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COPY NUMBER: 1

CP - 58-77

March 25, 1958

The White House

Washington

THE CABINET

Recommendations Concerning Railroads --
Report of the Transportation Study Group

For consideration by the Cabinet, attached is the Report of the special Transportation Study Group established in December, 1957 at the request of the Assistant to the President.

This Report analyzes and discusses some of the major problems of the railroad industry and makes recommendations with respect to governmental policies affecting that industry.

The attached Report should be read in conjunction with the Report of the Cabinet Committee on Transport Policy and Organization (AT END OF TAB 3) (issued as a White House Press Release on April 18, 1955).

The attached Report is preceded by a cover transmittal-letter from the Chairman of the Study Group to the Assistant to the President.

Distribution of the attached Report is on a limited basis only; special precautions are to be taken by each recipient to safeguard the privileged nature of this document.



Maxwell M. Rabb
Secretary to the Cabinet

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THE UNDER SECRETARY OF COMMERCE
FOR TRANSPORTATION
Washington 25

March 20, 1958

Dear Governor Adams:

Pursuant to your instructions of December 5, 1957, the group which met with you and certain railroad officials that day has prepared and now submits its report.

In preparing this report we have consulted representatives of the Treasury Department, the Department of Defense, the Post Office Department, the Department of Agriculture and the General Services Administration, but these consultations do not imply the approval of these agencies. We have also consulted some outside experts, no one of whom has seen any part of the report. We have also reviewed the Report of the Cabinet Committee on Transportation Policy and proceedings in connection therewith.

We have given serious consideration to all railroad proposals made at the December 5, meeting and subsequently to the Smathers Subcommittee and have reviewed all testimony to date before that Subcommittee.

We have not dealt with the matter of additional user charges on highways or new user charges on airways and inland waterways for the reason that we do not believe these should be considered as part of a program to alleviate ills in other fields of transportation.

Dr. Gabriel Hauge, Special Assistant to the President, has been present at all meetings of the group and concurs in our findings.

The recommendations contained in this report represent our best judgment. It is our opinion that if any of these recommendations require legislative action, they should be made a part of the President's program. We would hope that this might be determined long enough before March 27, the date on which government witnesses will testify before the Smathers Subcommittee, so that approved portions of it may be included in their testimony.

Respectfully yours,

Louis S. Rothschild
Louis S. Rothschild

Honorable Sherman Adams
The White House

Enclosure: (1)

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REPORT OF THE TRANSPORTATION STUDY GROUP

March 1958



Much of the extraordinary industrial development of the United States and of its unmatched standard of living has been made possible by the contemporaneous development of its transportation system. This is the only remaining privately owned system in the world today, and its growth has resulted from private initiative, guided, regulated, and at times assisted by government.

We recognize that it is of paramount importance to the country's welfare that this system remain privately owned and that the government's role be limited to such minimum guidance, regulation, and assistance as is essential in the public interest.

The system consists of regulated railroads, pipelines, airlines and bus lines, and regulated and unregulated truck lines and water carriers. Extensive competition exists among and within all these forms of transportation, with the result that any competitive or regulatory change may occasion a significant shift of business between or within these several elements of the industry.

Although our assignment was occasioned by the railroad's current situation, we recognize that recommendations which would merely shift business to one segment of the system, such as railroads, from other segments would not be in the public interest. The public interest will be served only by a strengthening of the system as a whole.

We believe that the system as a whole will be at its strongest when each of its elements is performing those services for which it is inherently best adapted at prices which will attract a sufficient volume of business to permit profitable operation. We believe also that the public, through the exercise or withholding of its purchasing power, brings to bear the soundest judgment as to the relative worth of competing transportation services offered at reasonable prices.

The public is already exercising a judgment. The railroad share of the total intercity freight transportation business in the United States has declined from about 75 percent in 1929 to less than 50 percent in 1957. This business appears to have gone to motor trucks, both regulated and unregulated, and to oil pipelines whose combined share of total intercity freight transportation has increased during this same period from about 8 percent to more than 35 percent. In intercity passenger transportation, the public judgment has been in the same direction. In 1929 the railroads carried about 17 percent of the intercity travellers. By 1957 this had declined to less than 4 percent. This traffic largely shifted to private automobiles which carried about 88 percent of the intercity passengers in 1957 as compared with about 78 percent in 1929. The balance of the passenger traffic lost by the railroads, about 3%, went to the airlines.

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There is every indication that this trend will continue. Construction of the Interstate Highway System and other Federal Aid Highways over the next decade or so will increase the utility of motor vehicles for hauling both freight and passengers. Increase in the safety and speed of air travel, coupled with its growing independence of weather conditions, will surely deprive the railroads of much of the medium to long haul passenger traffic. More freight will be handled by pipelines and inland water carriers.

If this choice by the public were being made strictly on the basis of the inherent merits of the various modes of transportation, there would be no economic justification for recommending changes in government policy. Justification would have to be found elsewhere--as in the importance of the railroads in an emergency.

We are of the opinion, however, that the public choice of transportation is being affected by governmental policies, and that there is reason to believe that a revision of certain of these policies would bring about some redistribution of traffic at prices which would benefit the public at large and strengthen each mode of transportation by encouraging it to perform those functions for which it is best adapted.

We make no recommendation with respect to the policies of management, but the group feels that the major responsibility for finding solutions to the problems that beset the transportation industry rests squarely on management. The group believes that the economic pressures of a free enterprise system, if allowed full enough play, will induce management to take the necessary corrective actions.

We come now to the governmental policies which we consider unsound, the problems created by them, and our recommendations. The group's recommendations involve specific and difficult technical questions on which, in a number of cases, conflicting solutions have been advocated. The group has not attempted to resolve these technical problems as part of the present report.

