United States to the detriment of the economy and the consumer.

Question. If Section 211 of the Airport Improvement Act seeks to deregulate the motor carrier industry by eliminating certain intrastate regulations, what would be the further impact of the House's ICC sunset proposal on DuPont's daily operations?

Answer. DuPont does not believe that Section 211 would significantly affect the operations of the ICC. We do not believe that its passage would significantly impact the sunsetting of the ICC as proposed by the House legislation.

NEGOTIATED RATES ACT

Question. Does DuPont have any concerns regarding sunset of the ICC in the wake of the enactment of the Negotiated Rates Act of 1993?

Answer. DuPont currently has a significant matter pending before the a Federal District Court. Expertise in tariff interpretation will be required in order to bring about a proper resolution of the outstanding issues. The matter should be referred to the ICC, under the Negotiated Rate Act, for review and possible resolution. DuPont believes that the ICC's expertise in the area will be invaluable in achieving a proper and equitable result in this matter.

Further, DuPont believes that the great majority of pending cases involving undercharge/overcharge issues should be referred to the ICC. The agency has the experience and necessary expertise required to resolve these matters. The absence of the ICC would cause these matters to be resolved in the Courts which will add significant cost, delay and, in many cases, improper results. The ICC must be preserved and permitted to fulfill the role assigned to it by Congress under the Negotiated Rates Act of 1993.

Question Asked by Senator Hollings and Answer Thereto by Mr. Velten

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the National Small Shipments Traffic Conference (NASSTRAC), and what would NASSTRAC's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. NASSTRAC supports continuation of an independent ICC for so long as necessary to rule on undercharge claims. Right now, that period is four years, to take care of any claims on current shipments. After that, there would be no need for economic regulation of motor carriers by ICC or any agency. The ICC should be continued into the future to regulate railroads. Unfortunately, the Exon Bill, as amended, will provide for continued tariff filing at the ICC of rate bureau rates. That is unnecessary and absurd, because it continues anticompetitive rate bureaus and thereby perpetuates the undercharge problem.

Questions Asked by Senator Exon and Answers Thereto by Mr. Velten

ELIMINATION OF THE ICC

Question. What effect would the House's proposal to transfer jurisdiction of duties from the International Commerce Commission (ICC) to the Department of Transportation (DOT) have on shippers in the transportation industry?

Answer. Transferral of functions to DOT would remove the independence of the agency's decisions and deprive shippers of the ICC's accumulated expertise. The ICC is doing a very good job of discharging its statutory functions.

Question. How would the National Small Shipments Traffic Conference (NASSTRAC) members' business practices generally be altered, if the ICC were to be eliminated and the statutory requirements remain in the Interstate Commerce Act?

Answer. This question is hard to understand. There is no rationale for eliminating the ICC and then continuing the statute with no one to administer it.

Question. What would be the effects on NASSTRAC members if the ICC was eliminated and its responsibilities were divided between DOT and the Department of Justice?

Answer. Division of functions between DOT and DOJ would take away NASSTRAC members' confidence in the regulatory process. What is needed is an orderly schedule to eliminate economic regulation of motor carriers altogether. Railroads will have to continue to be regulated because of captive shippers, unless Congress opens up all lines to competitive railroad services.

Question. If Section 211 of the Airport Improvement Act seeks to deregulate the motor carrier industry by eliminating certain intrastate regulations, what would be the further impact of the House's ICC sunset proposal on NASSTRAC members' daily operation?

Answer. Congress should adopt the provisions of the Airport Improvement Act for interstate motor carriers also. The ICC should continue to have responsibility for safety and insurance. It is a non sequitur to take away States regulation of motor carriers and leave Federal regulation behind.

NEGOTIATED RATES ACT

Question. Do NASSTRAC members have any concerns regarding sunset of the ICC in the wake of the enactment of the Negotiated Rates Act of 1993?

Answer. The NRA should be extended indefinitely and the ICC must be continued so long as any shipments remain subject to the filed rate doctrine.

Question Asked by Senator Hollings and Answer Thereto by Mr. Lema

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the National Coal Association (NCA). and what would NCA's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. National Coal Association (NCA) represents coal producers classified as NCA member companies, and also has in its total membership several additional coal-related organizations that are associate members, including some coal-carrying railroads. Our board of directors, which holds the policy-making role for NCA, as is customary for such entities in a company or in an association, is comprised of representatives of coal producer member companies, the president of NCA, Richard L. Lawson, and a person representing coal equipment manufacturing associate members collectively. This is stated simply to assert that the response to this question, and the responses to other questions presented below, are first and foremost on the views of coal producers and shippers, in other words, companies which must rely on bulk freight transportation services provided by outside sources, especially the rail carriers.

Typically, large tonnages of coal must be transported long distances from mines located in Appalachian, Midwestern, and Western coal-producing states to reach utility and industrial plants in the United States, Canada, and Mexico and terminals at ports on the inland waterways, the Great Lakes, and the Atlantic, Gulf, and Pacific Coasts from which coal is carried by vessels engaged in coastal commerce and world coal trade. In many cases rail carriers represent the only effective source of required coal transportation services for all, or part, of the movement from a mine to a consumer plant or port terminal. In fact, often only a single rail carrier is available for a particular shipment, so that the rail carrier then holds market dominance over specific coal traffic. Therefore, coal producers and shippers have a dual interest

in the delivery of railroad coal transportation services. First, it is important to have available efficient railroad services for the distribution of coal to domestic and export markets; and second, because they often are captive to a rail carrier for transportation services, coal producers and shippers need regulatory protection from possible abuses in rail rates and services due to the absence of effective transportation competition for specific coal movements.

With the above in mind, NCA supported, and continues to support, provisions of the Interstate Commerce Act, as amended by the Staggers Rail Act of 1980, which both have stimulated greater efficiency in furnishing railroad transportation services, and have enabled captive rail shippers to seek regulatory relief from abuses in rates and services by filing complaints with the Interstate Commerce Commission (ICC), given that the traffic at issue is subject to railroad market dominance and the shipper cannot negotiate a private contract with the rail carrier having rates which are reasonable for services to be furnished. Five areas of responsibility vested in the ICC under present law are especially desirable and warranted:

1. Adjudication of rate complaints filed by shippers subject to railroad market dominance for movements not carried under private contracts with carriers.

2. Continuation of railroad services where abandonments are petitioned by rail carriers and either such abandonments are unjustifiable in the public interest, or another party is at hand to purchase trackage and preserve railroad transportation services on the line.

3. Establishment of periodic rate adjustment indexes to reflect changes in railroad costs and in productivity.

4. Assurance of connectivity among rail carriers for interline railroad traffic at reasonable rates and divisions of revenue among carriers where more than one railroad is involved in the origination, termination, and/or in-route transfer of freight in a particular movement.

5. Review and approval of applications for rail mergers and consolidations and for new entrants into the railroad business from the perspective of public convenience and necessity, all targeted on the furtherance of competition in freight transportation and the need to hold down rail costs in the course of assuring ready availability of economic, efficient, and reliable railroad services.

Thus, in NCA's opinion, there are several key duties with respect to economic regulation of the nation's freight railroads which now are vested in the independent ICC under present law that should continue to be in force and administered by a body having unique qualifications in regard to transportation economic analysis, adjudicatory procedures, and investigations. The ICC, as presently organized, has those requisite capabilities. The House of Representatives has proposed that the ICC should be eliminated and that duties remaining under the law should be transferred to the U.S. Department of Transportation (DOT) and the Department of Justice (DOJ). However, NCA respectfully suggests that it is highly desirable to continue having an independent ICC responsible for administering railroad regulation as provided under present law, rather than having such regulatory provisions handled by a unit in the Executive Branch of the federal government, e.g., the DOT and the DOJ, for the following reasons:

1. With respect to railroad regulation, the function of the regulatory body is to set criteria in economics for investigating railroad transportation costs and revenues, for establishing rate reasonableness, and for determining profitability of the carriers in the interest of attracting investment required to preserve operations of privately owned railroads which, unlike other freight transportation modes, not only own, maintain, and operate transportation equipment, but also own and maintain their transport right-of-ways. Only the ICC now has the crucial expertise in transportation economics required for performing economic analyses of railroad freight management and operations that are critical for effective administration of railroad regulation.

2. It would be inefficient to separate responsibilities for elements of railroad regulation and have more than one body, e.g., the DOT and the DOJ, charged with selected aspects of provisions in present law on railroad regulation inasmuch as the databases and the analytical methodologies involved in administration of railroad regulation are fundamental and common to each element of the process, i.e., rate reasonableness and revenue adequacy investigations perhaps by the DOT versus structure of the railroad industry evaluations perhaps by the DOJ, if regulatory duties were to be split between the DOT and the DOJ, instead of primacy for the totality of railroad regulation granted to the ICC as currently in effect.

3. Given that the ICC presently is well qualified to administer railroad regulation (point 1 above), and that to divide responsibilities for elements of railroad regulation among the DOT and the DOJ would be inefficient (point 2 above), the overriding concern of NCA in seeking continuance of the ICC as an independent regulatory

body responsible for railroad regulation is that the responsible agency must be free of any undue and inappropriate pressure and influence that might be encountered as it performs its adjudicatory role in addressing potentially inequitable and unfair treatment of one or more shippers or carriers. Whether done on behalf of a particular party to a case, shipper or carrier, or in general support of one freight mode versus another, actions of that nature could inflict substantial losses to one or more parties and to the public, a possibility that underscores the importance of independence.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. LEMA

ELIMINATION OF THE ICC

Question. What effect would the House's proposal to transfer jurisdiction of duties from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) have on shippers in the transportation industry?

Answer. In general, the response presented above furnishes the gist of our reply to this question. Two additional observations deserve to be mentioned here. First, there are vital databases on railroad transportation costs, revenue, carrier operations, property and equipment, etc. which are maintained by the ICC. These are essential sources of information for shippers, carriers, and the public with regard to performing economic analyses of railroad transportation services under current conditions and for meeting future freight traffic demand. It is critical that these databases be retained and be kept up-to-date by the ICC, or by another unit if the House action prevails. Second, it is noted that this question focuses broadly on "shippers in the transportation industry." Coal traffic represents approximately 40 percent of the freight tonnage originated by all Class I railroads, and contributes about 24 percent of their total revenues. Shippers of many commodities other than coal, e.g., agriculture products, chemicals, transportation equipment, ores, petroleum products, forest products, metals, etc. require, like coal, efficient and reliable railroad transportation services. As stated previously, coal shippers often are captive to rail carriers, a circumstance that similarly is not uncommon for many noncoal shippers. This reinforces the importance of regulatory protection of captive shippers unable to negotiate private contracts.

Question. How would the National Coal Association (NCA) members' business practices generally be altered. if the ICC were to be eliminated and the statutory requirements remain in the Interstate Commerce Act?

Answer. Realizing that coal production in the U.S. in 1994 is forecast by NCA to reach 1.032 billion tons, and that rail carriers transport more than 600 million tons of coal annually, it is clear that coal and the railroads are intrinsically linked. With no options normally at hand, a coal producer and shipper will have to rely on the rail carriers to secure full and complete use of coal produced in the U.S. no matter what body would be responsible for relief from possible abuses in rail rates and services where the coal shipper is subject to rail market dominance. Because the cost of transportation usually amounts to one-fourth up to three-fourths of the delivered price of coal, the coal producers and shippers will constantly search for ways to hold down transportation costs just as they implement measures to increase coal mining productivity and competitiveness of U.S. coal in domestic and international markets.

With success in securing coal supply contracts so intertwined with an ability to obtain reasonable rail rates for prospective coal traffic, it is critical to have in place a ready point of recourse for timely adjudication of rate complaints, and thus to avoid losses of coal markets due to ineffective regulatory implementation of statutory requirements in the Interstate Commerce Act. With no intent to impugn the capabilities of the DOT or the DOJ, NCA believes that neither unit is prepared to offer expeditious treatment of rate disputes; and further, whereas resorting to the courts is possible, that does not appear to offer timely recourse.

Question. What would be the effects on NCA members if the ICC was eliminated and its responsibilities were divided between DOT and the Department of Justice?

Answer. Presumably, the DOT would have responsibilities for continuance of vital databases containing key information bearing on economic regulation of the railroads, and possibly for adjudicating rate complaint cases, whereas the DOJ would be involved mainly in decisions on railroad mergers and consolidations, i.e., the DOT would deal with rates, revenues, costs, and services provided by the rail carriers, and the DOJ would cover matters affecting competition among railroads; however, those are only assumptions on NCA's part inasmuch as these moves have not been described to date.

NCA members are now well versed in procedures followed by the ICC in the adjudication of rate complaints, in the establishment of regulatory criteria, and in the review of applications for abandonments, mergers, and consolidations. Generally, the ICC's regulatory process is thorough and well understood by virtue of past and present proceedings before she ICC, whether instituted by petitioners or by the ICC on its own volition. Of course, to change from these practices to those that might be adopted by DOT and DOJ would call for time in which to assimilate different approaches toward meeting regulatory functions divided between two new parties so engaged. Time would tell how well the DOT and the DOJ would handle what now is done well in the area of railroad regulation by the ICC. In any event, it would appear that there could be some loss of efficiency in splitting railroad regulatory duties between two units not so involved at this time.

Question. If Section 211 of the Airport Improvement Act seeks to deregulate the motor carrier industry by eliminating certain intrastate regulations. what would be the further impact of the House's ICC sunset proposal on NCA members' daily operations?

Answer. Trucking coal for relatively short distances on public highways is not unimportant to many NCA members; however, it does not appear that the elimination of certain intrastate regulations affecting the motor carrier industry would have any substantial impact on NCA members' daily operations. It is understood that proposals for intrastate motor carrier deregulation deal principally with tariff filings and the certification requirements for intrastate truckers, and do not relate to such matters as highway pavement and bridge design criteria, highway and traffic safety measures, truck sizes and weights, or other highway and traffic operations and safety requirements set by the DOT's Federal Highway Administration and National Highway Traffic Safety Administration and by the states and their local governments. Simply stated, moving coal by truck is a matter of interest to coal producers; however, moves toward reducing intrastate trucking regulation do not appear to create problems in coal transportation.

NEGOTIATED RATES ACT

Question. Do NCA members have any concerns regarding sunset of the ICC in the wake of the enactment of the Negotiated Rates Act of 1993?

Answer. We believe that the need for preservation of an independent ICC is to continue its functions for implementation of railroad regulation under present statutes. The 1993 Act is not of concern.

ICC REGULATORY FUNCTIONS

Question. In prepared testimony. NCA indicated that the 1980 Staggers Rail Act. containing provisions relevant to the ICC. has been successful in balancing the needs of carriers and shippers. Please explain to the Committee how NCA members think the ICC continues to play a role today in allowing private contracts while minimizing the potential for captive shippers.

Answer. NCA found several reasons for supporting the Staggers Rail Act of 1980, as it was signed by President Carter on October 14, 1980. Continuation of captive shipper protection, albeit limited to traffic meeting certain tests under the law, and provision of measures aimed at reducing costs incurred by the railroads in providing services were, and still are, very important. Equally important is the provision enabling rail carriers and shippers to enter into private contracts for specific rail traffic; in fact, essentially unregulated agreements on rail rates, services, and other elements pertaining to selected movements. It is estimated that 80 percent or more of railroad coal tonnage is being shipped under private contracts with the railroads.

Having said that it is nonetheless crucial to preserve the statutory provisions on captive shipper protection. There are various factors which can be brought to the bargaining table when negotiating a transportation contract, such as volume considerations, duration, loading and unloading facilities to be furnished, railcars to be supplied, together with unit train cycle times and rates. However, for the captive shipper who has no effective alternative to a single rail carrier for a shipment, the existence of regulatory protection implemented in a timely manner becomes an important stimulant for the parties to reach an agreement on a railroad transportation services contract whose terms and conditions are fair and equitable to the carrier and the shipper that otherwise must resort to a public tariff which if it is not considered to be reasonable, can be brought before the regulatory body—the ICC—in a rate complaint case. In summary, the existence of regulatory protection of captive shippers against abuses in rail rates and services, joined with the presence of a regulatory body capable of reaching prompt decisions on the reasonableness of a rail rate at issue, can be characterized as a major purpose for captive shipper provisions

in the statutes and for continuation of the ICC in this era of contracting by rail carriers and shippers for transportation services.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. EMMETT

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the National Industrial Transportation League (NITL) and its membership, and what would NITL's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. The National Industrial Transportation League represents a significant majority of rail shippers in this country. As opposed to motor carrier shippers, rail shippers usually are captive to only one rail provider. For this reason, the League supports the continued regulation of railroads by an independent regulatory agency that is above reproach in terms of fairness and expertise. This independent function could be conducted by the current free standing Commission, or by moving the Commission as a whole into the Department of Transportation just like the Federal Energy Regulatory Commission was moved into the Department of Energy while retaining its independence. The study of the future of the ICC called for in S. 1640 will explore all of these issues and the League will participate in this study.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. EMMETT

ELIMINATION OF ICC

Question. What would be the effects on the National Industrial Transportation League (NITL) and its members if the Interstate Commerce Commission (ICC) was eliminated and its responsibilities were divided between the Department of Transportation (DOT) and the Department of Justice?

Answer. The transfer of the ICC's faction to the Department of Transportation without maintaining the independence of those functions might cause rail regulatory decisions to be politicized. The League looks forward to participation in the S. 1640 studies to look at ways to further streamline federal transportation regulation and the future of the ICC.

Question. Please provide the Committee with NITL's view on how the shifting of jurisdiction from the ICC to DOT, as proposed by the recently passed House provision, would affect those in the transportation carrier industry.

Answer. To eliminate the ICC without changing the underlying statutes and moving them to DOT would create mayhem in the market place. Of particular concern to shippers is the final resolution of the undercharge crisis through the Negotiated Rates Act. All of the cases currently pending at the Commission's would be left "up in the air" and the federal government would not be in a position to enforce this law.

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. While such a move would create short-term confusion, the market place would adapt. The most significant long term result would be to divide the government's expertise and involve two agencies in rail and motor regulation.

Question. On June 16, the Senate passed section 211 of the Airport Improvement Program bill which virtually eliminates intrastate regulation of the motor carrier industry. If intrastate regulation is virtually eliminated, what effect, if any, would elimination of the ICC's budget have on ATA and its members?

Answer. Section 211 of S. 1491 preempts the states from regulating motor carriers. In enacting this legislation. the Congress found that such regulation was contrary to the Commerce Clause of the Constitution. Sunset of the ICC without changing the remaining federal motor carrier regulations would not affect state preemption.

NEGOTIATED RATES ACT

Question. In December of 1993, Congress passed and the President signed the Negotiated Rates Act of 1993, which seeks to help resolve the multi-billion dollar undercharge crisis. If funding for the ICC is eliminated without changes in its statutory responsibilities, what would be the impact on the undercharge crisis? How do concerns over this possibility affect ATA members' everyday business decisions?

Answer. Yes. See answer to previous question.

TRUCKING REGULATORY REFORM

Question. Are there any current ICC responsibilities that could be transferred legitimately to and administered by DOT?

Answer. While S. 1640 retains several motor carrier related functions at the ICC many of these should be transferred or eliminated. The League plans to participate in the studies called for in this legislation which will address these matters.

QUESTION ASKED BY SENATOR HOLLINGS AND ANSWER THERETO BY MR. WYTKIND

ELIMINATION OF THE ICC

Question. Why is the existence of an independent Interstate Commerce Commission (ICC) so necessary to the AFL-CIO, and what would AFL-CIO's concerns be should the ICC be eliminated in the fashion proposed by the House of Representatives?

Answer. Preserving an independent ICC is critically important to the Transportation Trades Department, AFL-CIO (TTD) because it is the agency responsible for regulating the rail and motor carrier industries in accordance with the provisions of the Interstate Commerce Act (ICA). TTD strongly supports the continued regulation of the surface transportation industry so as to ensure the safe operation of rail and motor carrier service, the protection of shippers against discriminatory rates and service, the protection of employee interests as provided for in the ICA, and the enhancement of efficient and stable carrier operations.

