For Release at 7:00 P.M. Monday, April 18, 1955

Murray Snyder, Assistant Press Secretary to the President

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THE WHITE HOUSE

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Report prepared by the Presidential Advisory Committee on Transport Policy and Organization.

Members: The Secretary of Commerce, Chairman; the Secretary of Defense and the Director of the Office of Defense Mobilization. Ad Hoc Participating Members: The Secretary of the Treasury, the Postmaster General, the Secretary of Agriculture and the Director of the Bureau of the Budget.

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THE SECRETARY OF COMMERCE
WASHINGTON 25

April 15, 1955

The President
The White House
Washington, D. C.

My dear Mr. President:

On July 12, 1954, you established under my chairmanship a Presidential Advisory Committee on Transport Policy and Organization. You requested that we undertake a comprehensive review of over-all Federal transportation policies and problems and submit our recommendations for your consideration.

In the preparation of our report, I have had the full cooperation of all members of your Committee. To assist us in our review of government transportation policies, I appointed a Working Group composed of outstanding individuals who have long had a close understanding of the Nation's transportation problems. Mr. Arthur W. Page, a Director of the American Telephone and Telegraph Company, New York City, served as Director of the Working Group.

I wish to commend each member of the Working Group for his contribution. Your Committee's unanimous report and recommendations are in large measure based on the study made by the Working Group.

After examination of the Nation's transportation problems, your Committee determined to focus its primary attention on those Federal policies which appeared to be most urgently in need of revision if the transportation industry of the United States is to maintain itself at maximum effectiveness.

In examining the effectiveness and deficiencies of the domestic transportation system, it was clearly evident that two broad major areas of Federal policy required prompt revision. In brief, the principal emphasis of our report is that, in conformity with today's availability of a number of alternate forms of transport, Federal policies should be amended (1) to permit greater reliance on competitive forces in transportation pricing and (2) to assure the maintenance of a modernized and financially strong system of common carrier transportation adequate for the needs of an expanding and dynamic economy and the national security.

The President

April 15, 1955

Our report does not propose any change in existing regulatory authority over the entrance of new enterprises in the field of public transportation, nor does it propose any change in the Federal organization for the administration of transportation functions and responsibilities.

Respectfully yours,

Sinclair Weeks

Sinclair Weeks, Chairman

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REVISION OF FEDERAL TRANSPORTATION POLICY

I. INTRODUCTION

Within the short span of one generation this country has witnessed a transportation revolution. All elements of the economy have been profoundly affected - investors in transportation property, geographic regions, distribution, individual shippers, the taxpayer, the ultimate consumers of goods and services. As late as 1920, the railroads held a virtual monopoly of intercity transportation with the exception of areas served by water. In striking contrast, there is available today a wide selection of transport methods for the movement of goods and people from one place to another with economy, expedition, and safety. The individual, whether traveling for recreation or business purposes, has a choice as between the private automobile, intercity busy transportation, air transportation, and railroad travel. The shipper, distributing finished products to a nationwide market, is free to elect the use of his own trucks, common or contract carriers by highway, a continental and physically integrated system of common carrier transportation by railroad, pipelines, coastal and intercoastal services, inland water transportation, or the rapidly developing air cargo services.

In major respects, government has played a decisive role in these fast moving and dynamic changes in the organization, financing, and operation of the Nation's domestic transportation services. All levels of government have participated. The states have played a dominant role in the provision of an expanding and modernized highway system, although aided by the Federal Government through a program of grants-in-aid. The Federal Government has spent vast sums of the general taxpayer's funds for the improvement of rivers and harbors. More recently it has aided materially in the development of airports, the financing and management of a nationwide system of aids to air navigation, and has advanced substantial sums of money in the form of direct financial assistance for the development of air transportation.

The net result is a competitive system of transportation that for all practical purposes has eliminated the monopoly element which characterized this segment of our economy some thirty years ago.

During this same period, government has failed to keep pace with this change and has, in fact, intensified its regulation of transportation. Paradoxically, the underlying concept of this regulation has continued to be based on the historic assumption that transportation is monopolistic, despite the fact that the power of individual transportation enterprises to exercise monopoly control has been rapidly eliminated by the growth of pervasive competition. The dislocations which have emerged from this intensified competition, on the one hand, and the restraining effects of public regulation on the other, have borne heavily on the common carrier segment of the transportation industry. The shipper and ultimately the consuming public pay the costs of this dislocation. The consequent loss to the public, while incapable of exact estimate, is believed to amount to billions of dollars per year, and calls for prompt and decisive action.

No economy that is based fundamentally on mass production and distribution of products throughout a continental market can continue to prosper without a transportation system that is dynamic, efficient, and capable of delivering goods and people with safety, expedition, with a high degree of dependability, and at the lowest cost in the expenditure of manpower and other scarce resources. Historically, these requirements have been met most satisfactorily by common carriers, who by statute are charged with the heavy obligation to serve all individuals and shippers alike to the extent of their physical capacities, on known schedules at published rates, and without discriminations. The availability

of this type of stable and dependable service is of equal importance in the day-to-day business operations, production and market planning of large and small businesses alike. Moreover, in a broader sense, the availability of this type of transportation system is essential to the orderly and healthful operation of a peacetime economy and is indispensable to the national security in time of war.