Passenger Services

All railroads that operate passenger trains, both commuter and intercity, have found the business to be unprofitable in varying degrees. The combined passenger train deficits are currently running in the area of \$600 to \$700 million per year.

Original jurisdiction of proceedings to abandon or curtail these unprofitable services is to a substantial extent vested in State commissions which, responding to local pressures, have in too many cases declined to grant relief. Also where, in the case of commuter traffic,



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abandonment or curtailment of service would have worked such hardship on the travelling public or local communities as to justify denial of relief by the State commission, the State commission, with its local rather than interstate interest, has often failed to cooperate with the railroads in working out some alternative form of relief.

The railroads, therefore, have been obliged to meet these deficits by seeking freight rates sufficiently high to offset these losses and yield a reasonable return on their total freight and passenger investment. In competition with other modes of transportation not so encumbered, this increase in rates by the railroads has resulted in the loss of a substantial amount of freight traffic and has denied the general public the benefit of the efficient and low cost freight transportation that otherwise might have been available.

We recommend that the Administration propose and support legislation (1) granting original jurisdiction to the Interstate Commerce Commission, where it does not now have such jurisdiction, and (2) permitting, subject to the availability of reasonably adequate alternate services, curtailment or abandonment of railroad ~~passenger~~ (including commuter) services which impose an undue burden on interstate commerce. (This restates a recommendation of the Cabinet Committee on Transport Policy and Organization.)

Private Carriage

There has been and continues to be a substantial growth in private transportation, which is defined as the hauling of merchandise by persons having a proprietary interest therein. It is not and should not be subject to economic regulation. There has additionally been a large and worrisome amount of hauling under the guise of private transportation. The ease of posing as a private carrier under present statutes and regulations in order to avoid regulation and to be able to quote prices with which regulated carriers cannot compete has contributed to the loss of a very substantial amount of business by regulated carriers, including the railroads.

We recommend a legislative redefinition of private motor carriage that will aim at eliminating unfair competition by certain for-hire carriers operating in the guise of private carriers. (This parallels in intent a recommendation of the Cabinet Committee on Transport Policy and Organization.)

Agricultural Exemption

The exemption from economic regulation of motor carriers carrying agricultural products from farm to market, commonly called the agricultural exemption, was originally intended for the benefit of the farmer.



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but has been abused and interpreted in such manner as to accord certain motor carriers a distinct competitive advantage over regulated carriers without benefit to the farmer. The advantage stems principally from the fact that exempt carriers are free to go wherever business is available and may adjust their rates in secret from day to day, as may prove most advantageous. Regulated carriers do not have similar freedom.

The agricultural exemptions are, therefore, responsible for a tremendous and rapidly growing diversion of important traffic from regulated carriers, including railroads.

We recommend that the exemption from economic regulation granted to motor transportation of certain agricultural and related commodities be narrowed so that, while it would continue to accommodate the real transportation needs of farmers, it would not unduly divert traffic from railroads and other regulated carriers. (The Cabinet Committee on Transport Policy and Organization recommended only that the Act be clarified.

**Water Carrier Exemptions**

At present, certain for-hire water carriers of bulk commodities, both liquid and dry, are exempt from economic regulation. This exemption had its origin at a time when such carriers were not considered competitive with regulated common carriers. While the extent to which they are competitive is not certain even now, it is felt that the distribution of traffic among carriers should not depend on an advantage accruing to a particular type of carrier from the absence of regulation.

We recommend that all for-hire water carriers now exempt be brought under economic regulation. (The Cabinet Committee on Transport Policy and Organization made this recommendation with respect to dry bulk carriers only.)

Transportation Excise Taxes

All forms of for-hire carriage of freight are subject to a transportation tax. Except for pipelines, this tax is 3 percent of cost and is paid by the shipper. Together with other factors previously enumerated, it is believed that this tax has contributed significantly in influencing shippers to enter the field of private carriage where there is no comparable tax burden. It is, therefore, an undesirable tax.

In addition there is a 10 percent tax on the carrying of persons. Other things equal, the removal of this tax would either permit a reduction of the total cost of transportation to the passenger, with some resulting improvement in the volume of traffic and earnings, or, if not passed on to the customer, would directly increase the net income of the carriers. Either result would be beneficial to the industry.



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We recommend the repeal, at the earliest practicable time, of the Federal excise taxes on the transportation of persons and property. (This recommendation was not made by the Cabinet Committee on Transport Policy and Organization.)

Rate-Making Policies

While the Government's regulatory functions cover a variety of matters directly affecting carriers under regulation, their most profound effect is to be seen in the regulatory agencies' determinations having to do with the establishment or change of rates. Railroad rates, like those of other common carriers, while always initiated by a carrier or group of carriers, are subject to review by the regulatory agency on its own motion or on complaint of anyone who is or seems to be affected.

Partially as a result of legislative enactment, partially as a result of administrative practice, there has grown up over the years a ponderous, slow moving, and frustrating procedure which has tended to make many requested rate changes so doubtful of accomplishment or so late in affording potential relief as to cause carriers to assume a less than aggressive rate change policy.

Rate regulation seems to have confined rate changes to those which cause as little disturbance as possible to existing patterns of freight distribution among types of carriage.

Because of the lack of precise statistical data on which to base their case, carriers have frequently sought general changes in rates rather than the specific rate changes that might be more helpful. Thus, a basic managerial function, that of establishing the price at which its services are to be offered to the public, has been impaired by government policy. As a result, shippers and the public have been denied access to services of maximum benefit at minimum cost.

The committee recognizes that more active rate and service competition would require the abandonment of some parts of the existing rail transportation capacity but accepts this result as the necessary cost of essential adjustments in the transportation system.