The ICC has a long history of performing these regulatory functions and has developed considerable expertise in connection therewith. While transportation labor has not always agreed with the decisions rendered by the ICC, it feels strongly that an independent agency should be the forum for resolving disputes pertaining to rail and motor carrier matters. We do not want to have our disputes heard by a department of the executive branch agency which will necessarily be subject to political influence. Moreover, to turn over to an executive branch agency the duty to review the affects a rail transaction has on employee interests would subject such an important regulatory function to unnecessary political intrusion, thereby threatening over 50 years of congressional mandate.

Eliminating the ICC without first analyzing what, if any, functions and activities now performed by the ICC under the ICA should be revised or deleted makes absolutely no sense. Doing so would effectively reduce or eliminate the regulatory oversight now in place. While the statutory provisions may remain on the books, no entity would have the responsibility (or ability) to enforce them. TTD opposes deregulation either by repeal of the substantive statutory provisions or by eliminating the agency charged with the responsibility to enforce those provisions.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. WYTKIND

ELIMINATION OF THE ICC

Question. What effect would the House's proposal to transfer jurisdiction of duties from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) have on shippers in the transportation industry?

Answer. While shippers can, of course, speak for themselves, TTD believes that the response to complaints and the adjudication of shipper/carrier disputes can be done more fairly, efficiently and expeditiously at the ICC as opposed to an executive branch department such as DOT. The interest of shippers, as well as labor, would not receive the same degree of attention and consideration in the vast bureaucracy of the DOT as can be provided by the ICC.

Question. How would the AFL-CIO members' business practices generally be altered, if the ICC were to be eliminated and the statutory requirements remain in the Interstate Commerce Act?

Answer. While the specific reference in this question to the "business practices" of TTD members is not necessarily relevant to our interests, we believe the elimination of the Commission would leave transportation labor faced with an undesirable situation whereby a politically-charged executive branch agency of the government would oversee many important regulatory functions including the protection of employee interests. Overall, the concerns of TTD regarding the elimination of the ICC and the continuation of the ICA are set forth in our comprehensive testimony and above in response to a question from Senator Hollings.

Question. What would be the effects on AFL-CIO members if the ICC was eliminated and its responsibilities were divided between DOT and the Department of Justice?

Answer. TTD believes an independent agency responsible for rail and motor carrier oversight is far preferable to including these functions in executive branch departments that have numerous other functions. Let us reiterate, as stated in our written testimony, that TTD believes labor protective provisions, currently imposed by the ICC during its consideration of rail mergers, acquisitions, abandonments and other transactions, must be provided to employees of motor carriers. It is only sensible to have the ICC, which has experience in dealing with this matter in the rail area, perform the same function in the motor carrier area. To turn over these functions to DOT, however, does not bode well for employees as that agency, under previous administrations, has exhibited aggressive hostility to labor protective conditions.

Question. If Section 211 of the Airport Improvement Act seeks to deregulate the motor carrier industry by eliminating certain intrastate regulations, what would be the further impact of the House's ICC sunset proposal on AFL-CIO members' daily operations?

Answer. If indeed deregulation of intrastate transportation is the will of Congress, then it is logical to conclude that an independent ICC is needed to perform vital federal economic regulatory oversight of motor carrier transportation operations.

NEGOTIATED RATES ACT

Question. Do AFL-CIO members have any concerns regarding sunset of the ICC in the wake of the enactment of the Negotiated Rates Act of 1993?

Answer. The Negotiated Rates Act provides for the ICC to engage in a number of important functions which include, but are not limited to, resolving issues relating to undercharge claims brought against shippers by trustees of bankrupt carriers. TTD supports the prompt resolution of undercharge disputes. We believe, however, that eliminating the ICC likely would result in a delay in the consideration and determination of numerous issues relating to undercharge claims and would effectively gut congressional intent.

TRUCKING REGULATORY REFORM

Question. What would be the effect on organized labor in the shipping and carrier transportation industries with the elimination of rate filing obligations?

Answer. TTD's written testimony fully described the adverse effects deregulation is having on transportation workers and their families. Specifically, the elimination of the obligation to file and adhere to motor carrier rates amounts to further deregulation and accordingly will contribute to more of what was described therein. There will be far less stability in the industry and numerous additional carrier bankruptcies can be expected, thus increasing the loss of good paying jobs for both union and nonunion workers.

If there is to be further deregulation in the motor carrier industry, labor protective provisions must be provided to counterbalance the upheaval employees will experience as the result of government policies. While the free market approach to transportation has perhaps enriched some corporations and large shippers, the legacy of deregulation is replete with examples of why this approach to transportation policy must be countered with a government-provided safety net for adversely affected workers.

PREPARED STATEMENT OF SENATOR THOMAS A. DASCHLE

Often what appears relatively minor and trivial to pundits in Washington has far-reaching consequences for local communities in the heartland of the United States. An example of just such a circumstance occurred earlier this summer when the House voted to eliminate funding for the Interstate Commerce Commission (ICC), and assign its functions to the Department of Transportation, all in the interests of deficit reduction.

At first blush, this proposal has superficial appeal; it promises to cut bureaucracy and cut spending, two goals I enthusiastically support. As is so often the case, however, further reflection on the proposal raises disturbing questions about its practical effect, particularly for states like South Dakota.

We all want a lean and effective government. This Administration is striving for that goal, first through the National Performance Review, and now through initia-

tives in specific agencies. Vice President Gore's Review took a serious look at the ICC and reaffirmed the need for its independent mission. The fact is that the ICC "reinvented" itself long before that idea gained credence in the halls of government. The ICC underwent a substantial change during the 1980s, shedding its regulatory power in many areas and cutting its organization—downsizing almost 75 percent of its employees. It is now an accessible agency of 625 employees, many with a great number of years of experience and substantial expertise, and an active and committed Commission, ably led by its Chairman, Gail McDonald. We now have a Commission which is providing strong and balanced leadership and is committed to implementing the Staggers Act. A success story!

How did we achieve this success? Congress passed the Staggers Act early in the decade, deregulating much of transportation law, recognizing that commerce could rely on market forces when there was open, competitive, and fair transportation services. The Act also recognizes that not all segments of the transportation market fit that description and charged the ICC with maintaining its rate-making oversight and ability to help so-called "captive shippers." In short, the ICC should protect American businesses and communities in those non-competitive segments, act as an independent forum, and maintain a level playing field for its constituencies.

The ICC's mission is particularly important to rural areas like South Dakota, which are dependent on rail service and whose farmers and small communities may not have the kind of economic resources necessary to challenge the economic power of rail conglomerates.

In my view, that mission should be preserved outside the Department of Transportation. But even if one were to suspend disbelief and assume that the ICC could maintain its independent status within the 68,000 employee Department of Transportation, the question of funding remains. It simply makes no sense to argue that the ICC's mission is worthwhile enough to ask the Department of Transportation to carry it out, and, at the same time, argue that the government should commit zero resources to support that mission. Transportation Secretary Federico Peña and the Administration agreed with me and oppose this proposal.

We cannot have it both ways, and suggesting that we can only adds to the misunderstanding of our fiscal problems that continues to impede their solution.

Others have suggested there is no appropriate mission left for the ICC and it is time to do away with the agency. I share Chairman McDonald's position recently stated in a national publication that the ICC's mission, even with deregulation, is to protect captive rail shippers and communities. Perhaps this is a concern only in some parts of the country, but I doubt it.

The bill introduced by Senators Exon and Packwood, S. 2275, "Trucking Industry Regulatory Reform Act of 1994," takes a logical step in promoting an effective trucking industry. It clarifies the mission of the ICC but in no way obviates the need for the Interstate Commerce Commission.

This is not simply a trivial "inside the Beltway" Washington debate. This is a story with a substantial South Dakota impact. We have seen the need for the ICC forum several times over the last several years in South Dakota. The ICC helped prevent the abandonment several years ago of South Dakota's primary rail shipping lane to the south and west, an act that would have cut off crucial western and overseas markets for a half dozen major Black Hills businesses. Those businesses directly employ over 1,000 South Dakotans.

This is the kind of balanced and responsive leadership the ICC lacked during the latter part of the 1980s. The ICC is moving in the right direction. Instead of abolishing the ICC, I would urge this Committee to tackle, with the ICC and the Department of Transportation, the enduring problem of captive shippers and communities, declining service, and ultimately abandonment of lines crucial to rural businesses, farmers, and ranchers. The issue can't be solved solely through the regulatory process but cries out for a solution.

It is as important to know when not to take action as it is to know when to take action. I urge this Committee to approve this bill and the Appropriation Committee to approve the Administration's FY 1995 request for the Interstate Commerce Commission. Those decisions will allow the ICC to continue protecting the public interest, including South Dakota's. This experience is instructive to all of us as we try to slim down government and ensure its agencies and programs are necessary to meet critical needs and are responsive and accessible to our citizens.

Prepared Statement of the American Insurance Association

The American Insurance Association (AIA) represents insurers providing approximately one third of the commercial automobile insurance in the United States. This

includes coverage on motor carriers, some of which are regulated by the Interstate Commerce Commission ("ICC").

MEMBERS OF THE PUBLIC, INCLUDING INSURERS, HAVE A STRONG INTEREST IN ICC ACTIVITIES

Insurance coverage on interstate motor carriers as required under federal law is unprecedented both as to the amount ($750,000 to $5 million) and as to the breadth of coverage. Coupled with the extensive federal insurance requirements are state insurance code provisions which establish pools (in which all commercial auto insurers must participate) to provide insurance to some motor carriers, even when insurers would ordinarily have rejected the applicants as uninsurable. Combined, these provisions mandate a huge risk of loss for insurers—much of it involuntarily assumed.

Beyond the economic interest, is our strong desire to prevent accidents, deaths and injuries and fight fraud. Insurers maintain rating systems which reflect comparative loss experience of motor carriers and aggressively pursue safety and antifraud activities and measures. The responsibilities of the ICC are important complements to these private sector safety and antifraud efforts.

The extraordinary financial exposure of insurers is moderated, somewhat, by federal authority relating to motor carrier financial matters assigned to the ICC and matters relating to safe operation and the performance of vehicles and equipment assigned to the United States Department of Transportation ("DOT"). It is important that the statutory responsibilities of both agencies be effectively and consistently carried out.

SAFETY AND FINANCIAL SOUNDNESS ARE STRONGLY INTERRELATED

Studies demonstrate that a motor carrier in financial difficulty is also more likely to be unsafe—more of a threat to the public and more of a risk of loss to its insurer. One example of such a study is a 1991 General Accounting Office report, Freight Trucking Promising Approach for Predicting Carriers' Safety Risks. Page 3 of that report noted: "Firms in the weakest financial position had the highest subsequent accident rates."

THE ICC HAS EXTENSIVE AUTHORITY TO MONITOR THE FINANCIAL HEALTH OF SOME MOTOR CARRIERS AND BY AND LARGE EXERCISES THIS AUTHORITY REASONABLY WELL

Perhaps because of its structure—an independent agency of several high level appointed commissioners with staggered terms—rather than a single head—the ICC can be more moderate and consistent in its policies. The ICC has also generally been open to the many segments of the public affected by agency decisions, including the trucking industry, the states, insurers and others.

DOT safety regulatory policy has sometimes swung dramatically, reflecting changes in the Administration. The past delays in DOT requiring anti-lock brakes for big trucks is a case in point. Long after the technology had improved, experience had demonstrated that antilock brakes in big trucks could virtually eliminate jackknifing accidents, and the cost of the equipment was minimized, the DOT still dragged its feet on requiring anti-lock brakes until directed by the Congress to act. These past delays have caused needless death, injury and economic loss to motor carriers, accident victims, the public and insurers.

While the ICC has not been immune to changes in regulatory philosophy, the responsibilities allocated to the ICC are now being discharged reasonably well. The ICC issues certificates of authority, mandates periodic financial reporting of some motor carriers and provides some oversight of foreign motor carriers. Recently, the ICC has issued a regulation to put in place the Single State Registration System, a major effort involving the competing interests of states, motor carriers, and insurers. While there are a few problems with the final regulation, the process was truly open to all interests.

The ICC has helped provide information so other parties could work to improve safety, through requirements for on-going financial reporting by some interstate motor carriers. As noted above, financial information is essential for improving safety. The ICC has also assisted in fighting fraud by providing information to fraud fighting efforts. In so doing, the ICC has helped uncover major fraud schemes and probably saved money for honest insurance policyholders.

CONCLUSION

The ICC is charged with important financial oversight duties which have a direct value in assuring safety and fighting fraud. These functions must be performed competently by some federal agency and if the ICC were to be eliminated, the powers

would have to be expressly and carefully transferred to another agency, accompanied by continuing Congressional oversight. Otherwise, safety will be jeopardized and some major fraud potentially left undetected. But there is little or no substantive reason to make such a transfer of functions.

The ICC is generally discharging its responsibilities effectively and accessibly to all parties who have legitimate interests. For these reasons, we urge the preservation of the ICC and the enhancement of the execution of its critical statutory responsibilities.

Prepared Statement of William E. Loftus, President, the American Short Line Railroad Association

I am William E. Loftus, President of The American Short Line Railroad Association (ASLRA). I appreciate the opportunity to present the views of the Association's more than 400 short line and regional railroad members on the future role of the Interstate Commerce Commission (ICC), and S. 2275, a bill to further deregulate the motor carrier industry and to study the feasibility of merging the operations of the ICC with other regulatory agencies and a study of additional regulatory reforms.

ASLRA supports the continued existence of the ICC, on the basis that small railroads, and the small shippers and small communities they frequently serve, need a voice and a forum in which their concerns can be heard regarding economic regulation of the rail industry. The ICC has provided that forum for the small businessmen and women that make up ASLRA's members.

Throwing the ICC out the door by suddenly cutting off its funding, and letting transportation regulation seek its own level in some subsequent action by Congress is not a rational way to proceed. Railroads provide services and conduct their businesses within a framework of economic regulation mandated by Congress through Federal law, and implemented by the ICC. We may not always agree with the regulations placed on us, but it is part of the way we do business. We have come to rely on a system that permits us to deal with an independent agency on highly critical matters of competition and service that arise in a regulated environment.

We believe strongly that Congress must weigh carefully the important regulatory role of the ICC and the stability of commercial surface transportation services when dealing with the question of funding or not funding the ICC in Fiscal Year 1995. If it is the intent of Congress to craft a new approach to regulation of railroads and motor carriers and to gain more efficiency in how such regulation is promulgated and enforced, then it needs to do so on the basis of an overall policy and plan; not a precipitous move to withhold funding from the ICC. Neither shippers nor the transportation carriers which serve them will benefit from severe disruption that will occur, if the Congress acts on the funding issue in isolation from the real question, that of continued regulation of railroads and motor carriers; how much and by whom.

S. 2275, The Trucking Regulatory Reform Act of 1994 which has been introduced by Chairman Exon and Senator Packwood offers a more reasoned approach to preserving the essential functions of the ICC while furthering deregulation of the motor carrier mode. I will not comment on the specific elements of motor carrier deregulation, but I compliment the sponsors of S. 2275 for proposing regulatory changes first rather than trying to sunset the ICC with no thoughtful consideration of the effect of such action on the regulated industries and the shippers they serve.

ASLRA supports the intent of S. 2275 as an appropriate means to develop regulatory policy and to implement structural changes, as may be necessary, in order to preserve the essential functions of the ICC.

ASLRA offers one recommendation with respect to the feasibility study by the Secretary of Transportation regarding merger of the ICC into another agency and the study by the ICC analyzing its regulatory responsibilities. We ask that the Committee make it clear in each instance that the studies and recommendations focus on the ICC's role in both rail and motor carrier regulation and not on motor carrier regulation alone, as the bill appears to do in its current form.

A decision to further deregulate motor carriers will indeed weigh heavily on the decision to continue the ICC in its present or altered form. Such a decision would have an impact on rail regulation, too, since any change in the ICC's mission and structure is of critical importance to small railroads. Therefore we recommend that the studies mandated in S. 2275 include a broader review of the ICC's regulatory function with respect to railroads as well as motor carriers, and that the agencies be instructed to recommend any changes in regulation they believe appropriate.

ASLRA respectfully, requests the Subcommittee to support S. 2275, as modified to include a review and analysis of the ICC role in state' rail and motor carrier regulation and recommended alternatives to the present regulatory structure.

Prepared Statement of James C. Harkins, Executive Director, Regular Common Carrier Conference

The Regular Common Carrier Conference (RCCC) submits this statement on behalf of the 200 for-hire general freight trucking companies that are members of our national trade association which is affiliated with the American Trucking Associations. Our motor carrier members specialize in the transportation of less-than-truckload freight, serving customers and communities throughout the United States. Last year, they collectively generated over $13 billion in revenue from their interstate operations.

The RCCC supports the two primary objectives of S. 2276, "The Trucking Industry Regulatory Reform Act of 1994." First, we agree that federal funding for the ICC should be significantly reduced, but the agency should be retained as an independent Commission to oversee transportation. The proposal to achieve a $50 million in federal tax dollar savings over five years is realistic.

We also concur that the licensing of for-hire motor carriers should be focused on the safety and insurance fitness of the applicant and that further regulatory reform measures, including the merger of the ICC with the Federal Maritime Commission should be carefully studied. Congress should decide, on the merits and after careful deliberation, what regulatory requirements should be eliminated and what should be retained.

The proposals to eliminate the filing of tariffs and give the ICC broad discretionary authority to deregulate, however, will not result in meaningful cost savings to the government. They are also contrary to the longstanding regulatory objectives of ensuring that an independent agency has the authority and ability to ensure that motor carrier rates, services, and practices are reasonable and nondiscriminatory. These proposals should not be adopted at this time through an ICC appropriations bill. Congress should not give the ICC broad exemption authority, as proposed in Section 5, since the scope of future transportation regulation is of such importance that it should be decided by Congress. Rather, these issues should carefully be examined by Congress after completion of the proposed study by the Department of Transportation provided for under Section 10 of this bill.

ICC FUNDING CAN BE SUBSTANTIALLY REDUCED WITHOUT SIGNIFICANTLY UNDERMINING ITS REGULATORY FUNCTIONS

In June, the General Accounting office (GAO) submitted testimony before the House of Representatives on ICC funding and functions.[1] While generally concluding that a transfer of ICC functions to DOT is inadvisable since it would jeopardize the independent decision-making process and result in nominal cost savings, GAO did note that there are possible budgetary savings if ICC motor carrier functions are reduced.

The current ICC budget is approximately $52.2 million, of which $45 million is a federal expense and $7.3 million is generated from user fees (GAO Testimony at p. 3). About $7 million of these user fees are generated through carriers' payment of the tariff filing fee, now set at $7 per transmission, for about one million tariff filings annually.

GAO estimates that 37 percent of the ICC's staff years or budget were consumed in 1993 on rail matters, while the motor carrier functions consumed 63 percent. In monetary terms, the rail and motor carrier function portions of the Commission's *total budget* are $19.3 million and $32.9 million, respectively.

According to GAO, the ICC spends about 300 staff years on motor carrier functions, with 100 staff years devoted to rate regulation, another 95 devoted to licensing of carriers, and the remainder of resources (about 38 percent) devoted to other services. (GAO Statement at pages 8-9.) These ancillary trucking services include some "safety and insurance regulation as- well as responsibility for antitrust enforcement, cargo damage liability, data collection, owner-operator protection, household goods protection,- and Mexican carrier registration." (GAO Statement at page 9.) GAO believes that the government could save $17 million per year if Congress decided to eliminate the rate and entry functions.

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[1] Statement of Kenneth M. Mead, Director of Transportation Issues, General Accounting office, on "Interstate Commerce Commission: Transferring ICC's Rail Regulatory Responsibilities May Not Achieve Desired Effects," (June 9, 1994).