Your Advisory Committee has proceeded from these fundamental premises in its reappraisal of national transportation policy: namely, that the transportation industry operates today in the general atmosphere of pervasive competition; that adjustment of regulatory programs and policies to these competitive facts is long over-due; and that the restoration and maintenance of a progressive and financially strong system of common carrier transportation is of paramount importance to the public interest.

Although it remains true that there is some rail-bound traffic and some water-bound traffic that is not competitive in one sense, the bulk of this traffic is competitive in the commercial sense even though not directly among carriers serving the same points.

Even where there is no direct inter-carrier competition, the great development of competitive industry in various parts of the country has placed indirect competitive pressures on transport rates. For example, producer A may be impelled to ship all his output of, say, heavy steel, into a given market by rail, but producer B may be able to reach the same market by a lower cost water haul. The self-interest of the railroad serving producer A demands that transportation rates be maintained low enough to enable producer A to compete in the market.

Such competition is not confined to the products of different firms in a given industry; related industries compete for certain markets in which alternative goods and services may be substitutable. A notable example is competition among fuels such as coal, natural gas, and fuel oil. Thus high freight rates on rail-bound coal would directly affect coal's competitive position, and reduce the coal traffic of many railroads.

In short, competitive conditions have been substituted with the growth of new forms of transportation, both public and private, for much of the monopoly element in the common carrier industry which in the past prompted so much of our present transport policy, both regulatory and promotional.

Obsolete Regulation

In many respects, government policy at present prevents, or severely limits, the realization of the most economical use of our transportation plant.

Notwithstanding the rapid growth and current pervasiveness of competitive elements in transportation, government policy holds regulated competitive forces within a tight rein. Railroads and motor carriers are most broadly competitive their rivalry extending to the movement of nearly all commodities over short hauls and to a considerable

range of traffic even on the longer hauls. Extensive competition also prevails among rail, water, and pipeline carriers for long-haul quantity movements of bulk commodities and general traffic.

In the case of railroads and motor carriers, their economic characteristics are virtually opposite, the one characterized by heavy investment and large elements of indirect and fixed costs while the other requires little investment and encounters a high proportion of direct and variable costs. The one is capable of heavy long-haul mass transportation at very low costs while the other can afford superior service conducted in relatively small units but at comparatively high unit costs beyond the shorter distances. Clearly they are fitted for different roles in the development of the most effective and coordinated transportation system of which technology and managerial skills are capable.

We do not find it possible to define the limits of the tasks which these and other forms of transport should perform in a transportation system which best meets the needs of the public. On the contrary, we believe that such a system, in the face of rapidly developing technology and a high rate of innovation, is to be achieved only by the exercise of greater freedom for competitive experimentation which enables the purchaser of transportation to adapt both service and cost opportunities to his own requirements.

The Essentiality of Common Carrier Transportation

The public interest requires the maintenance of a sound and vigorous common carrier transportation service by all of the available means of transport, each operating within its respective capabilities and developing in accordance with the indicated demand for its services. Such common carrier service is indispensable, yet the financial position of some of the major common carriers is precarious and they lack the means to offer superior service and to apply technological advances with desirable rapidity.

Our national policy has not provided us with the best transport of which we are capable, either in rate of technical development or in adjustment of the several types of carrier to their areas of greatest usefulness. Both the present force of competition, including that from other than common carrier transportation, and the unusual obligations which are placed upon common carriers argue for relieving these carriers as far as possible from restraints designed to meet conditions which have, in recent years, either disappeared or been greatly altered.

With some exceptions, regulated common carriers today encounter large and growing competition by exempt for-hire carriers or pseudo carriers whose operations are largely opportunistic in character. These operations are conducted without the necessity to publish rates, with freedom to discriminate in rates and service, and with no obligation to serve the general public. The continuing growth of this exempt for-hire carriage would seriously impair the maintenance of a strong and healthy common carrier industry, which by contrast is generally obliged to serve all of the public without discrimination.

An appraisal of the efficiency of present and proposed transportation policy to promote the strength of this Nation for defense requires, first, some analysis of the probable utility of and burden to be placed upon each form of transport in the event of full mobilization or war. Although we may expect that all-out involvement would create a two-front war with some familiar aspects, we must also fully expect that in such an event the continental United States would be placed under heavy attack and might sustain severe damage both to its industrial production and to its transport facilities. Hence we must be prepared to face a situation without precedent in our history.

All estimates of our economic potential under full mobilization conditions are subject to a considerable margin of error. While traffic estimates and transport requirements are no exception, it is probable that full use of our present economic potential would create a domestic traffic burden far in excess of any hitherto encountered. The expansion would be large and rapid and there is no such reserve of idle capacity as existed at the beginning of World War II. It would seem prudent to make every possible provision now to support with transport our full economic capability, without allowance for reductions imposed by attack.