We recommend that the Administration support the enactment of legislation fostering rate policies which, by placing greater reliance on competitive forces, will lead to adjustments in, and effective utilization of, transportation capacity. (This repeats, with increased emphasis, a recommendation of the Cabinet Committee on Transport Policy and Organization.)

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Financial Difficulties

This report has so far dealt with passenger services, private carriage, the agricultural exemption, transportation excise taxes, and rate making policies. Recommendations under these headings, if accomplished, would in the group's opinion ultimately but not immediately be of sufficient assistance to common carriers, including railroads, to obviate the need for government financial aid. The problem remains, however, whether transportation companies face immediate problems that require some type of special financial assistance.

Entirely apart from the effect on them of present business conditions, it appears that some railroads have for some years been suffering from serious equipment deficiencies which their financial capabilities have not permitted them to remedy on an individual basis. Accordingly, suggestions have been made for government assistance in various forms.

As a result of inquiry among lending agencies, we are convinced that there exists or can be created means by which sufficient amounts of investment capital will be available from private financial sources to correct this deficiency if depreciation schedules for tax purposes can be adjusted. This has application not only to railroads but to several other modes of transportation as well.

In the case of airlines, which do not have this need for depreciation adjustment, a necessary condition for achieving a satisfactory financial position is an increase in the permissible rate schedule, an issue now pending before the Civil Aeronautics Board.

As to railroads, a prime requirement seems to be freight cars with substantially improved performance capabilities. Because they are more expensive than the bulk of the cars being ordered by railroads today, and because an owning railroad contributes cars to the national pool without necessarily getting much advantage itself, there has been great reluctance to purchase cars, despite the fact that they can generate operating economies more than sufficient to repay their initial cost.

It has been suggested that a privately financed corporation jointly owned by the railroads which would own cars and lease them to individual railroads would be an effective solution of this problem. The existence of such a corporation would relieve the individual railroads of investing their own capital and would make this capital therefor available for fixed plant improvement, maintenance and other purposes in amounts believed sufficient to obviate the need for government assistance.

We recommend that depreciation schedules be established which will facilitate the private financing of rolling stock acquisitions. (This recommendation was not made by the Cabinet Committee on Transport Policy and Organization.)



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We recommend, further, that the Federal government encourage the establishment of a corporation by the railroads, as outlined above, and that stand-by legislation be prepared and for the moment kept confidential which would authorize the Federal government to make financial assistance available to the corporation in the event of demonstrated need. (This recommendation was not made by the Cabinet Committee on Transport Policy and Organization.)

With respect to the possible need for direct emergency financial assistance to the railroads, the group has determined that government presently has no authority nor funds for this purpose. Section 302 of the Defense Production Act runs only to loans for the repair or replacement of damaged properties.

Accordingly, we recommend that plans, including a draft of appropriate legislation, be prepared for acquiring the authority and funds by which direct emergency financial aid could be extended by the Federal government in the field of transportation, but that these plans be held entirely confidential until such time (which, hopefully, will not come) when they might be needed. (This was not a recommendation of the Cabinet Committee on Transport Policy and Organization.)



Merger and Consolidation Restrictions

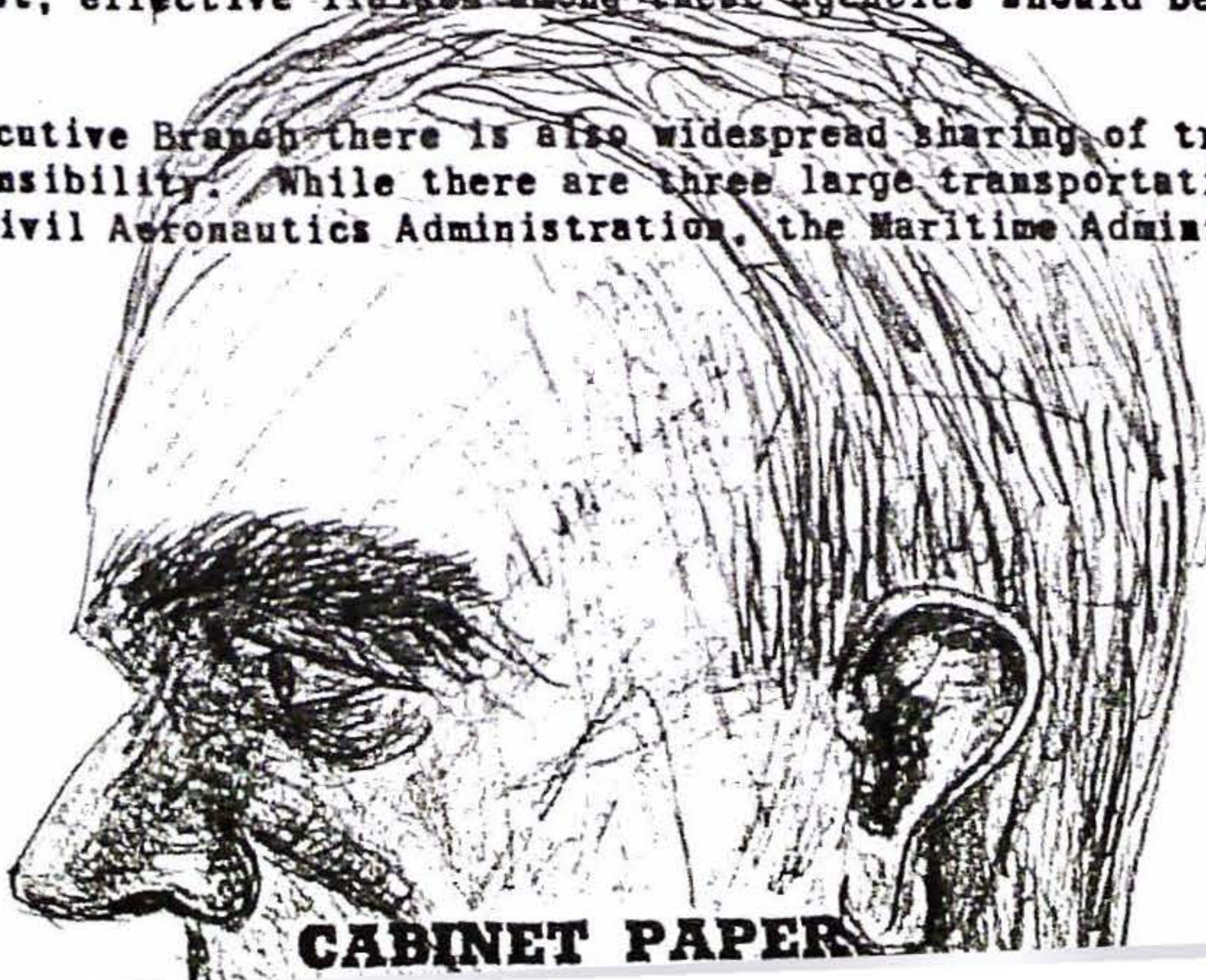
The law as it now stands permits mergers and consolidations of common carriers where the Interstate Commerce Commission finds such mergers and consolidations to be consistent with the public interest. Where the Commission has made such a finding, the anti-trust laws do not apply.