In actuality, the savings are substantially overstated. About half of these savings, or $8.5 million, would be from eliminating the licensing requirement. While we oppose a complete elimination of the licensing requirement, we support Sections 7, 8, and 9 of S. 2276, which modifies the current entry standard to establish a safety and insurance fitness test. We believe this change should save the federal government about $5 million annually. None of the serious deregulation initiatives have proposed that a motor carrier be allowed to operate without a federally-prescribed minimum amount of public liability insurance, which is enforced by a federal agency. Similarly, it is widely accepted that only safe motor carriers should be engaged in interstate transportation and that the federal government should be actively involved in removing unsafe operators from our highways. The ICC licensing or entry activity serves that function. A fitness only standard would continue to serve this function at considerably less cost.

Now, it is appropriate to debate whether this function should be transferred to the Department of Transportation or some other federal agency. But a transfer of this safety and insurance function would *not* save the $8.5 million now devoted to ensuring that safe and fully insured carriers are operating. It would only result in a cost shifting.

Also, it should be pointed out that the Department of Transportation has been woefully unsuccessful in this area. There are approximately 280,000 interstate motor carriers in the U.S., of which 62,000 carriers the ICC licenses and monitors insurance. DOT has been unable for many years to identify, let alone conduct a safety review, of about half of the 220,000 motor carriers subject to its jurisdiction. The ICC does a superior job in this area, and it is in large measure due to the licensing review process. This license allows the ICC to monitor each carrier's safety rating and insurance certification.

The other half of the $17 million, which GAO has identified as a potential savings, is in the rate regulatory area. First, it should be noted that this level of ICC spending was increased by the negotiated rates problem and should decline significantly now that Congress has legislatively solved that litigation through enactment of the Negotiated Rates Act of 1993.

Moreover, it bears highlighting that the rate regulation and tariff filing functions are largely self-funding through user fees. Of the approximately $8.5 million spent annually—an amount recently inflated by the negotiated rates problem—$7 million is obtained through tariff filing user fees. Thus, the amount saved by eliminating rate regulation and tariff filings would be nominal at best and more likely none at all.

S. 2276 wisely does not eliminate ICC jurisdiction over rates, but would eliminate the tariff filing requirement for motor carriers. We continue to believe that tariff filings should continue, particularly for rates and classifications collectively made by motor common carriers.[2]

Rate regulation and tariff filing still promote the public and societal goals of ensuring that transportation pricing and transportation services are reasonable and nondiscriminatory. Congress and our society have traditionally and continually sought to eliminate business practices that are unfair and discriminatory. A whole body of our Nation's laws are based on the core principles that business conduct should be reasonable and nondiscriminatory. The federal trade laws, the antitrust laws, our Civil Rights laws, the Americans with Disabilities Act, and even the health care reform initiatives demonstrate a commitment to ensuring that the public has equal access and opportunity to basic services at reasonable prices.

That is all the Interstate Commerce Act says and the agency does! The act states that motor common carrier rates must be reasonable and nondiscriminatory. 49 U.S.C. § 10701(a) and § 10741(b). A motor common carrier files its rates in tariffs to allow the agency to detect and deter unreasonable, discriminatory pricing.

Are these principles of reasonable and nondiscriminatory pricing meaningless today? We do not think so. If the ICC no longer fulfills this function, who will? In all likelihood, future rate disputes will be litigated in the courts under other federal and state laws. The elimination of the ICC's rate function might save this federal agency $8 million, but it will also transfer the costs to federal and state courts—

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[2] One option that could be studied later by Congress is whether tariffs should be eliminated for independently-established rates by motor common carriers, but be retained for the collectively-made classification and rates of carriers. That later tariffs number only about 100 filed tariffs today but they are used by thousands of carriers to negotiate their rates with a vast number of customers. The continued publication of collective rates would, therefore, disseminate price information and assist the small and medium carriers' rate negotiations in the marketplace. Those carriers, which would no longer file tariffs with the ICC, could publish and retain them at their own businesses to be provided to the Commission, which retains a rate regulatory function, and to the public.

which are already overburdened. Litigation in the courts is more costly to both private parties and the government than arbitration or informal adjudication which is the basic ICC rate function.

We believe that the ICC should continue to have jurisdiction over motor carrier rates. It should, in cases of disputes, determine what is the lawful rate. To that end, the filed rate doctrine should remain with the ICC given express statutory authority to waive enforcement of the tariff or carrier published rate when its imposition is unreasonable or would cause undue discrimination.

There are alternative means to reach the objective of reducing federal spending on the ICC by $50 million over five years, or $10 million annually, as proposed in S. 2276. They include:

1. Establishing a safety and insurance fitness licensing standard—*$5 million cost savings;*

2. Reducing the number of ICC commissioners from five to three. There are currently only four commissioners and one office expires at year end. *Another $2 million in cost savings* would be achieved based on salaries, benefits, and overhead expenses for two commissioners and their ten support staff;

3. An additional 25 percent across-the-board reduction in the ICC's annual $45 million budget would *save another $10.1 million annually. It is realistic in light of the continuing reductions in both ICC motor and rail functions and the proposal that all federal agencies reduce their budget by at least l2 percent in the coming years.*

The combination of these changes would save the federal government $17 million annually; an amount equal to the recommendations of GAO and well in excess of the target established by Chairman Exon.

Moreover, it would still leave Congress the freedom to study carefully all ICC functions and determine on the merits whether further changes are necessary. The appropriations process, as Chairman Exon stated, is neither an appropriate nor conducive procedure for making substantive changes in the law. While S. 2276 is a compromise to the wholesale elimination of the ICC functions and funding, it goes beyond what is necessary to achieve meaningful budgetary savings by adversely impacting many motor carrier activities other than entry.

For these reasons, our motor carrier association strongly recommends that the Senate reduce the ICC budget by $10 to $17 million through establishing a fitness licensing standard, by reducing to three the number of ICC commissioners, and by imposing a 25 percent reduction in its fiscal year 1995 budget. Congress should carefully study further substantive changes to the Interstate Commerce Act, as well as the merging of the ICC with the FMC or other federal agencies.

Prepared Statement of Andrew M. Schindel, President, Central Analysis Bureau, Inc.

Central Analysis Bureau is a private organization whose function is to provide most of the nation's insurers of motor carriers with financial and operational information concerning prospective and current motor carrier insureds. This information assists insurance companies in issuing policies, filings and endorsements so that motor carriers are in compliance with I.C.C. and D.O.T. insurance regulations and statutes.

Our role as advisors to the motor carrier insurance industry has given us a unique perspective of the Interstate Commerce Commission in the areas of motor carrier insurance, consumer protection, anti-fraud activity, data collection and safety. While there have been many comments made concerning the I.C.C.'s role in tariff and rate matters (something on which we take no position), there have been far fewer comments concerning these other vital Commission activities. We would like to offer our comments concerning the continuation of these important Commission functions, why these functions may not be readily transferable to the Department of Transportation (D.O.T.) and why contemplated budget savings may be only illusory.

MOTOR CARRIER INSURANCE

For over fifty years the I.C.C. has required bodily injury and property damage (B.I. & P.D.) insurance for all regulated motor carriers. It has also required cargo insurance for all common carriers. The minimum limits it requires are not subject to deductibles, exclusions or warranties. In other words, regardless of the terms or conditions in a policy, Commission regulations make an insurance company responsible from the first dollar of a claim up to the required limits.

The benefits to both the shipping public and the motoring public have been readily apparent over the years. Take cargo insurance, for example. Almost every cargo

insurance policy contains a deductible (the portion of a loss and damage claim that the insured motor carrier is supposed to pay itself) and exclusions. Motor carriers look to purchase higher deductible policies in order to lower premium charges and solvent motor carriers pay these claims themselves. However, should a motor carrier be financially unable to pay these deductibles and excluded loss and damage claims, the insurance company must step in and pay them, even though these claims were not covered by the policy, the insurance company received no premium for them and usually these claims were not even reported to the insurer. In other words, the insurer of an I.C.C. motor carrier becomes its financial surety and financial guarantor, solely because of the I.C.C. cargo insurance regulations. There have been dozens, if not hundreds, of insolvencies where shippers' recoveries from insurers have exceeded $1,000,000, and countless others where insurers have made substantial payouts to shippers solely because of the I.C.C. filings.

The roster of insolvent motor carriers is extremely high and includes such well-known names as St. Johnsbury, P.I.E., Transcon and Pilot. In bankruptcies such as these, the Commission's cargo insurance regulations have come in to play and have protected shippers for decades. The D.O.T. has never shown any interest in motor truck cargo insurance and the protection of shippers.

The I.C.C.'s B.I. & P.D. insurance requirements have protected the motoring public and other injured parties from the Commission's early days until the present. The Motor Carrier Act of 1980 gave the D.O.T. the authority to assign minimum B.I. & P.D. limits for I.C.C. motor carriers and also gave the D.O.T. the responsibility for instituting mandatory B.I. & P.D. insurance limits for non-I.C.C. carriers. Let's compare the regulatory philosophy differences between the I.C.C. and the D.O.T.

In order to be certain that all I.C.C. regulated motor carriers are fully insured, the Commission long ago set up a system whereby insurance companies file evidence of insurance (filings) with the Commission for each motor carrier they insure. Should a policy be canceled, the insurer notifies the I.C.C. by canceling the filing. The Commission warns the motor carrier of a potential lapse in required insurance coverage and, should a replacement filing not be forthcoming, the Commission takes steps to shut down the motor carrier and revoke its authority. This vital information is available to the public by means of an automated phone system. The Commission has even taken steps to bar fraudulent insurers from attempting to prey on motor carriers and thereby leave the public unprotected.

Contrast this with the D.O.T. In 1980, when the D.O.T. became responsible for assuring that all non-I.C.C. motor carriers be insured, it had the opportunity to set up a "filing" system similar to the I.C.C.'s. Instead, it declined to do so and to this day never has. It depends upon random safety checks, with insurance being far down the list of items checked. This represents a haphazard, shotgun approach to motor carrier insurance and the protection of the public with the result being that the D.O.T. hasn't the faintest notion of the number of uninsured and underinsured motor carriers under its jurisdiction that are travelling the nation's highways.

We urge the Subcommittee to propose legislation that the I.C.C.'s role in mandatory cargo and B.I. & P.D. insurance should not be diminished and that the Commission should be even more vigilant in keeping uninsured vehicles off the highways. Furthermore, in view of the explosive growth of contract carriage, we urge the Subcommittee to consider whether to extend the Commission's cargo insurance requirements to contract carriers.

CONSUMER PROTECTION

In no area of transportation is there more opportunity for consumer fraud and subsequent consumer grief, and more need for consumer protection, than in the movement of household goods. The moving public entrusts all of their worldly possession to an unknown third party and it is only the Commission's consumer protection regulations that the public can look to should anything go awry.

These regulations include mandatory cargo insurance, released rates orders setting forth under what conditions a mover's liability can be limited, claims handling procedures, the identity of a mover's insurer and policy number and numerous pamphlets and publications advising the moving public of its rights and remedies.

The importance of this protection to the public cannot be overstated. The D.O.T. has never been involved in this area, and to entrust this to it now is fraught with peril. The expertise the I.C.C. staff has built up should be allowed to continue to be of use to the public.

ANTI-FRAUD AND ENFORCEMENT ACTIVITIES

In recent years, motor carrier insurance "scams" have been a severe problem for the insurance industry, the I.C.C., the motor carrier industry and the public. Unsuspecting insurers have discovered, to their dismay, that due to "scam" leases they are covering hundreds of vehicles while receiving premium for only a few vehicles. Some of the perpetrators of these "scams" have been convicted and imprisoned, usually with the assistance of I.C.C. investigators, but a number of other "scams" still operate throughout the country. Besides costing the insurance industry millions of dollars (and raising the cost of insurance for all), the public is hurt by numerous uninsured losses.

The Commission's enforcement activities also include the shutting down of uninsured motor carriers and revocation of their operating authorities as well as ordering recalcitrant motor carriers to comply with Commission claims-handling and consumer regulations. Budget constraints have cut the I.C.C.'s anti-fraud and enforcement staff to the bone. In spite of this, the Commission remains in the forefront in assisting law enforcement agencies in the battle against these "scams" and other illegal activities, activities in which the D.O.T. has never expressed any interest.

We urge the Subcommittee to propose legislation continuing and strengthening the Commission's anti-fraud and enforcement capabilities.

DATA COLLECTION ACTIVITIES

The I.C.C. requires many motor carriers to file annual and quarterly reports with it. This information is used not only by the Commission, but by many other users including the insurance industry, universities, economists, other government agencies (the Military Traffic Management Control, the General Accounting Office and the Department of Agriculture regularly use I.C.C. motor carrier reports), motor carrier management, trucking associations and labor organizations. All of these users depend upon a continued, dependable flow of motor carrier data and would be severely hurt should this information cease.

In particular, the insurance industry uses the I.C.C.'s motor carrier reports to ascertain the financial condition of individual motor carriers so as to try to identify safe motor carrier prospective insureds and to target potentially unsafe present insureds so that additional safety engineering services can be provided. As financially weaker motor carriers may try to cut back on equipment maintenance, employee hiring standards and other safety related aspects, the help and assistance of insurance company safety engineers has undoubtedly saved lives and helped to eliminate potential accidents. Insurance companies would lose the ability to target these financially weak carriers should the sunset of the I.C.C. result in a diminution of data collection.

While not all motor carriers file reports with the I.C.C. (budgetary constraints have also cut into this vital area), it should be noted that the D.O.T. has never shown interest in receiving motor carrier reports. In fact, the Intermodal Surface Transport Efficiency Act of 1991 (I.S.T.E.A.) provided for the establishment of the Bureau of Transportation Statistics within the D.O.T. in order to enhance data collection, analysis and reporting, but as of this date no motor carrier financial data has been collected by it nor are there any plans to do so.

We believe it is imperative that any proposed legislation make clear the Commission's continued responsibility to collect meaningful motor carrier data. We also urge the Subcommittee to consider whether all I.C.C. motor carriers, not just the largest ones, should file motor carrier reports with the Commission. This would prove invaluable in shedding light on a segment of the trucking industry (over 40,000 carriers) that has been in total darkness for over a decade and would be beneficial in helping insurers target potentially unsafe motor carriers.

SAFETY

While popular wisdom has it that only the D.O.T. has a role in motor carrier safety, in truth, the I.C.C.'s impact on motor carrier safety has been substantial.

Keeping uninsured vehicles off the highways is undoubtedly a key safety activity. Each motor carrier that the I.C.C. shuts down for failure to maintain evidence of insurance means another potential menace is off the road.

The financial reports collected by the I.C.C. also have a direct impact on safety. Believing that financially weak motor carriers have a higher accident rate, insurers use these reports to help identify those motor carriers most in need of enhanced safety assistance.

The effect of NAFTA is yet to be felt. However, it is clear that many are troubled by the safety aspects inherent in having a large number of Mexican trucks on our

highways. The I.C.C. can be instrumental in being sure that these Mexican truckers are insured and financially sound.

We hope that the Subcommittee will consider measures to enhance the Commission's safety-related activities, activities that play an important, complementary role to the D.O.T.'s safety functions.

SUMMARY

We urge the Subcommittee to preserve the I.C.C. and the important functions it performs. Should some of the Commission's responsibilities be found to be no longer necessary, the appropriate remedy would be to eliminate these unneeded responsibilities, not to sunset the entire Commission. It would be tragic if all of the Commission's unheralded vital, necessary functions were to be lost among the tumult, as it is clear that the D.O.T. has neither the interest nor the capability of performing these praiseworthy duties. And should the D.O.T. be instructed by Congress to take over these functions, start up and implementation costs would undoubtedly exceed the I.C.C.'s present budget allocations for these services.

The Subcommittee has an opportunity to not only save the I.C.C., but to guide it toward a more meaningful future. The Commission should be given enhanced responsibilities in the areas of insurance, consumer protection, anti-fraud activities, data collection and safety. We respectfully urge the Subcommittee to consider our comments when drafting proposed legislation.

PREPARED STATEMENT OF THE TRANSPORTATION BROKERS CONFERENCE OF AMERICA

The Transportation Brokers Conference of America (TCBA) appreciates the opportunity to participate in the Subcommittee's oversight of the Interstate Commerce Commission (ICC) and hearings on S. 2275, The Trucking Industry Regulatory Reform Act of 1994, introduced July 1, 1994.

The (TBCA) represents 1,000 property brokers licensed by the Interstate Commerce Commission (ICC) who, acting as independent contractors, arrange interstate transportation for both shipper and carrier customers throughout the United States. TBCA members are also involved in transportation transactions in Canada, Mexico and other countries. As brokers, TBCA members essentially marry the available traffic of their shipper customers with the available equipment of their carrier customers in order to facilitate the free flow of goods in both domestic and foreign commerce.

In addition to brokerage, TBCA members provide a wide variety of third party services in transportation acting as freight consolidators or forwarders, warehousemen, NVOs, ocean or air forwarders, as well as agents of shippers and carriers.

TBCA members also offer services for freight management, logistics and distribution as well as cross-dock operations. As part of freight management, members are frequently designated as agents of shippers for the purpose of payment of freight charges and in conjunction with that responsibility perform pre- and post-audit functions to reconcile charges and insure compliance with carrier tariff rates, rules and classifications on file with the Commission, or any applicable contract carriage agreements with carriers.

TBCA members are involved in arranging transportation of general and exempt commodities, as well as household goods.

TBCA members have as their principal customer base for both shipper customers and carrier customers, small to medium size businesses which engage in domestic and foreign commerce. TBCA members themselves are primarily small to medium sized businesses whose function it is, is to provide competitive options and opportunities in finding solutions to transportation problems for their shipper and carrier customers alike.

In short, TBCA members may be characterized as market-makers, introducing the products of shipper customers into markets, both domestic and foreign, in which the shipper customer wishes to participate, and at the same time introducing the services of carrier customers into domestic and foreign markets which reflect the domestic distribution as well as import/export trade patterns of this nation's businesses.

It is from the broad perspective of third party activities of its members in transportation transactions that TBCA offers this statement.

I. FUNDING OF THE ICC FOR FY 1995

TBCA strongly supports maintenance of an ICC properly funded to implement the national transportation policies Congress has deemed appropriate for this nation's

interstate and foreign commerce and expressed in the Interstate Commerce Act (ICA), 49 U.S.C. Sections 10101 et seq.

Moreover, the role of the ICC as a constructive dispute-resolution forum places significant value on the Commission's expertise and uniform interpretation and application of transportation law and policy.

The valued hallmark of the ICC in both rulemaking and adjudication has been its function as an independent agency, immune as it were from the more political influences of the transportation industry.

All of that should be preserved, yet all of that is threatened as a result of House action on the transportation appropriation bill for Fiscal Year 1995 which eliminates appropriations for the ICC as of October 1, 1994. TBCA believes House action was neither reasonable nor responsible. Removal of ICC resources merely removes the forum, but does not alter the substantive law and policies of the Interstate Commerce Act (ICA). In short, the law would remain, but the agent for implementation and venue for dispute resolution would be removed.

Justification as a budgetary measure is not present either to achieve efficient governance or effective savings. Both the Government Accounting Office (GAO) and the Congressional Budget Office (CBO) agree, that absent any modification of the substantive transportation laws and policies, removal of the ICC removes no government functions and achieves no savings, merely a shifting or realignment of performance which itself may reduce government efficiency and at the same time increase government cost.

Most thoughtful consideration of the status of the ICC starts with the analysis of the substantive transportation policies of the ICA and the ICC's role in implementing those policies.

This the House did not do. Fortunately, however, the Senate appears to have set about that course in S. 2275, The Trucking Industry Regulatory Reform Act of 1994.

S. 2275 represents reform of transportation law policy as a predicate to the streamlining of the regulatory role of government in implementing policy.

II. S. 2275, THE TRUCKING INDUSTRY REGULATORY ACT OF 1994

The TBCA supports the reform initiative set out in S. 2275 with certain modifications and recommendations noted.

(1) Section 10505 Exemption Authority

TBCA supports the proposal to grant ICC exemption authority for motor carriers similar to that exercised over rail carrier activity. In addition, TBCA believes that it is also appropriate to extend exemption authority for activities of certain third parties such as licensed property brokers. This would be consistent with the 1986 Freight Forwarders Deregulation Act. If the rail and motor carrier transportation activities are deemed appropriate for exemption, the transportation-related services of third parties, such as licensed property brokers, should also be eligible for exemption.