While a general transportation policy should concern itself primarily with our developing national economy, it must also be concerned with potential defense requirements. In the latter context two primary objectives may be noted: (1) to emphasize the growth and development of the several forms of transport somewhat in accord with the proportional demands that defense will make upon them, and (2) to support their financial well-being to the end that they will be physically in excellent shape and possessed of a desirable flexibility and some degree of excess capacity. A policy under which the transportation enterprises generally live in precarious financial position is not a policy calculated to enhance our preparedness. Any policy which has the effect of weakening any form of transportation on which we must place major reliance in the event of war is not a satisfactory defense policy.

It may be necessary that particular modes of public transportation absorb a large share of the anticipated increase in domestic traffic and in addition take on substantial diverted loads in the face of conditions which prevent any material expansion of their physical plant or equipment because of the competition of higher priority items for available materials and productive capacity.

The railroads may be expected to have the greatest flexibility in accommodating an expanded domestic traffic with a minimum increase in equipment, since other forms of transportation as a rule require additions to equipment in direct ratio to an increase in traffic handled, and this is not the case with the railroad industry. Any policy which strengthens the railroad base will tend to increase the built-in flexibility of our transportation plant. Public interest, however, attaches to a national policy which enables all segments of the carrier industry including air, water, highway, and pipeline industry to make their respective contributions. For example, in the case of extensive domestic damage, it might be necessary to place greater reliance on waterway facilities which are relatively more immune from destruction.

Related to the foregoing considerations is the problem of developing and strengthening our coastal, intercoastal, and inland services by water. It is important to the national economy and to defense that these operations be both financially strong and prepared to meet their role in emergencies.

A common difficulty in wartime is the maintenance of carrier operations other than those of the regulated common carriers, particularly in the motor carrier field. The supply, under rationing or other procedures, of fuel, tires, repair parts, and other items is difficult to handle with large numbers of unregulated carriers which do not normally report to any Federal body. It is, moreover, characteristic of these operations that they do not obtain an equally intensive utilization of equipment and manpower, and hence they contribute less to a war effort than do common carriers in proportion to the input of scarce materials and equipment. A stronger common carrier segment attained in part by the substitution of common carriers for others, greatly simplifies the problem of wartime supply.

Emphasis on the essentiality of common carrier transportation does not imply that <u>bona fide</u> private carriage and true contract transportation are not useful and economic components of the national transportation system. The proper role of these services is discussed later in the report.

II RECOMMENDED ACTIONS

The major objectives of the followingrecommended actions and revisions of public policy affecting transportation are:

1. Increased reliance on competitive forces of transportation in rate making in order:

(a) to have transportation enterprises function under a system of dynamic competition which will speed up technical innovation and foster the development of new rate and service concepts; and

(b) to enable each form of transport to reflect its abilities in the market by aggressive experimentation in rates and service in order to demonstrate to the full its possibilities for service to the shipping and traveling public;

2. Maintenance of a modernized and financially strong system of common carrier transportation;

3. Encouragement of increased efficiency and economy in the management of all transportation services in order to give the ultimate consumer the benefit of the lowest possible transportation costs; and

4. Development of an efficient transportation system for defense mobilization or war.

Declaration of National Transportation Policy

Recommendation REVISE THE NATIONAL TRANSPORTATION POLICY TO ASSURE MAINTENANCE OF A NATIONAL TRANSPORTATION SYSTEM ADEQUATE FOR AN EXPANDING ECONOMY AND FOR THE NATIONAL SECURITY, TO ENDORSE GREATER RELIANCE ON COMPETITIVE FORCES IN TRANSPORTATION PRICING, TO REDUCE ECONOMIC REGULATION OF TRANSPORTATION TO A MINIMUM CONSISTENT WITH PUBLIC INTEREST, AND TO ASSURE FAIR AND IMPARTIAL ECONOMIC REGULATION.

The first and essential step in the recommended program is the revision of the declaration of policy in the Interstate Commerce Act. The present policy statement has placed undue restraints upon competitive rate and service experimentation by the several types of transportation subject to the act.

The present declaration of policy reads as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;— all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." 1/

In major respects the tone of the policy declaration in existing statutes, as interpreted, has been relied upon to justify the substitution of the judgment of the regulatory body for that of management,

especially in the adjustment of competitive rates between highway, rail, and water carriers.

The declaration of policy should be revised to make it clear (1) that common carriers are to be permitted greater freedom, short of discriminatory practices, to utilize their economic capabilities in the competitive pricing of their service, and (2) that in all such matters the regulatory Commission is expected to act as an adjudicator, not a business manager.

The recommended policy declaration would read substantially as follows:

It is hereby declared to be the national transportation policy of the Congress:

(1) To provide for and develop, under the free enterprise system of dynamic competition, a strong, efficient and financially sound national transportation industry by water, highway and rail, as well as other means, which is and will at all times remain fully adequate for national defense, the Postal Service and commerce;

(2) To encourage and promote full competition between modes of transportation at charges not less than reasonable minimum charges, or more than reasonable maximum charges, so as to encourage technical innovations, the development of new rate and service techniques, and the increase of operating and managerial efficiency, full use of facilities and equipment, and the highest standards of service, economy, efficiency and benefit to the transportation user and the ultimate consumer, but without unjust discrimination, undue preference or advantage, or undue prejudice, and without excessive or unreasonable charges on non-competitive traffic;

(3) To cooperate with the several States and the duly authorized officials thereof, and to encourage fair wages and equitable working conditions;

(4) To reduce economic regulation of the transportation industry to the minimum consistent with the public interest to the end that the inherent economic advantages, including cost and service advantages, of each mode of transportation, may be realized in such a manner so as to reflect its full competitive capabilities; and

(5) To require that such minimum economic regulation be fair and impartial, without special restrictions, conditions or limitations on individual modes of transport.