We conclude, therefore, that existing law does not unduly interfere with the opportunity to merge and consolidate, and that no legislative change is necessary.

Government Transportation Activities

Transportation interests frequently find it difficult to get more than partial answers to questions which they pose to Federal transportation agencies. A more effective means of discharging the government's transportation responsibilities and of being able to indicate its interest seems, therefore, not only desirable but necessary. Regulatory agencies in the field, Interstate Commerce Commission, Civil Aeronautics Board, Federal Maritime Board, now operate in a manner so wholly independent of one another that no consistent pattern of Federal regulation is achieved. At the very least, effective liaison among these agencies should be established.

In the Executive Branch there is also widespread sharing of transportation responsibility. While there are three large transportation agencies--the Civil Aeronautics Administration, the Maritime Administra-



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tion, and the Bureau of Public Roads--in the Department of Commerce, there continue to be lodged in other agencies direct and correlary transportation activities including the non-regulatory activities of the Interstate Commerce Commission, the United States Coast Guard, the Panama Canal Company, the St. Lawrence Seaway Corporation, and the Alaska Railroad among others. Much would be gained by a consolidation of all non-regulatory transportation activities in one area.

We recommend, therefore, the centralization of all of the Federal government's civil non-regulatory activities in the field of transportation. (This recommendation was not made by the Cabinet Committee on Transport Policy and Organization.)

It would seem to be additionally desirable to have a substantial measure of cooperation and understanding between regulatory agencies and the Executive Branch. This has been achieved in the maritime field by the simple process of making the Chairman of the Federal Maritime Board ex officio administrator of the Maritime Administration. Further efficiency and substantial economies are achieved by having one staff serve both the Administration and the Board.

We recommend that wherever possible, arrangements similar to that wherein the Chairman of the Federal Maritime Board is ex officio the Maritime Administrator, be made with respect to the Interstate Commerce Commission, the Civil Aeronautics Board and their opposite numbers in the Executive Branch. (This recommendation was not included in the Report of the Cabinet Committee on Transport Policy and Organization.)



L. S. Rothschild
Louis S. Rothschild
Gordon Gray
Gordon Gray
Raymond J. Saulnier
Frederick C. Nash

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E.O. 11652, Section 1

By SPAC NLE, Date 8-11-76

MINUTES OF CABINET MEETING

March 28, 1958
9:05 A. M. -- 10:30 A. M.

The following were present:

President Eisenhower

Vice President Nixon
Under Sec. Herter
 (for Sec. Dulles)
Sec. Anderson
Sec. McElroy
Mr. Rogers
Mr. Summerfield
Sec. Seaton
Sec. Benson
Sec. Weeks
Sec. Mitchell
Sec. Folsom

Director Stans
Deputy Director ODM Patterson
 (for Mr. Gray)
Amb. Lodge
Dr. Saulnier

Asst. Sec. Laurence B. Robbins,
 Treasury
Under Sec. Louis S. Rothschild,
 Commerce
Deputy Sec. Quarles, Defense,
 in part
Hon. Randolph Burgess
Adm. Strauss, AEC
Mr. Merriam, Budget

Gov. Adams
Gen. Persons
Mr. Rabb
Mr. Morgan
Gen. Goodpaster
Dr. Hauge
Mr. Harlow
Dr. Killian
Mr. Larson
Mrs. Wheaton
Mr. Martin
Mr. Siciliano
Mr. McCabe
Mr. Patterson
Mr. Minnich



Education Legislation - Sec. Folsom, in reporting the progress of discussions on this legislation, indicated that Sen. Hill was pressing a bill differing from the Administration bill as regards a duration of six years rather than four, scholarships numbering 40,000 per year instead of 10,000, and lacking any "need" qualification. He indicated that Sen. Hill felt that the House would inevitably reduce the scope of the Senate bill, hence it was necessary for the Senate to aim high. Mr. Folsom felt that the Administration would eventually have to compromise on some of these points but that in keeping with the President's directive he would continue for the present to support the Administration's proposal without change.