TBCA also believes, however, certain limitations should be preserved in extending exemption authority. Just as with rail carriers, motor carriers should not be exempted from provisions of Section 11707, Carmack Amendment liability. This would also be consistent with the 1986 Freight Forwarder Deregulation Act which retained 11707 Carmack Amendment liability for forwarders.

Concern and Recommendation No. 1. Exemption authority should be extended to cover licensed property broker activities. Section 5(a) of S. 2275 should be modified to add "or licensed property brokers" after "or a motor carrier providing transportation of property other than household goods" in subsection (a).

Concern and Recommendation No. 2. As drafted S. 2275 apparently authorizes exemption of motor carriers from Section 11707.

S. 2275 should be modified to add "motor carrier" after words "rail carrier" in Subsection 10505(e) as a part of provisions in Section 5(a) to limit the exemption.

(2) Filed Rate Doctrine

TBCA believes that while there may be some public benefit to rate disclosure, e.g. for purposes of assessing reasonableness or discriminatory rates, the Filed Rate Doctrine has become a trap for the unwary. In recent experience the doctrine has worked against efficient transportation by imposing "constructive notice" obligations and liabilities upon shippers as a result of the failure of motor carriers to adhere to and discharge their statutory obligation to charge and collect filed rates. Negotiated agreements between shippers, carriers and third parties over rates, routes and services have become commonplace since passage of the Motor Carrier Act of 1980. While the distinction in the nature of carriage (contract versus common) continues to exist, it is becoming more blurred. As a consequence, what parties in-

tended as contract carriage has been disavowed by carriers' trustees and frequently converted by bankruptcy courts to common carriage in order to pursue recovery of undercharges without referral to the ICC. what has become apparent in legislative efforts to resolve the undercharge crisis is that the filed rate doctrine is not working and needs to be fixed. The Negotiated Rates Act of 1993 P.L. 103-180, 107 STAT 2044 (Dec. 3,1993) (NRA) provides the opportunity and options to bring closure to the present problem. S. 2275 presents the opportunity to do so for the future.

Concern and Recommendation. As drafted it is not clear that S. 2275 removes tariff filing responsibilities and obligations entirely. Under the present language of Section 6, Tariff Filing, individual motor carriers would not have that obligation. Thus it would appear that attempts to individually file tariffs would be rejected by the ICC, and no obligation would be imposed on shippers based on "constructive notice". However, what is not clear is whether under the still authorized collective rate-making with rate bureaus acting as carriers agents, the filing obligation continues, and if so, what are the consequences to shippers if bureaus file collectively established tariff rates on behalf of motor carriers which individually need not file. If collective rates may be filed by rate bureaus on behalf of more than one carrier, it should not impose "constructive notice" obligations on shippers exposing them to subsequent undercharge claims if the carrier bills and collects less for its service. A "new" undercharge problem should not be the result of enacting S. 2275.

TBCA submits that Section 6 should be revised to clearly state that neither individual motor carriers not rate bureaus are under obligation to file tariff rates and that the consequence of "filing" a "tariff", disclosure, or "publishing" a tariff does not impose new liability on the shipper to pay freight charges other than that billed and collected by the carrier for the specific transaction. For a motor common carrier to seek to enforce or recover an amount other than that where it disclosed, billed and collected as being applicable to the transaction, should be deemed unreasonable. Appropriate modification of Section 10701 should be considered. See Appendix attached for suggested language.

(3) Licensure

TBCA supports the streamlined entry provisions of S. 2275 essentially focusing on safety, fitness and insurance criteria for the issuance of authority and eliminating public convenience and necessity (PCN). This more closely conforms with what are the present licensure practices implemented under current law.

(4) ICC-FMC Merger Study

TBCA supports this proposal, and believes this may be one of the most significant and far reaching aspects of S. 2275. The ICC and FMC are ideal candidates for merger. For a variety of reasons, most notable being the restructuring of government for more effective and efficient operations. Today's transportation services are truly multimodal and intermodal in character in both domestic and foreign commerce. The integrated utilization of transportation modes and the evolving marketplace warrant critical examination of the continuing need for separate modal regulatory agencies.

Moreover, the ICC and FMC have more functions and responsibilities in common than in distinction. The major economic regulatory issues involving antitrust, collective ratemaking, merger, contracts and competitive market analysis are similar under both the Interstate Commerce Act and the Shipping Act.

The FMC could benefit from the competitive market experience of the ICC under the Interstate Commerce Act. The ICC could benefit from the foreign commerce experience of the FMC under the Shipping Act. Both could conserve resources in encouraging and establishing public/private sector mechanisms for electronic data base and disclosure of rates, rules and classifications for transportation services. Both the ICC and the FMC have shared jurisdiction over transportation in the offshore trades which could be better coordinated to avoid the inconsistencies and contradictions of past separate agency actions.

Transportation policies involving maritime, surface and air modes should reflect market dynamics and the integrated use of the modes, the changing perspectives of economic regulation, as well as the global nature of today's marketplace.

(5) Study of Further ICC Regulatory Reform and Efficiency

TBCA supports further study, in consultation with the DOT Secretary, of the role and responsibilities of the Commission and welcome any further recommendations to enhance competition, and promote industry safety while providing more effective use of government resources.

In the next six months, experience in the resolution of undercharge disputes under the NRA, trans-border transportation issues under NAFTA, as well as public/private sector mechanism for disclosure of, rate, rules and classifications should en-

able the Commission to make timely and meaningful recommendations for further improvements to both public and private transportation policy.

Moreover, with the elimination of tariff filing requirements contemplated by S. 2275, the ICC will have the opportunity to evaluate the evolving "nature of carriage", and the relative value of the distinction between common and contract carriage, as well as the continued role of antitrust immunity for various aspects of motor carriage.

Finally, the growth and development of transportation intermediaries provides an opportunity for the Commission to more critically examine the expanding roles and activities of this rapidly emerging and substantial sector of the transportation industry in order to determine the regulatory reform appropriate to complement S. 2275.

Specific TBCA suggestions for amendments to S. 2275 are attached, as Appendix A.

APPENDIX A—AMENDMENTS MODIFYING S. 2275, "THE TRUCKING INDUSTRY REGULATORY REFORM ACT OF 1994"

1. Section 5—Exemptions

(a) In General—Section 10505 (relating to authority to exempt rail carrier transportation) is amended—

1. Add new language to Section 5(a)(1) to read:

(1) by inserting "or a motor carrier providing transportation of property other than household goods" and "or a licensed property broker" after "rail carriers providing transportation".

[This modification makes licensed broker activity eligible for exemption.]

2. Add new provision to Section 5(a) as (3) and renumber original (3) as (4):

(1) by inserting "or motor carrier" after "to relieve any rail carrier" and by inserting "motor carriers" after "prevent rail carriers" in subsection (e).

[This modification precludes exemption of motor carriers from Section 11707 (Carmack Amend. Liability) just as rail carriers are precluded from exemption.]

2. Section 6—Tariff Filing

[Add new Section (a) to Section 6 and redesignate original Sections (a)-(e) as (b)-(f)]

(a) Standards for Rates, Classifications, through Routes, Rules and Practices—Section 10701 (relating to Standards) is amended by deleting Old Section (b) repealed, etc., and inserting new Section (b):

(b) A motor common carrier providing transportation subject to the jurisdiction of the Commission under Subchapter II of Chapter 105, shall, prior to transportation, disclose in writing to all parties related to the transportation transaction, all of the carrier's rates, rules, classifications or practices applicable to the specific transportation to be provided, and that carrier is authorized to bill and collect only those rates and charges specifically disclosed as applicable to the transaction. It shall be unreasonable for a motor carrier to seek to enforce or recover freight charges under Section 11706 in any amount other than that disclosed, billed and collected by the carrier as being applicable for the services in the specific transportation transaction.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners (NARUC) hereby respectfully submits its written statement concerning the general functions of the Interstate Commerce Commission. We respectfully request that this statement be included in the record of the July 13, 1994 hearing held Senate Commerce, Science, and Transportation Subcommittee on Surface Transportation.

INTRODUCTION

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States engaged in the economic and safety regulation of carriers and utilities. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America. More specifically, the NARUC contains the State officials charged with the duty of regulating the intrastate rates and services of trucking companies. These officials have the obligation under State law to assure

the establishment and maintenance of such services as may be required by the public convenience and necessity, and to ensure that such services are provided at rates and conditions which are just, reasonable, and nondiscriminatory for all customers.

During the past year there have been numerous legislative proposals to either sunset the Interstate Commerce Commission (ICC) or to transfer its responsibilities to the Department of Transportation (DOT). These proposals have been supported for two reasons: cost savings to the Federal government or a perceived notion that the agency and its functions are obsolete.

The NARUC opposes any proposal to eliminate the ICC or to transfer its functions to the Department of Transportation. We support the current structure of the ICC to handle the regulatory, rulemaking, and oversight functions-related to surface transportation. The NARUC has adopted several Resolutions supporting the ICC, the most recent Resolution was adopted in 1993 and is attached to this testimony. NARUC opposes the sunsetting of the ICC, and further the NARUC opposes the transfer of the ICC's authority to the Department of Transportation for several reasons:

- The elimination of the ICC does not provide for a deliberative body to which individuals can seek recourse as currently can be guaranteed by ICC Commissioners and staff;
- The Department of Transportation does not have the staff nor the specialization to fulfill the duties and responsibilities currently overseen by the ICC Commissioners and staff;
- The Department of Transportation is presently inundated with its mandates and would be overly burdened with the statutory requirements and responsibilities of combining the Department of Transportation and the Interstate Commerce Commission;
- The ICC has responsibility over transportation safety and insurance regulation through tariff filings and established policies which promote reasonable and fair industry practices in the interest of protecting the public; and
- The NARUC Commissioners rely on the ICC for technical assistance and guidance in regulatory matters and statutory law.

DISCUSSION

The members of the NARUC believe that the most important feature of the ICC is its structure. The ICC, created in 1887, was established as an independent regulatory agency. While the ICC Commissioners are appointed by the President and confirmed by the U.S. Senate, political balance among appointees is created by ensuring that no more than three of the five appointees are of the same political party as the President. Unlike the Executive Branch's Departments, the ICC's function is not to carry out the programs and policies of the White House Administration. Rather, the agency is charged with protecting the public from discriminatory practices and is responsible to the Congress.

The NARUC firmly supports the ICC's independence. We believe that this independent structure insulates the Commission from the political pressure of both the Executive and Legislative branches of government and that this serves the institution, the states, the regulated industries and the public interest very well. Without such political pressures, the Commissioners are free to resolve disputes in an equitable manner for all parties involved.

The quasi-judicial nature of the ICC is also an important feature of the ICC's structure. It allows the Commissioners to mediate the interests of many different parties and prevents many parties from having to litigate their problems in court. State commissions have been involved in these cases and while the results are not always in the States' favor, we prefer having disputes resolved before the ICC rather than in court.

To move the ICC's responsibilities to an agency which is directly subject to the political pressures of the Administration would be a grave mistake. The Department of Transportation was simply not established to handle the rule making and dispute resolution functions which are the cornerstone of the ICC's responsibilities.

When the DOT was created, Congress decided against merging the functions of the two agencies. We believe that the Congress should continue to reject this notion. The impartiality of the ICC's functions is the hallmark of its history. Further, we believe that little cost savings will be achieved with such a transfer. It is unrealistic to think that such a transfer could be made without giving DOT additional funds to carry out the functions and without retaining those employees of the ICC who have years of institutional knowledge which would be necessary to the establishment of a new section within the DOT. The Federal Railroad Administration has

acknowledged that additional funds and personnel would be needed if they were to assume the ICC's railroad functions.

Finally, the ICC is an agency which has already undergone a significant "re-invention" as promoted by Vice President Al Gore through the National Performance Review. The ICC has modified its policies and structure after the passage of significant de-regulatory legislation such as the Staggers Rail Act and the Motor Carrier Act, which were both enacted in 1980. One tangible result of the de-regulation is seen in the sharply reduced number of ICC employees. The ICC has gone from over 2,000 full-time employees to 625 employees in 1993.

To eliminate the ICC would not be an example of the "reinvention of government" but a hastily made decision. The ICC has already had to reinvent itself and it will continue to do so. One example of its commitment to streamlining regulation is seen in the Commission's plans to move forward with the implementation of electronic tariff filing, which should ease the time and resource burdens on trucking companies.

In addition, the ICC has joined the NARUC's Committee on Transportation in initiating a task force to review all aspects of motor carrier practices, procedures, rules and regulations to promote greater uniformity and efficiency among State transportation programs. The goal is to encourage Federal and State government transportation policies to reflect the changing needs, operations and opportunities of transportation companies and consumers. The task force will work to make State policies concerning motor carrier licensing, services, safety, insurance, rates, practices, mergers, and acquisitions current with today's transportation environment. This joint effort, along with industry guidance, will also allow the task force to develop a model, uniform Federal and State program. The review and recommendations of the task force can then be presented to Congress and the State legislatures within 15 months.

Lastly, we must remember that, simply because the rail and motor carrier industries have been significantly de-regulated, does not mean that the need for regulatory oversight and dispute resolution should be eliminated as well. There is still widespread support for the Commission's regulatory activities relating to rail service and household goods. Without such oversight the problems which caused the need for more extensive regulation in the first place may re-appear.

CONCLUSION

There is still work to be done at the ICC. There is still a need for the motor carrier and rail oversight. These responsibilities have increased with the passage of NAFTA, because additional motor carrier and rail traffic from Mexico and Canada will require oversight as well. Further, while the industries have undergone significant de-regulation, the need to balance the competing interests among shippers and communities has not disappeared. It is the ICC who has the expertise in both staff and resources to fulfill these functions in an efficient and high quality manner. To hastily eliminate or transfer these functions would not benefit the industry, and its consumers, nor would it have any meaningful effect on the Federal budget.

RESOLUTION OPPOSING S. 1248 SPONSORED BY SENATOR DANFORTH TO SUNSET THE INTERSTATE COMMERCE COMMISSION

Whereas, Senator Danforth has introduced legislation, S. 1248, which would transfer the responsibilities of the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation and sunset the ICC as of October 1, 1993; and

Whereas, The ICC has some responsibility over motor carrier and rail safety programs through tariff filings and established policies which promote reasonable and fair industry practices in the interest of protecting the public; and

Whereas, The ICC has far reaching authority beyond rate regulation and this authority is vastly important in all aspects of protecting the public interest; and

Whereas, The budget for the Interstate Commerce Committee has been considerably reduced over the past years which has affected the Commission's ability to carry out its mission and protect the public interest; and

Whereas, The Department of Transportation does not have the staff nor the specialization to fulfill the duties and responsibilities currently overseen by the ICC Commissioners and Staff; and

Whereas, The S. 1248 does not provide for a deliberative body to which individuals can seek recourse as currently can be guaranteed by the Commissioners at the ICC; and

Whereas, The NARUC Commissioners rely on the ICC for technical assistance and guidance in regulatory matters and statutory law; and

Whereas, the Department of Transportation is presently inundated with their mandates and would be overly burdened with the statutory requirements and responsibilities of combining the Department of Transportation and the Interstate Commerce Committee; now, therefore, be it

Resolved, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 1993 Summer Meeting in San Francisco, California, strongly opposes the concept of elimination of the ICC and passage of S. 1248 sponsored by Senator Danforth and urges Congress to fund the ICC at a level which allows them to properly carry out its duties and responsibilities as are mandated by law.

PREPARED STATEMENT OF JOHN A. JAMES, CHAIRMAN OF THE BOARD, O–J TRANSPORT CO.

My name is John A. James. I am the Chairman of the Board of O–J Transport Company, a motor common and contract carrier holding authority from the Interstate Commerce Commission in MC138676. O–J's headquarters is located at 4005 W. Fort Street, Detroit, Michigan 48209.

In addition to being the Chairman of the Board of O–J, I am also a fifty-percent shareholder of the company. The other fifty-percent of the stock of O–J is owned by my uncle, Mr. Calvin Outlaw. My uncle and I formed O–J Transport in 1971, at a time when there were only a handful of minority-owned motor carriers in the United States. O–J Transport has, through the intervening 23 years, always maintained its status as a totally minority-owned concern.

At the time of the hearing on my first ICC permanent application in November of 1973, O–J held a single piece of temporary authority to transport malt beverages one-way from Milwaukee, Wisconsin to Detroit, Michigan. We operated with two tractor-trailer units, and shortly before the ICC hearing commenced that year, I returned home to find the driver's clipboard from one of the units placed inside my back screen door. I received a call a few minutes later, informing me that a fire had destroyed that tractor-trailer unit, which had been parked on the street only a few blocks from my home.

We persevered. O–J was unsuccessful in pressing itsargument that minority ownership, should be a factor considered in application proceedings within the term "public convenience and necessity" as contained in the Interstate Commerce Act, a fight we took all the way to the U.S. Supreme Court. We ultimately received numerous grants of operating authority, even before the Motor Carrier Act of 1980.

I worked with a member of this body, Senator Robert Griffin of Michigan, toward the goal of improving minority participation in the trucking industry, and visited the White House in 1976 to discuss this particular subject. I remember that Senator Griffin was especially interested in the fact that no blacks had ever even held the position of ICC Commissioner. I discussed with Members of Congress the minority issue in the process leading up to the passage of the Motor Carrier Act of 1980. Not once, however, did I advocate the abolition of the Interstate Commerce Commission or an end to all economic regulation.

Today, O–J Transport operates a fleet of over 300 tractors and 1,000 trailer units. Its operating revenues exceed 30 million dollars per year. O–J has as a goal targeted members of minority groups and the unemployed as a labor pool from which to seek new hires, and over 90 percent of O–J's employees are minority group members.

O–J is a certified minority supplier to the automobile industry. We count among our major customers such companies as Ford Motor Company and Chrysler Corporation. I personally am a member of the Michigan Public Service Commission Motor Carrier Advisory Board, having served 11 consecutive one years terms on that Board. I am a member of the Board of Governors of the Michigan Trucking Association also.

As O–J has grown, so has the transportation focus of O–J and its affiliated companies. I am also the owner of a business which is the operator of the City of Detroit foreign trade zone. Another entity which I own is actively pursuing a development plan for a new major port facility on the Detroit river in the City of Detroit, with complete intermodal facilities, including maritime and rail, as well as truck.

It was thus with extreme concern that I heard of the vote by the United States House of Representatives on June 16th to abolish the Interstate Commerce Commission. I strongly oppose the elimination of the ICC as an agency, I believe that such a step is terrible public policy.

I make this statement based on my experience as the owner of a minority-owned carrier over the last 20 years.

It is my firm belief that having in place a regulatory structure, governed by an independent regulatory agency mindful of its regulatory duties, is the best manner to secure a safe and sable truck industry for both carriers and shippers alike. Having such a structure in place, even with the greatly reduced responsibilities which occurred after the Motor Carrier Act of 1980, provides a framework within which all carriers, both large and small, can fairly compete. Such a framework allows for the small minority-owned business to enter the market place with at least some protection from cut-throat competition and chaotic economic conditions. I note that Congress, in 1980, included in the Transportation Policy of the Interstate Commerce Act the goal of "promoting greater participation by minorities in the motor carrier system".

Congress, only late last year, recognized that many serious problems had been created by lax rate regulation, when it passed the Negotiated Rates Act of 1993 (NRA). The NRA imposed statutory written contract requirements on motor carriers and their shippers and directed attention to the egregious abuses and, in some cases, outright fraud which had occurred through off-bill discounting practices. The NRA also provided a solution to the monstrous undercharge problem which had been created by spot contracts and generally unsound market place conditions. To eliminate funding for the ICC now runs directly counter to the wisdom contained in the NRA.