All the provisions of this Act shall be construed, administered and enforced with a view of carrying out the above declaration of policy.

Increased Reliance on Competitive Forces in Rate Making

Increased reliance on competitive forces in rate making constitutes the corner-stone of a modernized regulatory program. Recommendations contemplate revisions of four elements of current statutory provisions relating to: (a) maximum-minimum rate control; (b) suspension powers; (c) the long-and-short-haul clause (section 4); and (d) volume freight rates.

(a) Maximum-minimum rate control

Recommendation LIMIT REGULATORY AUTHORITY OF THE INTERSTATE COMMERCE COMMISSION TO DETERMINATION OF REASONABLE MINIMUM OR MAXIMUM RATES WITH NO CHANGE IN EXISTING PROVISIONS MAKING UNDUE DISCRIMINATIONS AND PREFERENCES UNLAWFUL.

Under current provisions of the Interstate Commerce Act, the ICC is authorized after hearing to prescribe the maximum and/or minimum rate or exact rate of common carriers subject to its jurisdiction upon a finding that the rate being investigated is unreasonable or unjustly discriminatory or unduly preferential. The Commission possesses like authority when it finds that any intrastate rate causes undue or unreasonable preference or discrimination against interstate or foreign commerce. In practical effect this means that upon a finding of the stated conditions, the ICC may determine and prescribe the precise rate, the ceiling or floor of the rates to be observed, or the range of rates (zone of reasonableness) considered lawful.

These rate controls were vested in the ICC during the period when the railroads were the sole or predominating intercity form of transportation. The principal purpose of these controls was to protect the general public against railroad monopolistic pricing or unfair or discriminatory rate cutting and to maintain reasonable rate relationships between competing shippers, markets, localities, or traffic. A related purpose was to prevent the accumulation of extortionate earnings by an industry vested with public interest. Regulatory authority over intrastate rates was granted to remove restraints on the free flow of interstate commerce.

With the changed character of transport organization and the development of greatly increased regulated and unregulated service and cost competition for traffic, there is no longer a need in the public interest to continue the present scope of rate controls if the Nation is to have a healthy common carrier industry, and to help assure the most economic use and needed development of our transport capacity.

The value of service today for any method of transport is in most instances fixed by the rates of competitors or by the cost at which the service can be privately performed by the shipper. As there are differences in the quality of service and in the ancillary costs to the shipper, forms of transport which have inferior service or service attended by additional costs borne by the shipper directly must have a cost advantage which is reflected in the rate to secure business. Although it was one of the objectives of the enactment of the Motor Carrier Act in 1935 to secure a controlled transition toward a cost-of-service rate structure, this objective has not been attained.

Analysis of cost and rate relationships indicates that some forms of transportation have a cost superiority over others on volume movements over longer distances. On the other hand, some modes of transport, both from a service and cost standpoint, have advantages in the shorter movements, and for some type of commodities have a cost advantage for intermediate distances. However, analysis of the rate-cost relationships under which traffic is distributed as between forms of carriage discloses striking inconsistencies and an essentially unsound economic situation for which regulation is at least partly responsible.

If the market is to determine the appropriate use of each form of transportation in accord with shippers' judgments of the utility to them in terms of cost and service, rates must be allowed to reflect cost advantages whenever they exist and to their full extent. Present regulatory policy defeats this prospect in large part since carriers, notwithstanding demonstrated lower costs, are permitted to do no more than to meet the competition facing them which, with some exceptions, means to name the same rate regardless of cost relationships. Especially where private or unregulated competition or the prospect of its establishment is involved, even this much opportunity may be permanently denied the common carriers

because of the long delay in deciding cases when proposed reduced rates have been suspended for investigation, thus leaving the old rates in effect during the critical period.

Moreover, outstanding maximum rate orders covering a wide range of common carrier traffic have been important in causing carriers to seek revenue relief through general rate level increases in ex parte decisions. This procedure for obtaining additional revenues has created difficulties for the carriers in adjusting their rates to meet particular competitive situations. In addition, regulation has held down a substantial portion of the common carrier rate structure to a level which appears to fail to cover the costs of the transport service rendered.

In brief, these rate maladjustments, in part enforced by regulation, deprive the public of the economy which would result from a distribution of the traffic in accord with the real capabilities of the several types of carrier just as they deprive the shipper of many valid choices which would be available to him were rate competition more free from restraint as to its character and timing. There is, however, danger that unrestrained rate competition may result in undue depression of rate levels. While competition among carriers in their lawful reach for traffic will generally serve to keep rates within a maximum reasonable level, the Interstate Commerce Commission should have authority to restrain carriers from charging excessive rates on traffic which is non-competitive. Moreover, the shipper is entitled to protection against unjust discrimination and carriers are entitled to protection against discriminatory picking and choosing in the making of competitive rates.