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E.O. 11652, Section 1By ANL NLE, Date 8-11-76

Cabinet Minutes, March 28, 1958 - page 2

Sec. Folsom also noted the conflicting opinions on the Hill as to whether scholarship awards should be on a national basis thus assuring national standards, or on a State basis. The President in this connection desired to insure that the student would have to maintain high quality work or lose the scholarship. He thought perhaps scholarship payments should be made directly from the States to the colleges rather than through the individual students. Mr. Folsom stated that such details had not yet been developed. Along with a number of other tendencies reported, Mr. Folsom noted that funds would probably not be directed in any Congressional bill toward raising salaries but that the money originally planned for this might be used in other respects advocated by Members of Congress. He also stressed an apparent desire on the Hill for establishing a loan fund to supplement scholarships, and members of the Cabinet cited various examples of the success of such loan funds in contrast with the President's citation of his rather unfavorable experience with one at Columbia University for medical students.

The President called specific attention to the points made in the current LIFE editorial on education.

Social Security - After noting that some Members of Congress wished early revision of the Social Security program, Mr. Folsom stated that Senators Hill and Byrd preferred to wait for completion of studies now being conducted by HEW concerning the fiscal soundness of the trust fund and the possible desirability of increasing payments in view of the 6% rise in the cost-of-living index since the last adjustment.

Sec. Folsom stated the Administration position as being opposed to any Federal participation in general assistance to the unemployed. He cited the existence of considerable pressure from the States for a new program in this area, which would take the Federal Government far beyond the four very specialized fields now supported. Mr. Folsom noted the important factor of the quantity of funds being fed into the economy through various social security and welfare payments. Approximately \$1.8 billion per month was paid out for all the various Federal and State assistance and pension programs.

Transport Policy (CP 58-77) - Following an introduction by Sec. Weeks, Mr. Rothschild reviewed in detail the Cabinet paper setting forth the report of the special group which had studied urgent railroad problems in recent months. In doing so, he noted some agreed departures from the draft circulated, including omission of passenger service from the provisions in Recommendation I and deletion of Recommendation IV which had insufficient value to warrant the controversy that would arise.

In connection with the Recommendation for tightening agricultural exemptions, Sec. Benson was assured by Mr. Rothschild that the change would not interfere with the farmer's freedom to haul his own things and those of his neighbors. In subsequent discussion it was agreed that Sec. Benson should consult with appropriate farm leaders before any final decision to go ahead with this item. Mr. Benson believed it would be acceptable.

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E.O. 11652, Section 1

By JH/C NLE, Date 8-11-76



Cabinet Minutes, March 28, 1958 - page 3

Regarding the Recommendation for reducing the transportation excise tax, Mr. Rothschild emphasized the need for determining a feasible time, and Sec. Anderson concurred fully. The latter added that no justification existed for the excise except the quantity of money it brought into the Treasury. He thought Congressional leaders might agree to consideration of legislation for a change in this tax under an agreement that other tax revisions would not be tacked on to this one.

Regarding the financial situation, Mr. Rothschild thought the proposed equipment Corporation might need a temporary advance of capital from the Government. He stressed the possibility that some eastern railroads would need Government loans very soon for survival, hence the recommendation that legislation be drafted confidentially for getting the necessary authority and appropriation but allowing the Administration to await an absolutely certain need.

A number of Cabinet members commented on various aspects of the fiscal difficulties of the several eastern railroads most seriously affected, the urgency of the problem, and the impact of possible bankruptcies on the economic psychology of the Nation and on national security. Sec. Anderson stated Treasury's belief that the Department already had sufficient authority under Section 302 of the Defense Production Act. Should Government loans be made, he said; it would seem desirable to establish a Creditors Committee with power to adjust debt relationships so as to avoid receiverships, a situation containing difficulties for the Government. Both Sec. Anderson and the President emphasized the importance of far-reaching changes in legislation if loans were to be made, since the Government should not make such loans with a prospect of inability of the railroads to repay the loans. Sec. Weeks thought it essential to secure the cure from Congress in advance of the loans, or Congress would not face up to the problem. The President reiterated his desire to avoid buying up broken-legged horses.

The President commented on the need for greater centralization among the railroads and the possible desirability of a Government requirement to that effect accompanying any Government subsidy as in the case of the airlines. Mr. Rothschild cited the possibility of important economies being accomplished through joint use of facilities.

It was agreed that the Administration should push ahead with developing legislative proposals for removing undue restrictions on the railroads, with the possibility of a limited excise action to be discussed with appropriate Congressional leaders, and that the Department of Justice should furnish an opinion as to the powers of the Treasury Department under Section 302.

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RA - 58-101

April 23, 1958

The White House

Washington

THE CABINET

Record of Action

The following is the action taken on the items presented at the Cabinet meeting of Friday, March 28, 1958:

1. **Report on the Status of Education Proposals**

ACTION: The Cabinet noted the summary by the Secretary of Health, Education and Welfare of the legislative status of the educational aid proposals.

- a) With respect to the number of scholarships to be authorized and in connection with current Senate action, the President indicated that he did not wish the Secretary to depart or give any intimation of departure from the Administration proposal.
- b) With respect to the method of making scholarship funds available, the President emphasized his interest in ensuring that the payment of the awards is made closely contingent upon the student's maintaining a high level of achievement; consideration should be given to paying the funds directly to the universities selected, to be disbursed by them in turn to the scholarship students on a periodic basis consistent with the proper achievement.

2. **Report on the Status of Social Security Legislation**

ACTION: The Cabinet noted the report by the Secretary of Health, Education and Welfare on the potential legislative situation with respect to social security, on the general magnitude of the program in toto and on its current impact upon the national economy. The President indicated his present opposition to proposals which would take the Federal government into State Public Assistance programs for the employable unemployed.