I submit that it makes absolutely no sense to cut the funding for the Interstate Commerce Commission, leaving carriers and shippers in a statutory limbo concerning requirements which would remain on the books with no actual agency to administer them. Neither would transfer of the regulatory duties of the ICC to the U.S. DOT be an acceptable substitute in my mind, given that agency's traditional hostility toward any economic regulation or controls on the transportation industry.

Eliminating all regulatory controls does not make it easier for the small businessperson in the transportation industry to get a foothold in a market. I have been fortunate to work with companies such as Chrysler and Ford which have a serious commitment to developing minority businesses. Many of my brethren in this business have not been so fortune. They have found lots of shippers, willing to give them all their freight, as long as the minority carrier was willing to do the work for peanuts. As new businesspersons without a solid notion of their costs of operation, they found, after the Motor Carrier Act of 1980, that the freedom to compete promised in the Act by the loosened regulatory policies was in reality the freedom to go broke, or otherwise suffer at the hands of shippers possessing monopoly power.

I have also contrasted and compared my intrastate experience in Michigan with my interstate experience since 1980. It is a telling comparison. Michigan also revised its motor carrier statute in the early 1980's, closely on the heels of the federal effort. I actively participated in the legislative process leading up to not only the Motor Carrier Act of 1980 changes, but also the Michigan revisions in 1982. The Michigan legislature chose not to go as far as Congress had, although intrastate economic controls were significantly loosened. Subsequently, the Michigan statute was revised again at the end of 1993, easing up on some aspects of common carrier regulation, while at the same time tightening contract carrier regulation. I have found that the Michigan environment with a degree of more stringent regulation, is more stable than the interstate environment. The majority of O–J's revenues are derived today from Michigan intrastate transportation in fact, whereas, in 1980, over 90 percent of O–J's revenues was derived from interstate commerce.

What this means to me, for the new minority motor carrier entrant, is that there is not too much regulation at the interstate level today, but rather too little. An Interstate Commerce Commission charged with enforcing the Act as written in 1980, instead of pursuing free market policies through administrative deregulation, would have served the public better, in my opinion, than what occurred. Now is not the time to worsen this situation, by abolishing the ICC altogether, but rather to preserve it as an agency, with its regulatory functions.

There is also the safety aspect to consider. With even minimal licensing requirements in place, as is the situation now, a control exists over the names and identities of motor carrier operators. A fitness certification process is involved in the receipt of any motor carrier operating authority. These minimal controls are an important check on those operators using our nation's highways to conduct a business. It also provides a minimum comfort level for shippers concerning the companies with which they deal. Just as does the fitness requirement on licensing proceedings, the strict monitoring of insurance presently done by the ICC is also of vital assistance from a safety standpoint. These beneficial aspects of ICC regulation should be retained, as part and parcel of a framework of liberal economic regulation that allows for new entry for those adjudged to be fit while at the same time providing for some flexible economic parameters within which the competition occurs.

Removing all the rules from the game or keeping the rules and killing the umpire, will lead not to greater economic competition but to greater concentration. It makes it easier for the big players, to take advantage of the smaller trucking company. O–J, compared to the largest players in the trucking industry, is a mere drop in the bucket. Removing ICC funding and effectively abolishing the agency as proposed will make it not only more difficult for the John James of the 1990's to go into the trucking business, but it will make it more difficult for those of us who have grown and survived to remain in business, and for us to continue to provide minority jobs in economically disadvantaged cities like Detroit. For these reasons, I respectfully request that the Senate reject this ill-advised attempt. The ICC functions should continue as an independent agency, and, as I have indicated, the agency should, if anything, be strengthened.

Prepared Statement of Alex M. Lewandowski, President, Transportation Lawyers Association

Iam pleased to have this opportunity to present the views of Transportation Lawyers Association (TLA) in connection with the Committee's oversight of the Interstate Commerce Commission. TLA's membership is composed of approximately 700 attorneys in the United States, Canada, Mexico and the United Kingdom who are involved in transportation law. Members of the Association represent a wide variety of interests, including for hire carriers in the surface, air and water modes, private carriers and shippers. Our U.S. members are actively involved in practice before the Interstate Commerce Commission, the Department of Transportation, the Federal Maritime Commission, all of the state regulatory agencies, and of course state and federal courts. Because of this broad perspective, we are keenly appreciative of the need. for continued existence of the Commission as an independent quasi-judicial body for the impartial resolution of the multitude of problems that arise in interstate and foreign commerce.

We take notice that this hearing is being held amidst agitation by some who propose the abrupt elimination of all funding for the Commission for fiscal year 1995. If that appropriation elimination effort were to succeed, commercial chaos would result. Tens of millions of interstate shipments of freight and household goods move every day subject to substantive duties spelled out in the Interstate Commerce Act and the ICC's implementing regulations. Defunding the ICC leaves the legal duties in place while eliminating the agency charged with administering the Act. This course would lead to massive confusion for carriers and shippers. It would also abruptly eliminate the ICC's activity in monitoring the safety and insurance of for-hire carriers, thereby putting the entire motoring public at risk. It is folly to believe that all of these problems can be sorted out in the short time remaining until Congress adjourns in October. It Is far better to proceed with the reasoned review of transportation matters which this Committee has commenced. For that reason, TLA is especially appreciative of the opportunity to offer this testimony.

Rather than transferring the important functions of the Interstate Commerce Commission to an executive branch department with no expertise in the issues involved, TLA firmly believes that adjudication of matters pertaining to interstate commerce is best entrusted to an independent and collegial body. The Interstate Commerce Commission served as the model for the development of the subsequent independent regulatory agencies, and that model remains valid for carrying out this type of function. As the very recent study by the General Accounting Office[1] pointed out, shippers and carriers value the independence of the agency in acting as an expert and impartial tribunal for the resolution of transportation disputes. GAO observed that certain executive agency functions, such as the Secretary's role in serving as an ex officio member of the Board of Directors and in administering funds for Amtrak would create conflicts of interest if the Department of Transportation were to be called upon to resolve disputes between Amtrak and the track owning railroads.

President Kennedy said it well in his message to Congress of April 13, 1961, 107 Cong. Rec., 5874, when he wrote:

> This does not mean that either the President or the Congress should intrude or seek to intervene in those matters which by law these agencies have to decide on the basis of open and recorded evidence, where they, like the judiciary, must determine independently what conclusion will best serve the public interest as that interest may be defined by law. Intervention, if it be deemed desir-

[1] GAO/T-RCED-94-22, Interstate Commerce Commission: Transferring ICC's Rail Regulatory' Responsibilities May not Achieve Desired Effects.

able by the Executive or the Congress In any such matter, must be as a party or an intervener in the particular proceeding; and such intervention should be accorded no special preference or influence.

The Committee must examine very carefully any proposed changes in the regulation of the for-hire motor carriage of property, including household goods, and passengers. It must be recognized that the ICC plays a vital role in overseeing the safety and insurance of for-hire carriers. Each year the ICC revokes thousands of certificates and orders the cessation of operations by carriers that have failed to keep in force the required levels of insurance. The ICC's functions in this area are absolutely essential to the safety and well being of the motoring public.

There are other matters relating to transportation by motor carriers where the ICC plays an extremely important role. Every year the ICC renders assistance to thousands of consumers who need assistance with respect to the movement of their household goods. Many of these people are entrusting their valued possessions to carriers for the first time in their lives. Under the Interstate Commerce Act the correlative rights and duties of these carriers are defined by their publicly filed tariffs. Furthermore, the ICC's regulations require prompt processing of all loss and damage claims, and also define the circumstances under which transportation of property may be subject to released value.

Looking to the future, we note that implementation of the North American Free Trade Agreement already is resulting in increased cross-border traffic. Commencing in December, 1995, Mexican truckers will be able to haul international traffic to and from all points in California, Arizona, New Mexico and Texas. After six years, they will be engaged in hauling cross-border freight to and from all points in the United States. A little known fact is that there are presently more than 4,000 Mexican truckers presently licensed by the ICC to operate within the border commercial zones. While NAFTA retains restrictions upon cabotage by Mexican truckers, those restrictions will be meaningless unless the United States retains a system to identify such carriers and maintains a reasonable enforcement capability. It will also be necessary to review the safety and insurance filings of those carriers.

As previously mentioned, our membership includes attorneys from Mexico. Our review of the law and practices governing transportation in the United States and Mexico reveals major differences. Transportation between the United States and Mexico under NAFTA will be greatly facilitated if uniform transportation practices, including a uniform bill of lading, can be developed. We believe that the ICC can play a very constructive role in developing this future international trade.

For all of the reasons cited, we strongly urge Congress to maintain the independent status of the Interstate Commerce Commission and to adopt changes in the Act only after careful deliberation and appropriate hearings which will provide an opportunity for careful evaluation of specific proposals. Any other course may lead to the precipitate adoption of proposals which turn out to have a host of unintended and unfortunate consequences.

In the limited time available since its introduction, we have reviewed S. 2275, "The Trucking Industry Regulatory Reform Act of 1994," but the time constraints have made it impossible for the Association to take a formal position on the bill. Nevertheless we will offer some preliminary impressions. While the proposal may contain some commendable provisions, the understandable circumstances that compelled its introduction also explains why the bill raises almost as many questions as "defunding."

For example, Section 9 proposes that only motor carriers of passengers, motor common carriers of household goods and brokers would be subject to the revocation provisions of 49 U.S.C. 10925(d)(1), but a contradictory revision of the subparagraphs under (d)(1) attempts to reintroduce motor contract carriers of property and motor common carriers of property other than household goods into the revocation scheme.

While the proposal eliminates tariff filing for individual motor common carriers, it would destroy the uniformity presently in place regarding claims processing as much as would "defunding," since all claims provisions are published as prescribed tariff rules. With the prospect of as many different claim regimes as motor carriers, confusion will be the inevitable result. It is foreseeable that this aspect alone could result in litigation problems matching those of the undercharge situation of the past several years.

Numerous other issues, involving such arcane but important commercial subjects as released value rates, all counsel that a cautious, thoughtful and thorough approach to reformation of the Interstate Commerce Act will not only limit undue disruption of commerce, but also permit Congress to free itself of the need to revisit these areas in the near future to correct unintended results.

We concur wholeheartedly with Section 10 of the bill, which calls for a feasibility study concerning a merger of the Federal Maritime Commission and the Interstate Commerce Commission. When Congress passed the Intermodal Surface Transportation Efficiency Act in 1990, it recognized that transportation is becoming increasingly intermodal in this decade. In view of this trend, we believe that it makes sense to have a single agency with intermodal jurisdiction to carry on these important functions. We also concur with Section 11, which calls upon the Interstate Commerce Commission and the Department of Transportation to conduct a study and to report promptly upon proposals for specific regulatory reform. It may well be that such a study should be conducted by a separate organization such as the Transportation Research Board. Wherever this study is performed, we believe that it represents a responsible approach to regulatory reform, that will reduce the likelihood of unintended and unfavorable consequences that attends legislation crafted in an artificial aura of a crisis that has been created by the recent action of the House of Representatives.

PREPARED STATEMENT OF RICHARD B. DAUPHIN, PRESIDENT, WESTERN COAL TRAFFIC LEAGUE

On behalf of the Members of The Western Coal Traffic League ("WCTL"), whose members are shippers of approximately 90 million tons of western coal per year, I am pleased to submit the following statement offering the WCTL's views on the continued funding of the Interstate Commerce Commission ("ICC"). Attached please find a list of the members of the WCTL.

The WCTL strongly supports the continued funding of the ICC. We further oppose efforts to transfer its regulatory and quasi-judicial functions to the Department of Transportation ("DOT"). The WCTL appreciates the opportunity to participate in later deliberations that will address the utility of ICC regulation of the rail transportation industry.

The rail transportation industry has undergone tremendous transformation over the past 14 years, since the passage of the Staggers Rail Act of 1980. Much of the regulatory burden that impeded modernization, competition and efforts to make rail transportation more efficient are now gone. Railroads may abandon unprofitable and rarely-used track, thus permitting shortline entities to operate on those routes in an efficient and profitable manner. The use of confidential contract negotiations assists shippers in obtaining the best available rail transportation service at the lowest cost. Thus, free market economy principles have cut needless costs and increased profits and quality of rail service for all.

While the Staggers Act deregulation has created many economic benefits for shippers and carriers alike, the need for continued regulatory oversight remains, however, to protect those shippers who cannot take advantage of the benefits of free market competition. Shippers that lack effective, economically feasible alternative means of transportation service remain captive to the rates and practices that a single rail carrier may provide. As a result, increases in rail transportation rates or changes in rail transportation practices must be borne by those captive shippers and thereafter passed along to their consumers.

Many electric utilities, for example, can only obtain rail transportation service for the shipment of coal from one rail carrier. Oftentimes, no competitive rail trackage that could generate competitive negotiations is present. Alternative transportation methods, such as truck or slurry pipeline, are not economically feasible due to the large amounts of coal delivered or land use restrictions. As a result, the utilities must pay for services that are not as cost-effective as they would be if free market competition existed. Examples of such situations, where captive coal shippers have recently found it necessary to seek rate protection from the ICC, include: Docket No. 41185, *Arizona Public Service* v. *The Atchison, Topeka and Santa Fe Railway Company;* Docket No. 41191, *West Texas Utilities* v. *Burlington Northern Railroad Company;* and Docket No. 41242, *Central Power & Light Company* v. *Southern Pacific Transportation Company.*

Such a situation requires the presence of experienced, regulatory oversight in order to guarantee the continuation of rail transportation service at a price and quality that maintains reliable service for electric utilities that depend upon coal transportation by rail, as well as other shippers who depend on rail transportation for the movement of supplies and manufactured goods.

The presence of an independent, effective ICC benefits electric utilities, especially those that are captive shippers, in two substantial ways. First, utilities can seek expert, impartial relief from unreasonable rail transportation rates and practices from the ICC. Over the past 10 years, as the ICC has streamlined its budget and size,

it has also saved hundreds of millions of dollars for electric utilities, including WCTL members, as a result of its actions affecting rail transportation rates for coal. These savings flow directly to the utilities' ratepayers in the form of lower electric bills.

Second, but just as important, the presence of the ICC as an impartial forum forces railroads that maintain a monopoly over rail transportation service to captive shippers to negotiate rail transportation contracts on more reasonable terms since these shippers can seek relief from the agency. The deterrent effect of possible regulation by the Commission is frequently sufficient to prevent actual litigation. Thus, the presence of an experienced, impartial agency that will act to protect captive shippers reaps the American consumer benefits without resolving a complaint!

While an argument can be made that the DOT and the ICC maintain overlapping, and therefore redundant, jurisdiction over certain motor carrier functions, no such argument can be made with respect to rail transportation. The DOT has no experience with the economic regulation of rail transportation service or resolution of disputes concerning that service. DOT admits this lack of experience as a primary reason why it and the Clinton Administration oppose efforts to sunset the ICC. Any effort to transfer ICC rail regulatory functions to the DOT would require a similar transfer of those ICC employees who possess the necessary expertise to the DOT—a transfer that does not save any money as sunset proponents argue.

For over 107 years, the Interstate Commerce Commission has served to regulate the rail transportation industry that is so vital the continued growth of the American economy. Over these years, the Congress has mandated, and the ICC has developed, special protections for "captive" shippers, such as electric utilities who are WCTL members, so that railroads cannot take undue advantage of the monopoly that the railroads maintain. Current efforts to eliminate funding for the ICC are shortsighted and ill-conceived. The proponents fail to consider the vulnerability of captive shippers to the imposition of unreasonable rates and practices, and the resulting costs that elimination of the ICC will force the American consumer to bear.

Electric utilities and other shippers strenuously oppose efforts to eliminate funding for the ICC and efforts to transfer its rail transportation regulatory functions to the DOT. The ICC has ably performed its rail transportation oversight responsibilities. The DOT, as it recognizes, has no experience with rail rate regulation or enforcement of the Staggers Rail Act. A transfer of this responsibility to the DOT would leave shippers, such as captive electric utilities, vulnerable to unreasonable rates and practices and increase their transportation costs. These increased costs would ultimately be borne by the American consumer.

WESTERN COAL TRAFFIC LEAGUE MEMBER COMPANIES

Arizona Electric Power Cooperative, Inc.; BNI Coal, Ltd.; Cajun Electric Power Cooperative, Inc.; Central Louisiana Electric Company, Inc.; Central Power & Light Company; City of Colorado Springs; City Public Service Board of San Antonio; Fayette Power Project; Houston Industries, Inc.; Kansas City Power & Light Company; Midwest Power; Minnesota Power; Omaha Public Power District; Public Service of Oklahoma; Southwestern Electric Power Company; TUCO, Inc.; Unitrain, Inc.; West Texas Utilities; and Western Resources.

Prepared Statement of Joseph M. Harrison, President, American Movers Conference

The American Movers Conference (AMC) is the largest national trade association representing household goods movers. With approximately 3,000 members nationwide, AMC represents the entire spectrum of the industry including national van lines, their affiliated agents and independent regional and national carriers. AMC functions include representation and promotion of the interests of the moving industry before federal and state legislative and regulatory bodies.

The Household Goods Carriers' Bureau Committee (HGCBC or Committee) is an autonomous committee within AMC and the principal tariff publishing and collective ratemaking organization of the moving industry. It operates pursuant to a collective ratemaking agreement filed with and approved by the Interstate Commerce Commission under 49 U.S.C. § 10706 on behalf of 2,200 movers. In addition, the HGCRC represents 13,000 motor carriers of every description who rely on the Committee to maintain an accurate National Mileage Guide of distances suitable for truck transportation between all points in the United States.

AMC is strongly opposed to any legislative effort that would eliminate funding for the Interstate Commerce Commission. We are aware that many of the pressures to

change regulation of the trucking industry are the result of federal budgetary constraints and changes in the industry, other than the moving segment. In the case of movers, they are inextricably linked with the ICC and any substantive changes in the ICC's role in the regulation of movers will seriously impact the industry's ability to serve the public.

This statement will address three aspects of the House of Representatives' action in eliminating funding for the ICC as they are presented for this Subcommittee's consideration:

(1) the consequences of letting the moving industry and the consumers and other shippers it serves adrift in an ineffective regulatory morass;

(2) the movers' position on the proposal introduced by Senator Exon (S. 2275);

(3) the fact that Senator Exon's proposal should be modified to preserve essential price related standards that have been developed to serve all motor carriers and shippers who use their services.

THE MOVING INDUSTRY ADRIFT

The precipitous action of the House of Representatives in eliminating ICC funding is so ill-conceived that it defies good common sense to be forced to argue against its eventual implementation. It seems axiomatic that movers are regulated because Congress has understood the special operational and regulatory circumstances presented by an industry that deals directly with consumers. Certainly the legislative history of the Household Goods Transportation Act of 1980 reflects this understanding as is apparent from the following statement of Congressional concern:

> The fact that the household moving sector does business with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lake a thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possession:, which often are of a fragile nature. H.Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in (1980) U.S. Code, Cong. & Admin. News, 4271, 4272.
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> * * * the committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Accordingly, this bill provides the Interstate Commerce Commission with special authority to protect these shippers. Ibid., at 4275.

As Congress said, "this bill provides the Interstate Commerce Commission with special authority to protect these shippers." The ICC has prudently exercised that authority. It has balanced the interests of consumers with those of the moving industry in a manner that requires movers to follow a standardized system of advising consumers of the carriers' responsibilities and the consumers' rights when household goods are tendered for transportation and possibly storage. During 1993 the industry moved 1.3 million households and in 1994 we project 1.5 million households will be moved. All of this was and will be accomplished pursuant to regulations promulgated by the ICC as mandated by the HGTA of 1980. Recent testimony of Gail G. McDonald, Chairman of the Commission, before the Subcommittee on Surface Transportation of the House Public Works Committee revealed that in 1993 the Commission handled 2,830 complaints involving interstate movers. Certainly, this is a small number in relation to the number of moves accomplished and, it is, I submit, because the moving industry adheres to the regulations established by the Commission. These regulations, as administered by the Commission, are essential to a well-ordered national moving system that serves the public interest. A list of the regulations follows and, as their titles indicate, set forth a defined, clearly understood set of operational requirements that movers are compelled to follow when performing their service:

- Information that must be furnished to shippers.
- Estimates of carrier charges.
- Final charges on shipments subject to weight limitations.
- Orders (estimates) for carrier service.
- Receipts and bills of lading.
- Determination of shipment weights.
- Reasonable dispatch.
- Notification of shipment charges.
- Selling of insurance to shippers.
- Liability of carriers.