Hence it is proposed to continue regulatory authority:

(1) to prescribe minimum rates of common carriers subject to the Interstate Commerce Act which shall not be less than a just and reasonable minimum. The Committee believes that rates are unreasonably low when not compensatory, i.e., when they fail to cover the direct ascertainable cost of producing the service to which the rates apply.

(2) to prescribe maximum rates of common carriers which shall not be in excess of a just and reasonable maximum; provided, that rates cannot be forced by the Commission below the full cost of performing the services to which such rates apply exclusive of losses in other services. In this connection the Commission should be required to take into consideration the extent and effect of competition with respect to the service to which the rates apply to the end that carriers shall be prevented from charging excessive or unreasonable rates on traffic which is non-competitive.

(3) to determine rate relationships which would avoid unjust discrimination or undue preferencesin event the latter are found to characterize any existing rate relationships, including the relationship of rates to be maintained as between intrastate and interstate commerce where state commissions have prescribed a basis of intrastate rates which is inconsistent with the basis currently in force on interstate traffic in a degree shown to burden interstate commerce.

Since particular standards to guide the ICC in determining the reasonableness of rates are set forth with its authority to exercise minimum and maximum rate controls, the need for present uncertain statutory rules of rate making disappears. This repeal would remove one of the most objectionable features of rate regulation, namely,

the necessity that the Commission substitute its own judgment for that of carrier management as to "the effect of the /proposed/ rates on the movement of traffic by the carrier or carriers for which the rates are prescribed."

(b) Suspension powers.

Recommendation: CONTINUE ON A MORE RESTRICTIVE BASIS COMMISSION'S AUTHORITY TO SUSPEND PROPOSED CHANGES IN RATES: SHORTEN SUSPENSION PERIOD TO 3 MONTHS; AND, CONTINUE PROVISION THAT PLACES THE BURDEN OF PROOF UPON CARRIER PROPOSING A CHANGED RATE, UNLESS THE PROTESTANT IS ALSO A CARRIER.

Since 1910 the Interstate Commerce Commission has had authority upon complaint or its own initiative to suspend proposed changes in rates pending a determination of their lawfulness. The ICC may also allow the rates in question to become effective, or may enter upon a hearing concerning their lawfulness without suspension. Upon suspension, the Act requires simply that the ICC shall attach to the filed schedule and deliver to the carrier or carriers affected "a statement in writing of its reasons for such suspension". At present the suspension period may not exceed seven months. In practice, however, many carriers voluntarily defer application of the proposed rates until the proceeding is terminated.

The Committee believes that suspension of new rates should be considered as a special and unusual remedy. However, those affected by proposed changes in rates are now given an opportunity, without adequate restriction, to have new rates postponed until the ICC has adjudicated the matter or the suspension expires. There is no practicable method of indemnifying carriers for possible losses in traffic or revenues over the period of suspension if it is later determined that the rates are just and reasonable. Moreover, at any hearing involving a proposed rate change, contrary to the usual practice in complaint actions under the Administrative Procedure Act, the burden of proof is upon the carrier to show that its proposed changed rate is just and reasonable.

If a rate is already in effect, a complainant's remedy is different, for the burden rests upon him to prove that the assailed rate is unlawful.

While there is justification in the case of shippers for requiring a carrier to assume the burden of proving that a proposed change in rates is just and reasonable prior to its becoming effective, there appears no sound reason why a complaining carrier competitor should not be required to prove his allegations of unlawfulness particularly when temporary relief during suspension is available upon a proper showing of need.

The power of suspension frequently has been used by competing carriers merely to delay decisions. Currently, nearly all the protested changes in rates involve reductions and by far the greatest number of complaints are filed by carriers. In this connection the standards which have been developed for determining the lawfulness of suspended schedules have become unduly restrictive, holding the carriers to the meeting of competition only and largely denying them the right to give effect to their full economic capabilities

In order to remedy this situation and to be consistent with the proposed revisions in transportation policy which place more reliance on competitive forces in rate making, the power of suspension should be exercised only after the ICC determines on the basis of factual information supplied by the protestant, or as a result of its own investigation that the proposed rates, or related matters are probably unlawful, and that making the rate effective would result in injury to the complainant, and that in the absence of suspension, the complainant would have no adequate remedy. The period of suspension should be shortened to three months. The requirement that places the burden of proof upon the carrier proposing a changed rate should be continued except in cases where the protestant is also a carrier.

By so circumscribing the power of suspension, carriers would be protected from unwarranted attacks by competitors and shippers on their pricing adjustments. Unnecessary suspension of new rates would be eliminated on the one hand and, on

the other, adequate emergency relief would still be available in situations where a proper showing indicates its desirability.

The interest of carriers and shippers alike in prompt action demands that administrative procedures should be adjusted to accommodate their needs accordingly. While the above recommendations should produce a marked decrease in the number of suspension dockets, the Commission should use every possible method for expediting such litigation.

The Bureau of Accounts, Cost Finding and Valuation of the ICC should be strengthened to the full extent necessary for it to carry on its studies and research on transportation costs to provide current information for measuring cost competition in the transportation field and in order to form a basis for the Commission's judgment of what constitutes compensatory rates.