3. **Recommendations Concerning Railroads --**
Report of the Transportation Study Group

ACTION: Cabinet Paper 58-77 was approved, subject to the following provisions and changes:

- a) The word "passenger" is to be deleted from the first Recommendation on page 8, thus extending the Recommendation to apply also to freight services.

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- b) The Recommendation near the top of page 4, while acceptable to the Secretary of Agriculture and approved, is to be held in abeyance pending consultation with the appropriate farm organizations and a review of the support which they are likely to give it.
- c) The second Recommendation on page 4 was withdrawn.
- d) The Recommendations at the top of page 5 and the bottom of page 6 are approved but their implementation is to be contingent upon consultation with the Congressional leadership and upon the assurances which can be obtained that other repealing amendments in this general field will not be tacked onto the legislation.
- e) The Recommendation at the bottom of page 5 is approved with emphasis on the need for speed in the decision-making process.
- f) With respect to the first and especially the second Recommendations on page 7, the measures recommended to be prepared shall be understood to include the guaranteeing of loans obtained from private sources.
- g) With respect to the second Recommendation on page 7:
 - i) The Attorney General will promptly advise the Study Group as to the legal questions involved in determining whether the Administration can take the measures recommended under present statutory authority (Section 302 of the Defense Production Act) or must seek new legislation;
 - ii) Alternative methods should be considered for avoiding receivership: e.g., bondholders-shareholders committees which would have the right to readjust debt relationships among those represented;
 - iii) The President indicated that in any case the Administration's position is clearly: that emergency direct aid is to be employed only after the other recommendations for long-range improvement are accepted in such a way that there is genuine promise of improvement in the earning position of the railroad industry, and specifically of any recipients of such aid. Implementation of these longer-range recommendations in fact is to take priority over the measures referred to in "d", "f", and "g" above.
- h) Action on the two recommendations on page 8 is deferred for further study.



4. Status Report on FY 1958 Expenditures and Personnel

ACTION: The Cabinet noted the report presented by the Director of the Bureau of the Budget, including his revised estimates of agency spending plans through the end of this Fiscal Year.

3.

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The Cabinet further noted that a special presentation is being prepared by the Director of the Bureau of the Budget for the next meeting which will show the longer-run trends in expenditures.

POST-CABINET BRIEFING ON NEW DEFENSE EXPENDITURES AND PROGRAMS

Information Item Only.

NOTE: The members of the Cabinet are reminded that:

- 1) This briefing was presented to them on a personal basis.
- 2) The briefing contained information in the highest security classification -- and is not to be repeated beyond those present in the room.
- 3) The proposals presented are tentative; action and decision are under Budget Bureau and White House review.



Maxwell M. Rabb
Secretary to the Cabinet

IMMEDIATE RELEASE

April 22, 1958

James C. Hagerty, Press Secretary to the President

THE WHITE HOUSE

THE WHITE HOUSE TODAY MADE PUBLIC
THE FOLLOWING LETTER FROM THE
PRESIDENT TO THE HONORABLE SINCLAIR
WEEKS, SECRETARY OF COMMERCE

Dear Mr. Secretary:

I appreciate very much your sending me a copy of your proposed letter to the Chairman of the Surface Transportation Subcommittee of the Senate Committee on Interstate and Foreign Commerce.

The recommendations made by the Administration to solve the railroad problem and strengthen the transportation industry are in my judgment sound. The soundness of the proposal for temporary financial assistance depends, of course, upon the increased earnings expected to result from the other proposals. Adoption of the former without the latter would, therefore, be quite undesirable.

All the recommendations should be enacted into law with dispatch. I hope that no effort will be spared to achieve this result.

Sincerely,

/s/ Dwight D. Eisenhower

The Honorable Sinclair Weeks
Secretary of Commerce
Washington, D. C.



THE SECRETARY OF COMMERCE

WASHINGTON 25, D. C.

April 21, 1958

Dear Mr. President:

I have the honor to send for your consideration a copy of a letter which I propose to send to the Chairman of the Surface Transportation Subcommittee of the Senate Committee on Interstate and Foreign Commerce.

It contains Administration recommendations to solve the special problems of the railroads and strengthen the transportation industry as a whole.

I hope that if you are in agreement with these recommendations you will find it possible to give them your approval and support.

Respectfully yours,

Sinclair Weeks

Attachment

The President

The White House



THE SECRETARY OF COMMERCE
WASHINGTON

April 22, 1958

Honorable George A. Smathers
Chairman
Surface Transportation Subcommittee
Committee on Interstate and Foreign Commerce
United States Senate
Washington, D. C.



Dear Mr. Chairman:

This letter is submitted in connection with your Subcommittee's study of "The Deteriorating Railroad Situation." You were very kind to invite me to appear in person before your Subcommittee to testify concerning this important problem. I regret that I was unable to do so. This letter embodying the Administration's views is being sent instead. I sincerely hope that you will find it helpful.

The difficulties presently besetting the railroads stem in part from the current downturn in general economic activity. This downturn accounts for much of the sharp decline in carloadings since last September. There are, however, other causes of longer standing which have acted as a depressant upon the transportation industry and upon the railroad industry in particular.

Many steps have been taken to promote general recovery of the economy and it is expected that the desired improvement will not be long deferred.

But however effective these measures may be, they will not solve the special problems of the transportation industry. For these special problems, special solutions are required. Although the solutions recommended below are intended to meet the needs of the railroad industry, they will, when placed in effect also help to strengthen the transportation industry as a whole and to further the general objective of renewed and vigorous national economic growth.