- Complaint and inquiry handling.
- Collection of charges on shipments involving loss or destruction in transit.
- Collection of charges on shipments transported in more than one vehicle.
- Use of charge card plans.

Civil penalties are imposed by the Commission when carriers are found to have violated these regulations. In addition, the Interstate Commerce Act imposes criminal penalties for so-called weight bumping, i.e., the willful making or securing of a fraudulent shipment weight.

The ICC is the exclusive monitor of these regulations. It requires very little imagination to understand the potential for abuse and the consequences to consumers if, to use a somewhat flippant analogy, "the asylum is run by the inmates." Unfortunately, this is a fairly accurate analogy since the Household Goods Transportation Act of 1980 and the regulations subsequently adopted by the Commission are the product of government reaction to those few movers who abused the trust placed in them by ordinary consumers who required a moving service. Neither the industry nor the public needs to wrestle with similar consequences.

The ICC also monitors equally complex regulations that govern essential aspects of the relationship existing between household goods carriers and an extremely important segment of the moving industry, the approximately 30,000 owner-operators who perform much of the physical service required to transport households. The Commission's leasing regulations impose a tight reign on carriers in their dealings with owner-operators. Disruption of that highly sensitive process cannot be tolerated.

Elimination of funding for the ICC is an invitation to economic disarray and service disruptions for the moving industry. I urge you to restore funding for the ICC.

S. 2275, TRUCKING INDUSTRY REGULATORY REFORM ACT—THE MOVERS' POSITION

If enacted, S. 2275 would leave existing tariff filing and related provisions of the Interstate Commerce Act intact for household goods carriers. AMC applauds Senator Exon's foresight in recognizing the need to retain in tariff form the various rules and regulations applicable to the transportation of household goods. In that form they have the force and effect of law, cannot be varied or departed from by carriers and are monitored by the ICC and our judicial system. However, we are aware of the potential within the legislative process to "throw the baby out with the bath water." It is therefore necessary to emphasize the obvious—shippers of household goods require the protections that result from the filed rate system that applies to the movement of their goods. The list of regulations I set forth earlier have been reduced to tariff matter that governs the shipper/carrier relationship and should remain in that form.

There are many other provision: in movers' tariffs that also govern that relationship although they are not the product of ICC regulations (e.g., rules describing the conditions for detention of vehicles, the use of extra labor, packing and unpacking, stop-offs in transit, servicing of appliances, storage at origin or destination, etc.). The ICC monitors all such tariff provisions to insure that they are consistent with existing Commission case law.

The public requires the protections afforded by household goods carriers' filed tariffs. The prospect of this Subcommittee or the Senate going beyond Senator Exon's proposal and eliminating the requirement that movers continue to file their tariffs with the ICC is alarming. Unfiled tariffs or no tariffs at all would turn the relationship that exists between movers and the public on its head.

S. 2275 AS IT AFFECTS THE 13,000 MOTOR CARRIERS AND THEIR SHIPPERS WHO RELY ON THE HGCBC MILEAGE GUIDE

As I have noted, an arm of AMC, the Household Goods Carriers' Bureau Committee (HGCBC), acts as the mileage guide tariff publishing agent for roughly 2,200 movers and more than 13,000 motor common carriers of every other description who price their services according to mileage and rely on the HGCBC Guide as a governing distance tariff on file with the ICC. Passenger carriers, pipe line carriers and household goods freight forwarders also price their services according to the Guide. In fact, it is safe to say that every motor carrier in the United States of economic significance, whether a carrier of household goods, truckload general commodity traffic, or other commodities that move in bulk such as petroleum and chemicals, refrigerated products, building or construction materials and all other products that move in truckload quantities base their mileage rates on the mileages contained in the HGCBC Guide. In addition, tens of thousands of owner-operators depend on the Guide to determine their compensation. Shippers who utilize the services of these carriers rely on the Guide to monitor the accuracy of the charges they are assessed.

They do this with confidence that variations will not occur in the mileages applied by carriers to arrive at shipments charges.

The Federal Government also places significant reliance upon the HGCBC Mileage Guide to facilitate the transportation of civilian and military traffic throughout the United States. The regulations of the Department of Defense Military Traffic Management Command and the General Services Administration, the traffic manager for all civilian government agencies, require that motor carrier bids to transport traffic on behalf of the government be governed by the HGCBC Guide. Approximately 1,500 motor carriers who transport freight traffic and roughly 500 motor carriers who transport civilian and military personnel personal effects traffic for the DOD and GSA are required to govern their mileage rates by the HGCBC Mileage Guide. Federal Government civilian employees who elect to move their personal effects rather than use approved motor carriers are reimbursed on the basis of HGCBC mileages according to GSA regulations.

HGCBC has also developed a U.S. Government Mileage Guide that contains mileages between 900 military installations and other government installations scattered throughout the country. It is used by military and civilian transportation officers who are directly responsible for the movement of government traffic. Of course, the mileage: contained in the Government Guide are consistent with the mileages contained in the National Guide.

As far as Federal Government procurement policies are concerned, application of HGCBC mileages is not an optional proposition. Carriers are bound by the mileages contained in the Guide or they do not transport government traffic. Many state agencies that also procure motor carrier transportation services have adopted similar requirements. DOD and GSA have also implemented fully computerized versions of the HGCBC Guide to facilitate their systems of auditing motor carrier transportation bills prior to payment. Any freight bill that contains charges based upon an erroneous mileage is rejected and a corrected payment amount is reduced based upon the correct HGCBC mileage.

It can be said without equivocation that no argument exists concerning the essential economic value the HGCBC Mileage Guides have played in facilitating the flow of commerce throughout the united States. Nearly 40,000 copies of the current Guide are in use by carriers and shippers today and almost 5,000 computerized versions have been integrated into the largest carriers' and shippers' transportation pricing systems. Therefore, any legislative proposal to repeal the requirement that tariffs be filed with the ICC that would also eliminate the requirement that governing mileage tariffs must be filed with the ICC will seriously disrupt a system that has served the public interest for nearly six decades. Federal law should continue to mandate the filing of mileage tariffs with the ICC.

At the risk of belaboring my point, it should be understood that the calculation of highway mileages is by no means a simple task. Determination of accurate truck route mileages that can be used on a nationwide basis and are applicable to any shipment regardless of origin or destination is a complicated process. Suffice it to say that, without a mandated filed tariff system, rates quoted by motor carriers on a per-mile basis (e.g., $1.00 per mile) could be assessed by any number of methods, viz., (1) odometer readings; (2) hubometer readings; (3) the route preferred by the carrier's driver; (4) the route preferred by the carrier's dispatcher; (5) the fastest but not the shortest highway route; (6) the highway route without tolls, etc.

During the earliest days of motor carrier regulation the ICC recognized the potential for unfair treatment of shippers and required that carriers develop a method of determining highway mileages and explain the method employed in their tariffs. The obvious purpose of such a requirement was to put shippers on notice as to the method followed which in turn permitted their calculation of mileages and resultant carrier transportation charges. Since 1936, the HGCBC Mileage Guides have been the "method' employed by the transportation industry, shippers and carriers, to determine highway mileages. This system has earned the confidence of the industry and has been accepted as the preeminent source for determining accurate highway mileages for transportation purposes. HGCBC and its partner in this project, Rand McNally & Company, the leading cartographer in the world have continuously produced mileage guides that are filed in tariff form with the ICC, the Federal Maritime Commission and 33 states.

To our knowledge no one in the transportation industry or government challenges the proposition that an equitable standard for the calculation of highway mileages is in the public interest. Yet, without a tariff filing requirement, the issue of highway mileages for transportation purposes will be subject to all of the uncertainties of contract law. Governing tariffs such as the Mileage Guide which provide the nexus between carrier rates, whether in individual or collective tariffs, and ultimate transportation charges, must be maintained to avoid serious disruption of our Na-

tional Transportation System. AMC therefore urges that if S. 2275 is to be enacted, it be amended to include a requirement that the filing of governing mileage guides with the ICC be mandated. Additionally, all motor carriers including household goods carriers who elect to have their tariffs governed by a mileage guide that is filed with the ICC should be required to provide notice to the public of their participation in such a guide. Such a requirement can be accomplished by further amending Sections 10761 and 10762 of the Interstate Commerce Act consistent with the amendments proposed by Senator Exon. I append hereto proposed revisions to these sections which will accomplish this objective.

The notice contemplated by the AMC proposal would be issued by the governing tariff, classification of commodities or mileage tariff issuing agent(s) and would be posted with a carrier's tariffs. Such a notice will inform shippers and the Commission, for enforcement purposes, of the carrier's governing tariffs. In this way agents of governing publications will assume the obligation of monitoring carrier participation thus relieving the ICC and individual carriers of the filing of such notices with the Commission.

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§ 10761. Transportation prohibited without tariff

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate commerce commission under chapter 105 of this title *except a motor carrier of property other than household goods* [1] shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter, *provided however, that any motor carrier of property the application of whose rates depend upon a governing tariff, classification of commodities or mileage tariff on file with the Commission cannot collect its rates unless such carrier is a participant in the governing tariff.*[2] That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

§ 10762. General tariff requirements

(a)(1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A). if a common carrier, classifications, rules, and practices related to those rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or service it may provide under this subtitle. A motor common carrier (*except a motor common carrier providing transportation of property other than household goods*) [1], shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle, *provided however, that any motor carrier of property the application of whose rates depend upon reference to a governing tariff, classification of commodities, or mileage tariff on file with the Commission shall obtain from the tariff publishing agent of such governing publication(s) and keep open for public inspection a notice certifying its participation in such governing tariffs.*[2] The Commission may prescribe other information that motor common carriers (*except a motor common carrier providing transportation of property other than household goods*)[1] shall include in their tariffs. *A motor contract carrier of property is not required to publish or file actual or minimum rates under this subtitle.*[1]

PREPARED STATEMENT OF JOHN W. SNOW, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CSX CORP.

My name is John W. Snow. I am Chairman and Chief Executive Officer of CSX Corporation, which is a family of international transportation companies including CSX Transportation, Inc., a railroad with over 18,800 route miles in 20 states.

I want to commend you, Mr. Chairman, on your decision to hold this Interstate Commerce Commission oversight hearing. Just as private industry must periodically examine its goals, strategies and organization and, where appropriate, cut costs by streamlining, so too should government periodically review its functions.

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[1] Proposed by S. 2275.
[2] AMC proposed amendment.
[1] Proposed by S. 2275.
[2] Proposed AMC amendment.

Unfortunately, the debate over the ICC's future has sometimes been confused, with some wishing to transfer the existing functions of the ICC to another agency, and some wishing to do away with the agency in the mistaken belief that the ICC no longer has a role. The ICC definitely has a mission, and I think the question should be framed as follows: Given the regulatory powers of the Interstate Commerce Act, should the body entrusted with those powers by Congress be an independent agency? I believe the answer is yes.

In urging independence of the ICC, I am in no way advocating further—or even continued—regulation of the rail industry. To the contrary, I have always been a staunch advocate of deregulation of rail transportation, and my experience under the Staggers Rail Act of 1980 has only reinforced that belief. In my view, further deregulation of the railroad industry is both desirable and justified. But that is not the issue at hand today. From the rail perspective, the issue being addressed is not the regulatory regime but where the responsibility for administering those laws will reside, because even with Staggers, the ICC retains extensive regulatory powers. It seems to me vital that those regulatory powers be exercised by an independent agency, free of even the appearance of political influence.

The debate over the ICC has largely focused on the motor carrier industry. I ask that you momentarily shift that focus to the rail industry, which is regulated by the Commission far more extensively than are the motor carriers.

The nation's rail system is a vital contributor to our economic prosperity. Railroads today account for more than 37 percent of all inter-city freight ton miles, and we expect more freight to move by rail in the years ahead, thanks to the rapid growth in intermodal transportation and partnerships between railroads and long-haul trucking.

This renaissance in the railroad industry relieves congested highways, improves air quality and energy efficiency at a time when policy-makers are hard-pressed to find resources to address these issues. I would urge Congress not to lose sight of the potential harm to our economy and to our nation's agenda for a 21st century transportation system that would result if precipitous steps were taken that would adversely affect the rail industry.

Let me touch briefly on just some of the tremendous powers that the Congress vests with the ICC today:

- *Approval of Rail Consolidations.* The ICC has the power to approve or disapprove mergers of railroads. Unlike the antitrust reviews of she Department of Justice and FTC which focus only on whether a merger of two businesses may substantially lessen competition, the Interstate Commerce Act requires an in-depth review of a proposed rail transaction to determine its effect on the public interest. This is a standard that considers competition but also weighs the effects of a proposed merger on rail service to the shipping public, other railroads, and affected communities.
- *Setting of Maximum Rates for Rail Service.* Under the Staggers Act, shippers can ask the ICC to establish a maximum reasonable rate in certain cases. The ICC can award damages in the form of refunds from the railroad to that shipper.
- *Plant Rationalizations.* The ICC fosters the efficient utilization of the industry's rail lines by overseeing the carriers' use of each others' facilities and authorizing the abandonment of money-losing lines.

These are but a few of the significant economic regulatory functions now entrusted with the ICC.

It is important to note that, in many cases, the ICC is called upon to adjudicate disputes between two private parties. In this capacity, the Commission functions, in many ways, more like a court than an executive branch agency.

While I have the greatest respect for Secretary Pea and the outstanding team he has assembled at DOT, it seems to me that the ICC's quasi-judicial functions should be performed by an independent agency that can carry out Congressional transportation policy outside the executive branch. The process must be shielded as much as humanly possible from political pressure. The ICC often must balance competing interests. Federal, State and local authorities frequently have different, often conflicting, goals. Doubtless every shipper would like lower rates and those located on money-losing lines would be happy to have that operation subsidized by other shippers. It must remain an impartial legal forum governed by rules of the process and whose proceedings are open for all to see.

Transferring the responsibility for administering the Interstate Commerce Act to DOT would also create potential conflicts of interest. The United States government is a major railroad customer. It would certainly appear to be a conflict of interest if one Executive Branch agency had the unilateral power to establish the maximum rail rates that could be charged it and its sister agencies.

When the Department of Transportation was formed in the 1960s, certain functions of the ICC were transferred to DOT, but the Congress specifically kept the area of economic regulation at the ICC since it correctly determined that such functions frequently are quasi-judicial and, thus, demand independence.

In 1980 Congress took a giant step toward saving the rail industry by breaking the regulatory shackles that had prevented railroads from competing and charged the ICC with the mission of implementing that policy. The ICC responded to that challenge and, taking direction from the Congress, has implemented the Staggers Act with great success. Its adoption of constrained market pricing as the standard of rate reasonableness has been endorsed by the courts. Using its authority under Staggers, the ICC has exempted significant segments of rail traffic from regulation—most notably intermodal and boxcar traffic. Rail customers have responded to the competitive spirit evidenced by railroads in these markets; so much so that shippers are now actively supporting, and even joining in, petitions for further deregulation.

At the same time, I believe the ICC's jurisdiction over certain intermodal movements, notably those in the domestic offshore arena, should be retained because it fosters competitive rate-making to the benefit of shippers.

I am confident that the Commission will continue to respond to the new challenges it faces.

Mr. Chairman, I recognize that there is widespread support for substantial trucking deregulation. There very well may be functions in the motor carrier area that can be eliminated. However, given the current economic regulatory framework within which the railroads must operate, I believe it is essential to maintain the independence of the ICC.

Thank you for the opportunity to share my views on the importance of maintaining the ICC.

Prepared Statement of the Fertilizer Institute

The Fertilizer Institute (TFI) is a voluntary, non-profit association representing approximately 95 percent of the domestic fertilizer production in the United States. The Institute's membership includes producers, manufacturers, traders, retail dealers and distributors of fertilizer materials. Its members are a vital link in the Nation's agricultural system.

As Congress addresses legislative proposals calling for elimination of the Interstate Commerce Commission (ICC) altogether and, in this process, examines the jurisdictional role of the ICC over rates for rail and motor carriers and market entry and exit, TFI would request that the following views be considered and included in these deliberations:

TFI supports total economic deregulation of motor carriers. TFI believes that the Interstate Commerce Act should be amended to accomplish that objective, and also that it be amended to provide that the States are preempted from engaging in such regulation themselves.

The current situation in which the archaic filed rate doctrine gives rise to undercharge complaints in bankruptcy proceedings by trustees of bankrupt motor carriers serves no useful purpose. To that end, TFI supports the direction of the bill introduced on July 1, 1994 by Senators Exon and Packwood, the "Trucking Industry Regulatory Reform Act of 1994" (S. 2275).

TFI supports continued economic regulation of railroads, particularly for captive shippers. The Interstate Commerce Act contains balanced provisions to protect the interests of shippers, carriers, and the public in such circumstances, and those provisions should be retained, regardless of who administers them. To that end, if the functions of the Interstate Commerce Commission are retained by it, TFI would urge that the railroad-related provisions of the Act be maintained without alteration at this time. If the railroad-related functions of the ICC are transferred to another agency, however, the same balanced statutory provisions should be retained and careful attention should be paid to the drafting of transitional provisions to ensure that pending cases are disposed of without disruption or delay. Whichever agency regulates railroads, the process should be governed by the facts and the law, and should not be subject to arbitrary policy changes without a substantial basis for the change.

Thank you for including TFI's statement in the Committee's hearing record.

Prepared Statement of Wayne T. Brough, Director of Research, Citizens for a Sound Economy

Citizens for a Sound Economy (CSE), a nonprofit, non-partisan 250,000-member grassroots advocacy organization that promotes market-based solutions to public policy problems, strongly supports efforts to eliminate funding for the Interstate Commerce Commission (ICC) and transfer any essential functions of the ICC to the Department of Transportation (DOT). These changes would provide an impetus for further deregulation while improving the federal government's fiscal deficit.

The Kasich amendment to the House fiscal year 1995 transportation appropriation begins the process to streamline government while providing substantial benefits to taxpayers and consumers. The appropriations amendment was passed with intentions to enact further legislation (H.R. 3127) that will transfer ICC functions over to the Secretary of Transportation. CSE urges the Senate to take similar actions, eliminating funding and enacting S. 1248, which would authorize the transfer of functions.

DEREGULATION HAS PROVIDED SUBSTANTIAL CONSUMER BENEFITS WHILE REDUCING THE ICC'S ROLE

Economic deregulation, a process that began in the 1970s and continued through the early 1980s, has provided significant benefits for U.S. consumers. In the ten years from 1977 to 1988, the level of GNP produced by regulated industries fell from 17 percent to 6.6 percent. Since deregulation, Americans have benefited by at least $36-$46 billion annually.[1] A significant portion of these benefits was generated through transportation deregulation. The trucking, rail, and airline industries all experienced substantial levels of deregulation, particularly with respect to pricing policies and entry and exit restrictions within the industry.

Although the degree of economic regulation has been reduced substantially, pockets of economic regulation persist in various areas, including surface transportation. Tariff filing requirements for motor carriers, for example, are still in force despite the fact that most motor carriers rely on information generated in the market rather than ICC filings.

Prior to deregulation, the ICC played a much larger role in the transportation sector, controlling many aspects of the transportation sector. Pricing policy, entry into new markets, competition between the various modes of transportation—all of these activities entailed ICC oversight. However, the Motor Carrier Act of 1980 deregulated trucking, the Staggers Act of 1980 deregulated the railroads, the Household Goods Transportation Act of 1980 deregulated the moving industry, and the Bus Regulation Reform Act of 1982 deregulated the busing industry.

Today, the ICC's role in the economy is minimal. Employment at the commission has fallen from 2000 in 1980 to just over 600 in today's post-regulatory world. This reduction was not due to streamlining the organization and rooting out inefficiencies—it was the natural result of dismantling the massive structure of economic regulation that the ICC had generated over the past 100 years.