In addition, the ICC's resources and means of developing current information covering transport operations and the movement of traffic should be strengthened. This knowledge is essential if the Commission is to effectively carry out its necessary regulatory functions.

(c) Long-and-short haul clause (4th section)

Recommendation REMOVE REQUIREMENT THAT RAIL OR WATER COMMON CARRIERS OBTAIN PRIOR APPROVAL FOR CHARGING GREATER THAN AGGREGATE OF INTERMEDIATE RATES, AND FOR CHARGING LESS FOR LONGER THAN FOR SHORTER DISTANCES OVER THE SAME LINE OR ROUTE IN THE SAME DIRECTION, THE SHORTER BEING INCLUDED WITHIN THE LONGER, IF NECESSARY TO MEET ACTUAL COMPETITION AND THE CHARGE IS NOT LESS THAN A MINIMUM REASONABLE RATE.

Except on the Commission's special authority - usually after a hearing - the railroads, for example, for years have been prevented from charging a lower rate from A to C than from A to the intermediate B, or charging a higher rate from A to C than the aggregate of the intermediate rates A to B and B to C. These prohibitions might be justified if there were no competition for such carriers to meet or the competition were evenly distributed among their stations and equally potent at each.

The fact is, however, that competition exists between stations in varying degrees, and when the railroads seek (for instance) to publish rates which are lower to the further distant point which is located on water than to the intermediate point which is inland, they are not creating preference and prejudice. These are already present by virtue of the existence of water service to the further distant point and will continue - regardless of any action the railroads may or may not take. The question in such cases is, are the railroads entitled to make themselves competitive or is the traffic to be handled to the further distant point exclusively by a competing pipeline, railroad, water or other carrier?

Should instances arise where economic interests would be subjected to undue disadvantages by reason of this proposed amendment to section 4, remedial measures remain available under section 3 which prohibits undue or unreasonable preference or prejudice.

Although the long-and-short haul clause is applicable to common carriers by water, as well as by railroad, it may be noted that comparable provisions are not applicable to motor carriers governed by the Interstate Commerce Act.

(d) Volume freight rates.

Recommendation. MAKE LAWFUL SUCH VOLUME RATES AS ARE BASED ON COST DIFFERENCES WHICH RATES ARE ESTABLISHED TO MEET COMPETITION.

The prime economic benefit of rail, water and pipeline transportation clearly lies in heavy long-distance and large-scale transportation. It is invariably cheaper to haul traffic in volume from one point of origin to a single destination. Heavier loading produces lower per-ton cost. The public is denied these cost benefits when obstacles are placed in the way of lower rates for volume movements. Consequently, carriers should be permitted to make incentive minimum weights and volume rates, provided that such rates are open upon equal terms to all who may wish to use them and further provided that such rates meet the compensatory test. Price differentials having a suitable relation to cost are generally accepted in the pricing of goods and services in all parts of our economy.

A Modernized and Financially Strong System of Common Carrier Transportation Must be Maintained

Historically, common carrier service has been recognized as the hard core of our transportation system. Yet, in recent years there have been a number of developments that have mitigated against the maintenance of a financially strong system of common carrier transportation.

Among such developments are the rapid growth of privately operated fleets of trucks, the relatively less regulated status of contract carrier service, and statutory exemption of the transportation by water of commodities in bulk from the regulatory controls imposed on common carriers. These developments have had the effect of diverting profitable sources of traffic from the common carriers. To this must be added the large deficits resulting from the enforced maintenance of unprofitable services.

(a) Private carriage.

Recommendation. REDEFINE A PRIVATE CARRIER BY MOTOR VEHICLE AS ANY PERSON NOT INCLUDED IN DEFINITION OF A COMMON OR A CONTRACT CARRIER WHO TRANSPORTS PROPERTY OF WHICH HE IS THE OWNER, PROVIDED THAT THE PROPERTY WAS NOT ACQUIRED FOR THE PURPOSE OF SUCH TRANSPORTATION.

Private truck operations should be limited to the distribution of the owner's products and supplies from plants, the distribution centers, and the return haul of materials to be used in his own operation.

A primary problem in transportation at present concerns the infringement of private carriers upon the field of common carriage and the need for remedial action in the form of more effective regulation of private carriers or enactment of legislation to delineate more adequately the proper place and status of such carriers.

Legitimate private carriage is not in issue. The practice of shippers handling their own merchandise is sanctioned legally and is frequently sound economically. The problem is created by those practices of private carriers which undermine the common carrier transportation system which must bear the main burden of the Nation's transportation requirements in peace and war.

The Commission has pointed out that where so-called private carriage is a subterfuge for engaging in public transportation, it constitutes a growing menace to shippers and carriers alike; is injurious to sound public transportation; promotes discrimination between shippers; and threatens existing rate structures.

Provision should be made for appropriately franchising, upon application, either as a contract carrier or a common carrier as the case may be, carriers who have been operating legally as private carriers but who would not be entitled to continue to operate as private carriers under the new provisions of the Act, and who make application within a specified period.