Some indication of the gravity of the situation confronting the transportation industry, and the railroads in particular, appears in the following statistics. While corporate sales in all other industries, measured in dollars, increased about 3-1/2 times between 1929 and 1956, transportation sales, similarly measured, increased less than half that much. During the same period, corporate income after taxes in all other industries increased about 1-1/2 times but in transportation corporate income after taxes decreased about 50%. These declines occurred despite the fact that total intercity ton-miles of freight carried by all means of transportation more than kept pace with the growth in gross national product and despite the fact that total intercity passenger transportation by all kinds of carriers grew more than twice as fast as population.

In the railroad industry, the average ratio of operating income to operating revenue declined from 1929 to 1956 from about 18% to about 10% -- even though ton-miles of intercity freight carried by the railroads increased.

The Administration is convinced that, while the special problems of the railroads are in part due to increased competition and ill-advised practices of management and others, they are also due to long-standing governmental policies -- federal and local, regulatory and otherwise -- which have served to decrease their revenues, increase their costs and foreclose to them and to the public the benefits of increased efficiency which otherwise might have been achieved.

The Administration, accordingly, makes the following recommendations and urges their prompt consideration by the Congress:

1. Enlarged ICC Jurisdiction over Curtailment of Services --

The Interstate Commerce Commission should have original and appellate jurisdiction over all curtailments of service and facilities affecting interstate commerce, including curtailments of passenger and commuter service and facilities.

2. Redefinition of Private Motor Carriage -- The definition in the Interstate Commerce Act of "private carrier by motor vehicle" should be amended to preclude the unfair competition which occurs today when certain for-hire carriers operate in the guise of private carriers.

3. Clarification of the Agricultural Exemption -- The agricultural exemption in the Interstate Commerce Act should be clarified with the object of accommodating the real needs of agriculture while preventing undue diversion of traffic from regulated carriers.
4. Revised Federal Rate-making Policies -- Federal rate-making policies should be revised to encourage more service and price competition while providing adequate minimum regulation.
5. Temporary Financial Assistance -- Federal guarantees (1) of short term private loans for cost-saving capital additions to, and improvement of, plant, facilities and equipment other than rolling stock (not to exceed \$500 million), and (2) of equipment obligations for purchase of improved freight cars, up to 10% of the purchase price (not to exceed \$200 million).



The Administration recognizes that, even if immediately effective, the first four recommendations will not for several years fully achieve their intended results. The railroads, however, must be able at once to commence cost saving programs which are not possible, without interim assistance, until the first four recommendations achieve substantial results. Recommendation number five is intended to make such cost saving programs immediately possible.

The last recommendation must be regarded, however, as integral with the others. Its financial soundness depends on the increased earnings expected to result from the preceding measures.

The repeal of Federal excise taxes on the transportation of persons and property, and the shortening for income tax purposes of depreciation schedules, while advantageous to transportation interests, should be considered only as part of a general tax revision program consistent with over-all fiscal policy. No recommendations are, therefore, being made in this area at this time.

There follows a detailed explanation of each recommendation.

Enlarged ICC Jurisdiction over Curtailment of Services

Rail carriers suffering deficits from the operation of persistently unprofitable services and facilities have requested that

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the Interstate Commerce Commission be authorized to permit the discontinuance or curtailment of such services and facilities when public need therefor no longer exists. Competing air, motor, and water carriers, as well as shippers, have supported the railroads in this request.

Continued operation of unprofitable services and facilities places an unreasonable burden on shippers as well as on carriers. For example, losses from passenger train services, which have been estimated to be as high as \$750 million a year, must be recouped to the extent possible from freight operations. The result is higher freight rates. Moreover, increased freight rates divert traffic to carriers not encumbered by these unprofitable operations, thus deepening the railroads' troubles by depriving them of the traffic they are best adapted to carry at a profit.

Rail carriers have been unable to avoid these burdens primarily because of the inability or failure of State regulatory bodies to act promptly or at all in authorizing the discontinuance or curtailment of unprofitable operations. The Interstate Commerce Commission has jurisdiction to authorize the abandonment of "all or any portion of a line of railroad, or the operation thereof," but it does not have authority to permit carriers merely to discontinue or curtail a service. This authority, where it exists at all, is vested in State regulatory commissions. Even where they do have the authority, State commissions, because of pressure from local interests, have too often been reluctant to permit a discontinuance or curtailment. In some instances, such as those involving commuter traffic, the State commissions have not acted to evolve an alternative form of relief for the railroads.

The Presidential Advisory Committee on Transport Policy and Organization, recognizing the need for such relief, recommended that the Interstate Commerce Commission be empowered to set aside certain State service requirements if continuance of such service would result in a net revenue loss or otherwise unduly burden interstate and foreign commerce and if reasonably adequate alternative service would be available. Legislation to implement this recommendation was incorporated in bills submitted by the

Department of Commerce during the 84th and 85th Congresses. Extensive hearings were held on the House bill during the 84th Congress, but no action has been taken on the Senate bill, S. 1457.

S. 1457 would vest the Commission with authority over railroad services or facilities in intrastate commerce comparable to that which it now has under the Interstate Commerce Act over State imposed intrastate rates, fares, charges, etc., which are found to be an undue burden on interstate commerce. Such authority would be appellate in nature, for the Commission could not act until a State regulatory body denied an application for discontinuance or curtailment of a service or facility, or failed to act within 180 days after the filing of such an application.

The Administration is convinced that the Interstate Commerce Commission should also be given original jurisdiction over the discontinuance or curtailment of services and facilities. The continued operation of an unprofitable rail service ceases to be a problem for exclusive State or local solution when it imposes an undue burden on interstate commerce. It would also appear that the interests of interstate rail carriers or shippers should not be determined, even initially, by State Commissions where concurrent action by several State Commissions would be required to effect the curtailment or discontinuance or where a State Commission has previously demonstrated a clear inability or unwillingness to give proper recognition to interstate interests.