IS THERE VALUE ADDED AT THE ICC?

Roughly two-thirds of the remaining ICC activity involves motor carrier regulation, particularly the filed rate doctrine, which requires motor carriers to file tariff schedules with the ICC. In a deregulated industry, however, market forces and market prices provide shippers and truckers the information they need; the ICC no longer has the authority to regulate the shipping rates on file. According to the General Accounting Office, today's filed rate doctrine is "largely a formality."[2] Additionally, the ICC approves motor carrier licenses, which, in a deregulated market is also a formality. Of the 10,000 license applications filed each year, for instance, 99 percent were approved without opposition.

The bulk of the remaining ICC oversight is devoted to rail functions. These include regulation in captive markets, rail line abandonments, and mergers. In terms of staff time, the ICC devotes most of its rail regulatory resources to rail line abandonments. However, in the wake of deregulation, railroads have again become profitable and abandonments have declined dramatically from their peak during the regulatory era when many railroads were financially strapped. Currently, the ICC

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[1] In 1990 dollars. This estimate does not include qualitative benefits from changes in service in a deregulated industry. For an overview of the economic benefits of deregulation, see Clifford Winston, "Economic Deregulation: Days of Reckoning for Microeconomists, Journal of Economic Literature, September 1993: pp. 1263-1289.

[2] "Transferring ICC's Rail Regulatory Responsibilities May Not Achieve Desired Effects, General Accounting Office, June 9, 1994 (GAO/T-RCED-94-222).

denies approximately one abandonment per year. Again this level of activity does not require an independent agency with its own overhead and bureaucracy. The DOT can effectively handle this function while not threatening the services received by consumers.

ELIMINATING THE ICC HAS BENEFICIAL IMPACTS ON THE BUDGET WITH NO HARM TO CONSUMERS

According to the Congressional Budget Office, moving the ICC's responsibilities to the Department of Transportation would save taxpayers up to $235 million over five years. Many critics of the proposal to eliminate the ICC suggest that, relative to the federal budget, these savings are minimal. However, any private company that failed to act upon the opportunity to save $235 million just because it was a "minimal" saving would soon feel the pressures of competition as more efficient firms outperformed them in the marketplace. In the private sector, recent years have been marked by a sometimes painful, but effective, restructuring of American corporations. As a similar step toward reinventing government, ICC funding should be eliminated, with any essential activities transferred over to DOT.

Critics of efforts to eliminate the ICC often cite the need for an independent agency to perform the quasi-judicial functions of the commission. However, several executive branch agencies perform similar quasi-judicial functions, including the Internal Revenue Service, the Veterans Administration, and Social Security Administration. The dispute resolution process is not compromised by shifting the functions from an independent agency to a cabinet level agency. The Administrative Procedures Act ensures the public of fair adjudications in any administrative agency.

ELIMINATING THE ICC WILL NOT HARM THE TRANSPORTATION SECTOR

While it is true that the legislation passed in the House is strictly appropriations language that does not address the functions of the ICC, the sponsors of the amendment made it apparent that the appropriation cutback is to be followed by legislation that transfers the ICC's functions to DOT. Many have challenged this assumption, claiming that DOT does not have the capacity to assume the functions of the ICC. There are over 64,000 employees at DOT, with an attrition rate of more than 3,000 per year. With only 600 full time employees—less than one percent of total DOT employment—the ICC could be easily merged with DOT without increasing the agency's full time equivalent employment levels. Moreover, should Congress decide to eliminate unnecessary ICC functions, the number of personnel moved to DOT would be even less.

Historically, DOT was established by combining the various federal transportation agencies into one agency. In this manner, it is possible to avoid duplicative overhead and coordinate more effectively between modes of transportation. This is still a relevant point today, given that transportation policy is focusing more and more on the important issue of intermodal transportation. A sole agency for transportation enhances this approach and avoids the potential for excessive regulation and paperwork burdens generated by separate federal agencies. Indeed, this was the approach taken after airline deregulation, when the remaining functions of the Civil Aeronautics Board were folded into DOT.

In the case of the ICC, shifting its functions to DOT would encourage further deregulation in the transportation sector. Under the approach in S. 1248, once the ICC's functions are transferred, the Secretary of Transportation would prepare a report to Congress that would include an assessment of the remaining functions, assessing their benefits and costs and recommending the elimination of any functions identified as redundant to services provided by DOT or any other public or private organization. At this point, there would be an opportunity to eliminate any remaining regulations that are burdensome or excessive. Under this approach, it would be possible to conduct a more balanced assessment of the ICC's functions, because the Secretary of Transportation would not be under any pressures to develop justifications for the continued existence of an institution that may have outlived its usefulness.

CONCLUSION

Eliminating the ICC to save up to $235 million offers Congress and the administration an ideal opportunity to demonstrate their convictions for reinventing government. CSE recommends that the Senate take this opportunity to reassess federal oversight of the transportation sector, and bring federal activity into line with market realities.

LETTER FROM MARC RACICOT, GOVERNOR, STATE OF MONTANA

JULY 13, 1994.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20515

DEAR CHAIRMAN EXON: As I am sure you know, our State has been involved in litigation against Burlington Northern Railroad with respect to the reasonableness of the wheat and barley rates for shipping grain from Montana to the Pacific Northwest. The ICC has already decided BN is "market dominant" in our state. Thus, the wheat and barley growers in Montana are "captive" shippers.

Small captive shippers, like the farmers in Montana, need an independent regulatory agency to protect them from potentially abusive pricing. For the last 14 years, out State has been involved in developing standards for determining the reasonableness of rates where a rail carrier is market dominant. These standards have finally been developed and are currently being used by the ICC to balance the needs of the rail industry with the small shippers.

We urge you to oppose any action which would effectively abolish the ICC or transfer its functions to the Department of Transportation. Eliminating the funding for this agency or transferring the duties and responsibilities of the agency to the DOT would only further delay the development and application of the standards for these rate reasonableness cases.

Sincerely,

MARC RACICOT,
Governor.

LETTER FROM GEORGE PAUL, EXECUTIVE DIRECTOR, MONTANA FARMERS UNION

JULY 7, 1994.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: We must have your support in the funding of the Interstate Commerce Commission which the House two weeks ago stripped in their Transportation Appropriations bill.

IS THIS JUST A MONTANA ISSUE—NO!

The reality for all states who burn Powder River Basin coal is that loss of the Interstate Commerce Commission will result in increased and perhaps substantially higher rail freight rates on coal to their power plants. When the price of coal at mine mouth runs $3.00-$6.00 per ton and the price of rail transportation can run $30+ per ton, it is obvious that all constituents of those areas utilizing Montana-Wyoming Powder River Basin coal should be even more frightened of the House action eliminating the ICC than people in Montana. Reason, they have more to lose. where does Montana/Wyoming coal get utilized: South Dakota, Nebraska, Oklahoma, Texas, Missouri, Arkansas Tennessee, Georgia, Florida, Illinois, Wisconsin, Ohio, Louisiana, Oregon, Utah, and Iowa. All of these states would he faced with radically higher freight rates on coal if economic regulation by the Interstate Commerce Commission is terminated.

MONTANA'S PRIMARY TRANSPORTATION IS RAIL

Montana's primary transportation movements are bulk materials requiring movement to domestic and foreign destinations. Therefore, the State's economic survival depends on having access to good affordable rail transportation and attendant facilities so that its shippers can deliver a competitively priced product, which in turn depends on having essential transportation facilities adequately available to consolidate shipments into trainload quantities.

Montana is a base industry state. In the 1800's its chief industries were mining. lumber and agriculture; today and the future, Montana's chief industries will be the same three industries, with perhaps the addition of tourism Today we have one major railroad, the Burlington Northern operating as a monopoly in the transportation of bulk commodities.

Congress started economic regulation of the railroads with the passage of the Act to Regulate Commerce, approved on February 4, 1887 and formed the Interstate Commerce Commission to oversee economic regulation of railroads. Its basic purpose

was to correct railroad abuses of its monopoly power. It sought to prevent unjust and unreasonable rates, to secure equality of rates and practices to all, to require publication of tariffs, and to forbid rebates, preferences, and all other forms of undue discrimination. That need to protect rail consumers, with the deregulation efforts that occurred in the early 1980's, exists as much today as it did in 1887.

OUTLINE OF INDUSTRY IN MONTANA

The wheat industry in Montana is characterized by an export-dominant rail movement.

The barley industry in Montana is characterized by both an export and domestic market dominated by rail.

The lumber industry in Montana is characterized by both an export and domestic market dominated by rail.

The coal industry in Montana is characterized by domestic rail movement.

MONTANA IS AN EXPORT STATE

The predominance of Montana's economy and its products are basic commodities of bulk which come from the mine, lumber or agriculture. In order for these commodities to have value in the market place, they must be moved great distances. Those markets exist outside of Montana and thus require rail transportation to reach markets of value.

Montana is a landlocked state, with no direct access to water borne transportation. Other than rail, Montana products must travel by motor carrier which for most bulk commodities is prohibitively expensive and not practical for the tonnage involved.

In fact, in 1990, 96 percent of our wheat moved west and over 60 percent of Montana wheat was exported at the coast through Portland (in excess of 64,000,000 bushels) with over 97 percent moving via rail (BN).

In wheat and barley marketing the farm producer bears the transportation costs of moving the wheat or barley to market.

MONTANA WHEAT RATES HAVE BEEN JUDGED MARKET DOMINANT

Montana rail rates on wheat to the Pacific Northwest in the McCarty Farms case ICC Docket No. 40169, was judged by the Interstate Commerce Commission to be subject to its market dominance rules and that body found that the Burlington Northern Railroad had market dominance. This is the only all-state rate structure in the Union to be classified as rates that met their market dominance determination.

MONTANA RAIL TRANSPORTATION IS PREDOMINATED BY ONE CARRIER

Montana's rail infrastructure is controlled by the Burlington Northern Railroad. That railroad and its off-shoot, Montana Rail Link, control over 96 percent of all rail miles, over 95 percent of all grain elevator and terminal sites and move 98+ percent of all wheat movements from the state. It should be noted that MRL cannot reach any market for Montana grain without BN participation; thus BN controls rail rates in nearly all movements from Montana eastbound or westbound. The BN charges more from Montana points today (where it has no competition) to Portland than it does from Nebraska points (where it does have competition) to Portland even though the Nebraska points are 25-40 percent greater distance! That is with economic regulatory forces in place! Annually the Montana producers move about 100 million+ bushel production that is handled by rail from Montana.

The importance of the Interstate Commerce Commission to regulate the BN in Montana grain marketing cannot be over-emphasized. Montana grain producers do not have alternatives to shipping via the BN to market their grain. Without regulation, the BN will be free to set rates at the level that will potentially cripple the farm unit in Montana.

Many organizations have come out In support of continued ICC funding including: Transportation Trades Department of the AFL-CIO; The National Small Shippers Traffic Conference; Health and Personal Care Distribution Conference; The National Industrial Transportation League; The Regular Common Carrier Conference; American Trucking Associations; National Farmers Union; American Association of Railroads; and The Teamsters Union.

The announcement last week of the Burlington Northern and the Santa Fe wanting to merge, gives even more need for continuance of the ICC. The ICC is the only agency in the massive federal bureaucracy that has the expertise to evaluate and adjudicate this largest merger in railroad history.

The potential cost to Montana farm producers will be more than the cost of the whole operation of the Interstate Commerce Commission ($45 Million/year). If we look at the potential increased costs associated with a deregulated coal hauling railroad the estimates could be as high as $100-$500 million/year in increased freight costs all passed on to the consumers of electricity. Other issues pale in comparison.

Summary—The House has voted to eliminate the Interstate Commerce Commission to save an estimated $45 million/year of federal expenditures. Railroads operate as monopolies and are not like the trucking industry. Such action will potentially cost consumers upwards to $500 million in increased freight charges!

We need your help to correct this most unfortunate action by the House. We need, this nation needs, a viable and vigorous ICC.

Sincerely,

GEORGE PAUL,
Executive Director.

LETTER FROM TERRY L. PRIEST, CORPORATE COMMERCE MANAGER, LOGISTICS, COORS BREWING CO.

JULY 8, 1994.

The Honorable JAMES J. EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: Coors Beer is distributed in all 50 states and the District of Columbia by 670 independent distributors and 6 company owned and operated outlets. We are in 19 international markets and use 26 satellite distribution centers strategically located across the United States in our distribution process. Coors is a fully integrated company consisting of company owned and operated container, glass, and related facilities. We sold about 20,000,000 barrels of beer in 1993 and in recent years, we are the third largest brewery in the United States. In 1993, we shipped 37,500 carloads and received 11,770 carloads; we shipped 150,567 truckloads, 23,000 less than truckload and 2,821 international containers. We employ several thousand people and are engaged in a consistent and controlled expansion program. Coors Beer is currently brewed in Golden, Colorado and Memphis, Tennessee. We recently became 52 percent owners of a brewery in Zaragoza, Spain and we are half owners of a brewery in Seoul, South Korea. We package our products in cans, bottles, kegs and party balls at Golden, Colorado; Coors Crossing (Elkton) Virginia; and Memphis Tennessee. Coors Brewing Company was founded in 1873 and for the first 105 years, we were content to be a regional brewery operating from our headquarters in Golden, Colorado. To compete in the 1980's, Coors Brewing Company expanded to all 50 states and international markets. We were able to achieve a lot of our expansion as a result of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980.

The House of Representatives on June 16, 1994, passed an amendment to H.R. 4556, the Department of Transportation Appropriations Bill, that would eliminate funding for the Interstate Commerce Commission (ICC). A similar amendment to the DOT Appropriations Bill may be offered during Senate consideration of this measure early in July. We believe that elimination of the ICC and transfer of its motor carrier and rail regulation functions to the Department of Transportation (as contemplated by the House action) would not be good legislation at this time. We are concerned with the implementation of the Negotiated Rights Act of 1993 and think the ICC is the proper body to handle it. We would like to see Congress totally deregulate economic regulation of motor carriers. On the rail side, even though railroads have been substantially deregulated by the Staggers Rail Act of 1980, the ICC still exercises significant regulatory authority over various aspects of rail transportation. We are satisfied with Staggers. This authority includes rate regulation of market dominant traffic, carrier mergers and acquisitions, and abandonments and line sales.

We think Congress should keep its power under Article 1, Section 8, Paragraph 3 of our Constitution and if consolidation of agencies truly saves tax payer's money, we think merging of the Federal Maritime Commission and Interstate Commerce Commission should be considered before transferring duties to the Department of Transportation.

As a brewer/shipper which greatly depends on our nation's and the world's transportation system(s), we strongly urge the Senate to reject any proposed legislation that would eliminate funding for the ICC at this time.

Letter From Terry L. Priest, Corporate Commerce Manager—Logistics, Coors Brewing Co.

July 8, 1994.

The Honorable Hank Brown,
U.S. Senate,
Washington, DC 20510

Dear Senator Brown: Coors Beer is distributed in all 50 States and the District of Columbia by 670 independent distributors and 6 company-owned and operated outlets. We are in 19 international markets and use 26 satellite distribution centers strategically located across the United States in our distribution process. Coors is a fully integrated company consisting of company-owned and operated container, glass, and related facilities. We sold about 20,000,000 barrels of beer in 1993 and in recent years, we are the third largest brewery in the United States. In 1993, we shipped 37,500 carloads and received 11,770 carloads; we shipped 150,567 truckloads, 23,000 less than truckload, and 2,821 international containers. We employ several thousand people and are engaged in a consistent and controlled expansion program. Coors Beer is currently brewed in Golden, CO and Memphis, TN. We recently became 52 percent owners of a brewery in Zaragoza, Spain and we are half owners of a brewery in Seoul, South Korea. We package our products in cans, bottles, kegs, and party balls at Golden, CO; Coors Crossing, Elkton, VA; and Memphis, TN. Coors Brewing Co. was founded in 1873 and for the first 105 years, we were content to be a regional brewery operating from our headquarters in Golden, CO. To compete in the 1980's, Coors Brewing Co. expanded to all 50 States and international markets. We were able to achieve a lot of our expansion as a result of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980.

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As a brewer/shipper which greatly depends on our Nation's and the world's transportation system(s), we strongly urge the Senate to reject any proposed legislation that would eliminate funding for the ICC at this time.

Sincerely,

Terry L. Priest,
Corporate Commerce Manager, Logistics.

Letter From Jerry J. Jasinowski, President, National Association of Manufacturers

July 13, 1994.

The Honorable James J. Exon,
U.S. Senate,
Washington, DC 20510

Dear Mr. Chairman: On behalf of the National Association of Manufacturers (NAM), I am writing to express the association's strong support for S. 2275, the Trucking Regulatory Reform Act. I would appreciate your placing this letter in the hearing record of July 12.

After careful consideration, the NAM Transportation Subcommittee recently voted to support any efforts that would eliminate wasteful and unproductive activities of

the Interstate Commerce Commission (ICC), while preserving its ability to carry out necessary functions. S. 2275 meets this mandate.

As you know, the NAM has long opposed the continuation of tariff-filing requirements and entry review of more than financial fitness and safety considerations. The NAM also recognizes the difficulty in making appropriate legal changes with respect to the Staggers Act and the Negotiated Rates Act that elimination of the ICC would entail. These and other functions should be considered thoughtfully, as called for by S. 2275.

The NAM sympathizes with your general concern about legislating on appropriations measures, as expressed in your statement of introduction. As you noted, however, given the fact that the House has voted to eliminate funding for the ICC through the appropriations process, the NAM will be contacting Senators Byrd, Hatfield, Lautenberg and D'Amato to urge them to consider making S. 2275 part of the transportation and related agencies appropriations measure.

Sincerely,

JERRY J. JASINOWSKI.

LETTER FROM TIM ENGLER, HARDING & OGBORN

JULY 7, 1994.

The Honorable JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: We understand your Subcommittee is meeting on Tuesday, July 12, 1994, at 9:30 a.m. to conduct a public hearing on the future of the ICC. Due to time constraints, we will not be able to testify before your Subcommittee. However, we would ask that you make this letter a part of the record of that proceeding.

Our firm represents all wheat and barley growers in the State of Montana in a federal class action lawsuit against Burlington Northern Railroad. The name of the case is *McCarty Farms, et al.* v. *Burlington Northern.* The case has been referred to the Interstate Commerce Commission by the federal district court in Montana for a determination of whether the wheat and barley rates charges by BN are reasonable. The ICC has already decided BN is "market dominant" under the Staggers Act of 1980. Thus, the wheat and barley growers in Montana are truly captive shippers.

For captive shippers, like the farmers in Montana, the need is great to have the ICC involved in the continued regulation of the railroad industry. The only effective way to protect these small shippers against potential abusive pricing is through an independent regulatory agency. Since the Staggers Act of 1980, the ICC has carefully designed standards for deciding the reasonableness of rates where a carrier is deemed to be market dominant. The process of developing these standards has been slow and time consuming. Much of the time has been spent attempting to balance the needs of the rail industry with the interests of shippers located in areas where there is no effective free market competition.

Eliminating the funding for this agency at this time would abandon that careful process. The proposed action would have a particularly devastating impact on our clients, whose case has been before the agency for the last 14 years. Transferring the functions of the regulation of the rail industry to the DOT is also not the solution. The DOT currently does not have the expertise to handle these difficult economic issues. A transfer at this stage would only delay the development and application of the standards for these rate reasonableness cases.

The way in which the ICC has functioned historically is not free from criticism. Like any government agency, the Commission needs to be more efficient and responsive. However, the answer to this criticism is not the elimination of the agency.

We urge you to oppose any action which would effectively abolish the agency or transfer its functions to the DOT.

Very truly yours,

TIM ENGLER.

Letter From Frederick L. Webber, President, Chemical Manufacturers Association

July 8, 1994.