(b) Contract carriers

Recommendation REDEFINE MOTOR AND WATER CONTRACT CARRIAGE AS BEING THAT TRANSPORTATION PROVIDING SERVICES FOR HIRE BUT OTHERWISE EQUIVALENT TO BONA FIDE PRIVATE CARRIAGE AND REQUIRE THAT ACTUAL, RATHER THAN MINIMUM, CHARGES BE FILED.

The definition of contract carrier by motor vehicle and contract carrier by water provided in the Interstate Commerce Act should be sharpened to make clear that such carriers are of a specialized nature, and that they should be so regarded only if they clearly substitute for a feasible private carrier operation and do not perform common carrier services which would ordinarily be undertaken by common carriers. Provision should be made for conversion, after hearing, of existing contract carrier permits to common carrier certificates where the carriage is not that of a contract carrier as above defined, and where the holder of the permit makes application within a specified time and shows that he is engaged in bona fide transportation for hire which is not contract carriage as so defined.

To further assure that motor and water contract carriers will operate in their appropriate roles in the transportation system, the Interstate Commerce Act should be amended to require the filing and publication by contract carriers of actual rates, charges, and regulations affecting transportation under their contracts or the publication of those contracts in entirety at their option.

The purpose of these recommendations is to protect common carriers against contract carriers who are in effect engaged in common carrier operation without having had to demonstrate the "public convenience and necessity" of the service offered.

There has developed an area of conflict between certain motor contract carriers and competing motor and rail common carriers over whether the contract carriers are not, in many instances, actually performing a common carrier service. These contract carriers are taking substantial blocks of traffic in their service areas through excessive numbers of shipper contracts constituting in effect common carriage. The provisions of part II of the Interstate Commerce Act with respect to publication of rates are also more lenient to contract than to common carriers. The former are required only to post their minimum rates in contrast to the requirement that actual rates of common carriers be published. Due to

this disparity it is not possible for common carriers to compete effectively because they have no means of determining the actual rate charged by contract carriers. For this reason, the Committee advocates that the Interstate Commerce Act should be amended to require the publication of actual rates charged together with the contracts and other descriptions of the services to be rendered by contract carriers.

(c) Bulk commodity exemptions.

Recommendation. REPEAL THE BULK COMMODITY EXEMPTION APPLICABLE TO WATER CARRIERS SO AS TO SUBJECT SUCH TRANSPORTATION TO REGULATION SIMILAR TO THAT APPLICABLE TO OTHER TRANSPORTATION.

Part III of the Interstate Commerce Act exempts from regulation the carriage of commodities in bulk when ". . . the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities." For purposes of the Act, barge tows are considered as single vessels. Economic regulation is applied to bulk commodities in a vessel or a tow when more than three commodities or non-exempt commodities are being carried.

Both railroads and many common carriers by water, in their competing service in the carriage of bulk commodities, are fully regulated, including the requirement that actual rates be published. Bulk water carriers in exempt operations, on the other hand, need not publish their rates and are able to obtain competitive traffic by quoting lower than the published rate. Common carriers by water contend that if they are to obtain the benefits of the exemption they must segregate their tows to exclude non-exempt commodities. This procedure is often impossible, in which case they must quote published rates with the risk of losing the business to another carrier quoting a secret exempt rate. It is claimed that conformity with the requirements for exemption results in operating inefficiencies such as smaller tows, and poorer service to some shippers.

Repeal of the bulk commodity exemption would bring under Commission regulation common and contract water carriers engaged in transportation of such commodities on the inland waterways, coastal waters and deep sea routes, and the Great Lakes. However, the repeal would not affect the bulk commodity exemption now applicable to the transportation of such commodities by contract carriers in non-ocean going vessels on international waters. Nor would it disturb the right of contract carriers to seek exemption of transportation which, by reason of the nature of the commodities or requirement for special equipment, is not competitive with rail or motor common carriers. Of course, provision should be made for granting appropriate operating authority to carriers now engaged in the transportation of bulk commodities if application is made within a stated period of time.

(d) Freight forwarder associations.

Recommendation. PROVIDE DEFINITE STATUTORY STANDARDS FOR DETERMINING WHICH SHIPPERS OR SHIPPER ASSOCIATIONS INVOLVED IN CONSOLIDATION OR DISTRIBUTION OF VOLUME FREIGHT ON A NON-PROFIT BASIS FOR SECURING LOWER RATES ARE ENTITLED TO EXEMPT STATUS.

Some shipper or shipper associations involved in consolidation or distribution or volume freight on a non-profit basis for the purpose of securing lower rates, although termed non-profit, in fact absorb costs which include overhead, and the expenses involved go beyond those paid to a carrier. In effect, this exemption opens the way to establishment of non-regulated forwarding enterprises. Definite statutory standards should be provided as a basis for determining which of such associations are entitled to exemption and which should be subject to regulation.

(e) Service deficits.

The need for this correction is illustrated by the fact that the railroads have suffered for many years from a persistent and creeping malady of unprofitable passenger service operations. The provision of freight and passenger services by railroads constitutes a common enterprise. Consequently, the actual losses incurred from passenger service operations must be borne from earnings realized from freight service. Thus, in final analysis, the railroad shippers of the country are being required to subsidize in substantial and growing amounts those who benefit from the utilization of passenger train services.