The Honorable James J. Exon,
U.S. Senate,
Washington, DC 20510

Dear Mr. Chairman: The Chemical Manufacturers Association (CMA) is a nonprofit trade association whose member companies account for more than 90 percent of the productive capacity for basic industrial chemicals in the United States. As major shippers, CMA member companies value the availability of safe and efficient rail and truck transportation.

For many years, the Interstate Commerce Commission (ICC) has played an important role in regulating surface transportation. On June 16, 1994, the House of Representatives included a provision that would eliminate funding for the ICC in H.R. 4556. CMA requests that the Senate not "put the cart before the horse" by deciding the future of the ICC through the appropriations process.

Instead, CMA supports a meaningful review of the current scope of the Interstate Commerce Act. Such a review would inevitably modernize the role of federal and state governments in the economic regulation of transportation. Some functions, particularly those relating to motor carriers, add no value and should be terminated, i.e., the filed rate doctrine. However, other statutory provisions, such as the review of railroad rates and line abandonments that protect rail shippers in certain circumstances, must be maintained.

Only after determining the future course of transport ion regulation can Congress decide which of the ICC's responsibilities should be maintained. Additionally, Congress could then determine whether any of the ICC's remaining functions should be transferred to other parts of the federal government, or performed by an independent agency. Funding decisions could then be made to reflect the policies adopted to enhance the strength and efficiency of American shipper and carrier industries.

CMA would be pleased to participate in the review of. the proper scope of the ICC's jurisdiction and the related issues mentioned above. If you have questions about CMA's position, please contact me or Gary Griffith

Sincerely,

Frederick L. Webber.

Letter From Robert E. Barrow, Master, National Grange of the Order of Patrons of Husbandry

July 15, 1994.

The Honorable Ernest F. Hollings,
U.S. Senate,
Washington, DC 20510–6125

Dear Mr. Chairman: In 1874, the National Grange, the nation's oldest, general farm organization, called for the establishment of a federal agency to regulate commerce between the states. In 1876, the Grange passed a resolution that demanded the establishment of a national Bureau of Commerce whose objectives were accomplished by the creation of the Interstate Commerce Commission (ICC) in 1887.

During all the years since this Commission was established, it has been the chief safeguard of the farmers' transportation interests, particularly concerning freight rates—an indication of early Grange action in starting its fight for the creation of the tribunal—as an effort toward securing fair play for farmers, transportation interests, and the general public.

While we agree that the need for the ICC is not as great as it was in the late I8o0s, there is still a need to regulate interstate commerce.

This nation's agricultural production and marketing system depends heavily on raid transportation to move bulk agricultural commodities, fertilizer, and agricultural products to domestic users and export points. The Grange strongly supported the Staggers Rail Act of 1980, which substantially deregulated certain aspects of rail transportation. However, Congress also vested the ICC with the responsibility to ensure competitive, efficient, and equitable rail transportation for shippers and communities that depend on rail service. One of the ICC's fundamental duties is ensuring that the rail companies' statutory common carrier obligations to all rail users are met.

During these times of railroad abandonment and rail mergers, the shippers' rights must be protected from the monopolistic power of railroads. With each merger or

abandoned railroad, more captive shippers are left at the mercy of a single line. The ICC is needed to continue to look at the competitive and transportation aspects of proposed rail mergers.

As the debate over the sunsetting of the ICC continues in Congress, we must remember that same Congress passed a law last year to end the legal controversy over retroactive truck rate claims, which account for more than one-half of the agency's caseload.

The Negotiated Rates Act, a law that was passed solely to clean up the problems that resulted from partial trucking deregulation in 1980, is another reason to retain the Commission.

The intent to transfer the ICC's responsibilities to the Department of Transportation (DOT) may result in minimal budget savings, but that agency is currently not positioned to handle the ICC's functions. The DOT is not equipped to handle the economic regulation matters in which the ICC has substantial experience and expertise.

Therefore, we urge you to reject any efforts to terminate the ICC. If the ICC is to be downsized, the process should proceed through the authorizing committees where budget saving estimates, competitive concerns, shippers' rights, government efficiency, and other factors can be fully considered and debated prior to any major action to change the Commission's make up or regulatory responsibilities.

Thank you for allowing the National Grange, the midwife of the ICC, to express our support for the continued operation of this important agency.

We request that this letter be made part of the hearing record on the ICC. Thank you.

Sincerely,

ROBERT E. BARROW,
Master, National Grange of the Order of Patrons of Husbandry.

LETTER FROM KEITH BISSELL, COMMISSIONER, PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

JUNE 20, 1994.

U.S. Senate,
The Capitol
Washington, DC 20510

DEAR SENATOR: During consideration of the transportation appropriations legislation, the House of Representatives voted to delete fiscal year 1995 funding for the Interstate Commerce Commission (ICC) and to transfer its authority to the Department of Transportation. On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I urge to oppose any similar action when the legislation reaches the Senate floor.

During a recent hearing on the ICC, held in the House of Representatives, Mr. Ken Mead, Director of Transportation Issues for the General Accounting Office (GAO) testified that little budget savings would result from the transfer of ICC's authority to the Department of Transportation. In addition, Mr. Mead's testimony indicated that his review of the ICC indicated that there was "a continuing need for an independent regulatory commission * * *"

As the members of NARUC rely on the ICC, we have the following concerns with the House's action. First, the bill does not allow for the transfer for any funds or personnel to the DOT once they assume ICC responsibilities. By prohibiting ICC personnel from transferring over to the DOT, ICC institutional memory will be lost. Also, DOT personnel will have a steep learning curve on ICC issues and will have no one to refer to if they have questions. A smooth transition will be impossible without the involvement of those who are familiar with the ICC's operations.

More importantly, the ICC operates in a quasi-judicial public forum. Its procedures and hearings are open forums and a public record is kept. This open procedure benefits all parties which have dealings with the ICC. The provisions adopted in the House contain no language or guarantee that the process at DOT will be conducted in the same open manner. Decisions would simply be left to the discretion of the Secretary.

In addition to being an open process, the ICC allows for multiple view points to be heard. While the ICC Commissioners are appointed by the President and confirmed by the U.S. Senate, political balance among appointees is created by ensuring that no more than three of the five appointees are of the same political party as the President. Unlike the Executive Branch's Departments, the ICC's function is not to carry out the programs and policies of the White House Administration. Rath-

er, the agency is charged with protecting the public from discriminatory practices and is responsible to the Congress. The proposed legislation does not ensure that the minority party voice will be heard, as the Secretary of Transportation, representing the White House Administration, will be the only person making decisions.

The NARUC firmly supports the ICC's independence. We believe that this independent structure insulates the Commission from the political pressure of both the Executive and Legislative branches of government and that this serves the institution, the states, the regulated industries and the public interest very well. Without such political pressures, the Commissioners are free to resolve disputes in an equitable manner for all parties involved.

Again, we urge you to oppose any effort to eliminate funding for the ICC or to transfer ICC authority to the DOT. Thank you for your consideration.

Sincerely,

KEITH BISSELL, *Commissioner,*
President, National Association of Regulatory Utility Commissioners.

LETTER FROM RICHARD B. DAUPHIN, PRESIDENT, WESTERN COAL TRAFFIC LEAGUE

JULY 14, 1994.

The Hon. J. JAMES EXON,
U.S. Senate,
Washington, D.C. 20510

DEAR SENATOR EXON: The Western Coal Traffic League is a voluntary organization formed in 1976 that serves to protect the interests of consumers of coal mined west of the Mississippi River. Each WCTL member is a major consumer of western coal and moves substantially all of their coal by rail. Currently, WCTL member utilities buy and ship over 90 million tons of coal by rail every year which is used to generate electricity for residential and commercial use.

Current efforts to sunset the Interstate Commerce Commission and to transfer its administrative and regulatory functions to the Department of Transportation could hurt shippers of coal, such as our members, and their ratepayers and customers. Since the continued existence of an independent, regulatory agency that serves to protect consumers from unreasonable, inefficient rail rates and practices is critical to the nation's coal shippers, we join the Clinton Administration, the ICC, the DOT and numerous railroads, rail shippers and associations in opposing these efforts. Transfer of ICC functions to a partisan, executive agency that does not possess the ICC's institutional expertise would extinguish the protection which has been carefully built over many years.

The League commends your past efforts opposing transfer of ICC functions to the Department of Transportation. The continued existence of an independent, effective and open ICC helps not only electric utilities, but also other major shippers which are dependent on railroad transportation in situations where competitive market alternatives are lacking.

Accordingly, we ask you to support the continued existence of an independent, effective, and open ICC and respectfully urge you to oppose efforts to sunset the ICC.

Sincerely,

RICHARD B. DAUPHIN,
President, Western Coal Traffic League.

LETTER FROM VOTE TO SAVE THE ICC

JULY 13, 1994.

DEAR SENATOR: As you are aware, the House adopted an amendment to H.R. 4556, the FY95 Transportation Appropriations bill, to eliminate all funding for the Interstate Commerce Commission (ICC). We, the undersigned, representing a wide array of industry and labor organizations, vigorously oppose an amendment to zero out funding for this important independent agency as it would bring chaos to the surface transportation industry, its users, employees and ordinary consumers.

Under present law, the ICC is charged with fulfilling important regulatory functions and doing so as an independent quasi-judicial agency that, unlike an executive branch agency, is better insulated from partisan pressures. These functions, including the duty to adjudicate disputes between competing interests, require independent and nonpartisan decision-making.

We are particularly disturbed by the fact that, despite claims made to the contrary, no other agency of the government has the Commission's level of expertise about our respective industries nor its historical perspective. To eliminate this agency simply by zeroing out its funding effective October 1 of this year would wreak havoc by cutting off the ICC's ability to even complete its deliberations on pending cases.

While the organizations we represent differ on many matters—including the level of regulation warranted, the way the ICC functions and the precise role it plays, and issues in specific cases before the agency—we are united in our view that the Commission should not be casually abolished in this way without due consideration of the many policy consequences. Moreover, while some advocate a zero-funding amendment as a budget-saving measure, the fact is that it does not eliminate tee laws governing the Commission's regulatory functions and thus, as the General Accounting Office has recently concluded, produces negligible savings at best.

The House-passed amendment is bad public policy. The duty to review the agency's regulatory functions should be reserved to the authorizing committee to handle in a responsible and deliberative manner. An amendment to simply zero fund the ICC, however, takes a meat cleaver to an important government agency, leaving a product of butchered public policy.

We urge you to vote against any amendment to eliminate full funding for the ICC. Thank you for your consideration of our views.

Sincerely,

AFL–CIO Transportation Trades Department; Amalgamated Transit Union; American Bus Association; American Federation of Government Employees; American Movers Conference; American Short Line Railroad Association; American Train Dispatchers Department, BLE; American Trucking Associations; Association of American Railroads; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Burlington Northern Railroad Company; Central Analysis Bureau; Chicago and Northwestern Railway Company; Conrail; CSX Corporation; Hotel Employees and Restaurant Employees International Union; Illinois Central Railroad; International Association of Machinists and Aerospace Workers; Int'l Bro. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; International Brotherhood of Teamsters; National Motor Freight Traffic Association; Rail Supply and Service Coalition; Railway Labor Executives' Association; Regional Railroads of America; Regular Common Carrier Conference; Sheet Metal Workers International Union; Southern Pacific Lines; The Atchison, Topeka and Santa Fe Railway Company; Transport Workers Union of America; Transportation Brokers Conference of America; Transportation.Communications Union; Union Pacific; and United Transportation Union

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LETTER FROM THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

APRIL 20, 1994.

Honorable J.J. SIMMONS III
Interstate Commerce Commission
Washington, DC 20423

DEAR COMMISSIONER SIMMONS: The Federal Railroad Administration recently distributed a report concerning transportation's role in the grain merchandising system. We urge that the Interstate Commission reject the findings of this report.

The report recommends that the ICC, the courts, and Congress abandon the existing definition of "common carrier obligation" in favor of a system which allows railroads to allocate all their grain cars to the highest bidders. To paraphrase Senator Exon, the report presents a simplistic approach to dealing with a complex problem. Replacing car shortages and delays with unaffordable transportation is not in the public's interest.

The report suggests that car allocation is the primary problem confronting the transportation of grain by the nation's railroads. This finding is certainly nothing new and is, in fact, exactly what we have said in our filings in this and other cases before your Commission.

The report also suggests, however, that the problem can best be addressed by letting market forces determine where available cars are distributed for loading (i.e. give them to the highest bidders). We disagree.

Giving cars to only the highest bidders would have a dramatically negative effect On the competitive environment that currently exists within the nation's independent country elevator industry. Elevators make money by selling grain. Active grain markets often make it difficult to obtain rail service. Giving cars to only the economically strongest entities in the market would eventually force many local buyers out of business.

The end result of these occurrences would be far fewer competitive buyers for farmers' grain. Less competition would mean lower price offerings and reduced farmer income. it would also mean longer trips from farms to elevators—more fuel, more time, bigger trucks, more damage to local roads, etc. In summary, lower farm incomes and higher operating expenses. These occurrences would have negative ripple effects throughout the economy of rural America.

The report acknowledges that car supply problems are the greatest in the Upper Midwest and especially in the Dakotas. Despite this finding, the report's authors list only one elevator manager in the entire five state region who contributed to the report. They did, however, have one of the primary founders of Burlington Northern's Certificate of Transportation car auction program on the report's study team. These occurrences, although they may be unintentional, make it difficult to embrace the report's objectivity.

Congress, the Commission, and the courts have worked long and hard to balance the public's need for transportation services and the rail industry's quest for profits. The FRA's report appears to neglect the public's interests in lieu of an economist's Utopian free market answer to very complex problems.

We commend the Interstate Commerce Commission for its efforts in Ex Parte 519 and suggest that it is a much more enlightened approach than the one suggested by the FRA's report.

Sincerely,

LEO M. REINBOLD,
President.
SUSAN E. WEFALD,
Commissioner.
BRUCE HAGEN,
Commissioner.

NEWS RELEASE—NATIONAL GRAIN AND FEED ASSOCIATION

NGFA URGES CONTINUED APPROPRIATIONS FOR ICC

WASHINGTON—The National Grain and Feed Association today termed as "regrettable and ill advised" a House vote to end appropriations to finance the continued operations of the Interstate Commerce Commission and urged the Senate to reject any similar amendment.

The NGFA issued the statement following the June 16th House approval, by a 234-192 vote, of an amendment to the fiscal 1995 transportation appropriations bill that would eliminate the $43 million included in the measure to finance the ICC. The House subsequently adopted an amendment by a voice vote that would earmark an additional $26 million to the Department of Transportation to allow it to take on the statutory responsibilities of the ICC.

The NGFA, which represents the interests of rail shippers and receivers of grains and oilseeds, said the ICC serves a necessary function in overseeing interstate surface transportation matters.

"While the Staggers Rail Act of 1980 did substantially deregulate certain aspects of rail transportation, Congress also vested the ICC with responsibility to ensure competitive, efficient and equitable rail transportation for shippers and communities dependent on rail service," said NGFA President Kendell W. Keith. "Among the ICC's fundamental duties is ensuring that the statutory common carrier obligations of rail companies to all shippers are met."

The NGFA noted that the DOT customarily regulates rail safety issues and is ill-equipped to handle the economic regulatory and quasi-judicial matters with which the ICC has substantial experience and expertise.

"The ICC is under capable new leadership under new Chairman Gail McDonald, and has signaled its intent to resume its role as an impartial overseer of statutes designed to remove unnecessary regulatory shackles on rail carriers while at the same time protecting the legitimate interests of shippers," the NGFA's Keith said. "It is irresponsible for Congress to eliminate funding for the ICC before taking affirmative steps to ensure that the rights of rail users and the public are adequately protected. Those proposing to eliminate the ICC should first proceed with congres-

sional hearings, where careful consideration of the impacts of such a step could be fully considered and debated."

The NGFA also questioned whether budget savings would result from shifting the ICC's functions to DOT since the underlying statutes—including the Interstate Commerce Act and the Staggers Rail Act of 1980—that generate the work load for the ICC remain on the books.

The NGFA is the national nonprofit trade association of more than 1,000 grain, feed and processing firms comprising 5,000 facilities that store, handle, merchandise, mill, process and export more than two-thirds of an U.S. grains and oilseeds utilized in domestic and export markets. The NGFA also consists of 37 affiliated state and regional grain and feed associations whose members include more than 10,000 grain and feed companies nationwide.

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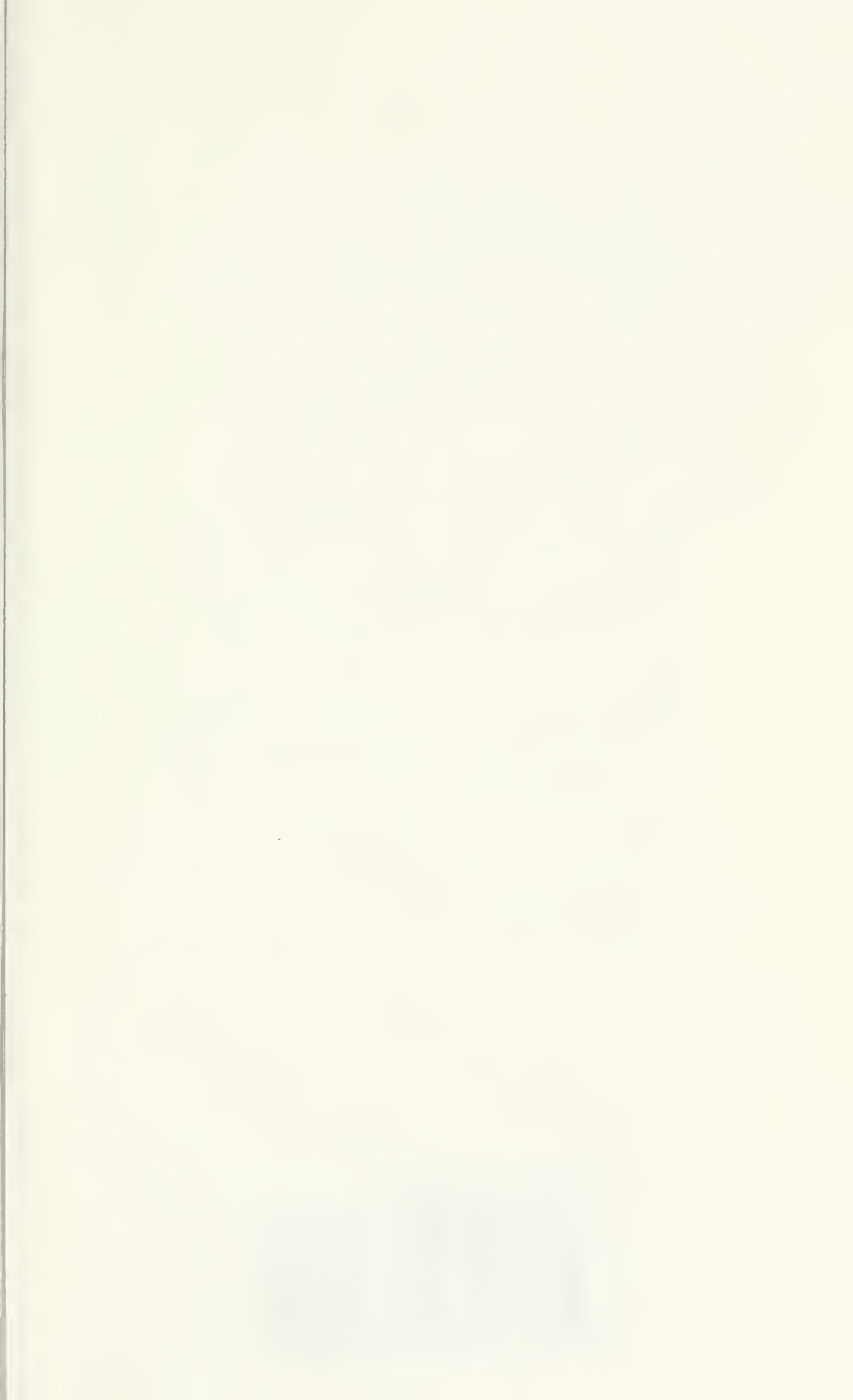

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