Class I railroads have incurred a deficit in their passenger service operations every year since 1930 with the exception of the war years, 1942-45. The deficit averaged about $250 million annually between 1936 and 1940, with the annual average rising to nearly $625 million between 1948 and 1953. The peak deficit - $705 million - occurred in 1953. These figures, however, fail to reveal the full extent of the total deficit because individual company and train losses have been offset in part by trains showing passenger profits. Moreover, these data make no allowance for return on investment in passenger service facilities nor do they reflect the cost of transporting fuel and materials for the benefit of the passenger service.

These substantial losses have an extremely adverse effect on the overall financial position of the railroads. In unregulated business enterprises, prudent management would abandon even at the loss of capital investment, any plant or product which for any period of time operated at a loss or showed no prospect of becoming profitable. The common carrier transportation industries, however, faced with a similar situation are not permitted to operate as prudent business managers. For, under the public utility theory, common carriers certificated either by the Federal or state authority, are required to maintain satisfactory service for all segments of their transportation plant for which public authorization has been given.

Many trains, particularly those engaged in short-haul local operations do not produce enough revenue to pay their out-of-pocket costs. Furthermore, in many cases such operations are no longer needed because of the development of alternative transportation service, particularly by improved highways. Curtailment and abandonment of these unprofitable trains offer a means of substantially reducing the passenger deficits. Service abandonments, however, are almost uniformly subject to approval of state regulatory commissions. These commissions have shown reluctance to grant permission because of opposition to the service curtailment from local interests and railroad employees. The ICC has held that its jurisdiction extends only to the complete abandonment of line and operations.

In order to alleviate this situation, the Interstate Commerce Act should be amended to provide that where the Commission finds that continuance of unprofitable facilities or services imposes an undue burden upon interstate commerce, and that adequate service by other forms of transportation are available to meet the public need, it may order the discontinuance of such services or facilities irrespective of the law of any state or the order of any state authority. We believe it is desirable that consideration be given by the Congress to extending this principle to carriers subject to Parts II and III of the Interstate Commerce Act.

(f) Agricultural Commodity Exemptions. In the enactment of Part II of the Interstate Commerce Act providing for the economic regulation of service by trucks, the Congress exempted from regulation trucks carrying certain agricultural products from farm to market.

These exemptions have grown under current court rulings so that now, for example, the ICC has before it a case involving the question of whether green coffee beans and cocoa beans are "exempt" commodities, although neither is produced by any farmer in this country. A continual expansion of these exemptions could destroy the fundamental purpose of the Act.

The ICC which has jurisdiction in this matter has asked Congress to allow it to testify on this complex subject. The Act should

be clarified to indicate what exemptions the Congress now wishes to give without undue interference with the main purposes of the legislation.

III. SPECIAL GOVERNMENTAL RATES

In addition to the basic issues of transportation policy discussed above, the special problem of government rates merits attention.

Recommendation. CONTINUE AUTHORITY FOR CARRIERS TO ESTABLISH VOLUNTARY SPECIAL GOVERNMENT RATES BUT SUBJECT SUCH RATES TO ALL PROVISIONS OF THE ACT (INCLUDING PUBLIC FILING) EXCEPT SUSPENSION AND LONG-AND-SHORT HAUL PROVISIONS, WITH AUTHORIZATION FOR APPLICATION OF SPECIAL GOVERNMENT RATES RETROACTIVELY AND ON SHORT NOTICE IN SPECIAL INSTANCES AND WITH AUTHORIZATION FOR WAIVER OF FILING REQUIREMENTS IN CASES WHERE NATIONAL SECURITY IS INVOLVED.

The use by carriers of that portion of Section 22 of the Interstate Commerce Act granting free or reduced rate transportation to government traffic has given rise to abuses and evils which are not in the public interest. It is recognized also however that government procurement practices and the peculiar exigencies affecting movement of its traffic as distinguished from normal movement in commercial channels require special consideration.

For these reasons existing statutory provisions authorizing carriers to tender special government rates and fares to the United States, State, and Municipal Governments should be amended in such a way as to preserve the features which accommodate the special needs of government traffic movements yet will overcome the present abuses.

Except for rates and fares subject to security, such special government rates and fares should be published in tariffs and filed in accordance with the provisions of the Interstate Commerce Act and regulations thereunder, provided that filing and publication requirements of the Interstate Commerce Commission may be waived to assure application of such rates or fares on less than statutory notice or retroactively.

Upon enactment of legislation to accomplish the above recommendations, a savings clause should be inserted to permit carriers sufficient time to review and incorporate then existing provisions of Section 22 tenders in published tariff form.

Members:

Sinclair Weeks, Secretary of Commerce, Chairman

Charles E. Wilson, Secretary of Defense

Arthur S. Flemming, Director of the Office of Defense Mobilization

Ad Hoc Participating Members:

George M. Humphrey, Secretary of the Treasury

Arthur E. Summerfield, Postmaster General

Ezra Taft Benson, Secretary of Agriculture

Rowland R. Hughes, Director, Bureau of the Budget