Giving the Interstate Commerce Commission both original and appellate jurisdiction would permit carriers to apply either directly to Federal authority or to a State Commission without losing their Federal remedy.

The Administration recommends, therefore, that the Interstate Commerce Commission be given both original and appellate jurisdiction to authorize the curtailment or discontinuance of rail services (including commuter services), and the abandonment of facilities used in connection therewith, which are in intrastate or interstate commerce and which impose an undue burden on interstate

commerce, provided that reasonably adequate alternative services are available.

Redefinition of Private Motor Carriage

Rail carriers have protested that for-hire transportation performed under the guise or subterfuge of private carriage is unjustifiably diverting traffic from regulated for-hire carriers and is disrupting their rate structures. The railroads have been joined by other regulated for-hire carriers in requesting that the Interstate Commerce Act be amended to afford relief from this abuse.

The activity denounced by the railroads usually takes the form of what is known as the "buy-and-sell" method. Bills of sale, invoices, etc., are issued to make it appear that the property being transported belongs to the owner of the vehicle transporting it. Also, manufacturers and mercantile establishments, which deliver in their own trucks articles they manufacture or sell, quite frequently purchase merchandise at or near their point of delivery and transport it to their home terminal for sale to others.

The Interstate Commerce Commission has stated that private carriage used as a subterfuge for public transportation constitutes a growing menace to shippers and carriers alike, is injurious to sound public transportation, promotes discrimination between shippers, and threatens sound rate structures.

Although certain of these operations have been struck down by the courts, there is no uniformity in the decisions. The Commission, in its Annual Reports since 1953, has stated that it cannot "effectively cope with this problem without some changes in the Act." Last year the Commission for the first time submitted legislation to meet this problem. Hearings on the bill (S. 1677) were held in the Congress, but no further action has been taken.

The Presidential Advisory Committee on Transport Policy and Organization previously had recommended relief from these evils by an amendment of the Interstate Commerce Act definition of "private carrier by motor vehicle." Legislation incorporating this recommendation

(S. 1457) was introduced in the 84th and 85th Congresses. Except for hearings in the House during the 84th Congress, no further action has been taken.

The Commission and the Department of Commerce have repeatedly made it clear that the legislation submitted by them is not designed to affect bona fide private carriage. Despite these assurances, certain groups of private carriers oppose this legislation. They contend that the problem is one of enforcement rather than legislation, and that any modification of existing law would upset the "primary business test" applied in Brooks Transportation Co. v. United States, 340 U.S. 925.

No extended comment on the first of these objections is required. The Commission has stated time and time again that it cannot cope with the problem without legislation. The Commission reiterated this view in testimony on March 28, 1958.

To meet the second objection, the Transportation Association of America at the hearings on S. 1677 presented an alternative proposal which would amend the Interstate Commerce Act to incorporate the primary business test. The Commission stated on March 28th that it was already on record in support of either S. 1677 or the T.A.A. proposal if modified in certain minor respects. Certain of the rail carriers have also endorsed the T.A.A. proposal.

The Department of Commerce stated at the hearings on S. 1677 that certain phrases in that bill would be difficult to interpret and administer. The Department also stated, however, that it did not seek only its own bill (S. 1457), and that it would be agreeable to an alternative proposal which would accomplish the Advisory Committee's objective.

To enhance the probability of legislation in this field, the Administration recommends enactment of the T.A.A. proposal, modified as suggested by the Commission.

Agricultural Commodities Exemption

There has been considerable controversy with respect to the "agricultural commodities exemption" embodied in Section 203(b)(6) of the Interstate Commerce Act. The railroads and regulated motor carriers, as well as the Interstate Commerce Commission, contend that Congress did not intend that the exemption include processed commodities such as some of those declared by the courts in recent years to be exempt. They maintain that Congress intended the exemption merely to serve as an aid to the farmers in marketing their products.

Some agricultural interests contend, on the other hand, that Congress intended that many processed (but not manufactured) agricultural commodities be exempt. They cite the need for flexibility in marketing agricultural commodities, including processed commodities.

The regulated transportation groups are also concerned lest the exemption be further broadened by judicial interpretation to include additional significant groups of commodities, such as canned foods. Major agricultural interests have indicated that they do not seek further substantial broadening of the exemption, and there appears to be no evidence that any producing groups desire such further broadening.

In view of the situation which currently exists, the Administration recommends that Congress take action which would remove the threat of further expansion of the exemption while still retaining for agriculture the benefits which accrue from the use of exempt motor carriers in marketing those commodities presently considered ex-

Revised Federal Rate-making Policies

The revolution which has taken place in the transportation industry is described in the report of the Presidential Advisory Committee on Transport Policy and Organization. Even as late as 1920, the railroads enjoyed a virtual monopoly of intercity transportation. Since that time, however, a wide selection of transportation facilities for the carriage of persons and property has developed. The result is that today extensive competition exists throughout the

economy among modes of transportation.

The Advisory Committee's report noted that, notwithstanding this revolution, governmental policies still held "regulated competitive forces within a tight rein." The Committee recommended relaxation of those reins to reflect present day realities. It held that the changed character of transport organization and the development of greatly increased regulated and unregulated service and cost competition made it unnecessary, in the public interest, to continue the contemporary scope of rate controls.

As a first and essential step it was recommended that the National Transportation Policy be revised so as (1) to assure the maintenance of a national transportation system adequate for an expanding economy and for the national security, (2) to place greater reliance on competitive forces in transportation pricing, (3) to reduce economic regulation of transportation to the minimum consistent with the public interest, and (4) to assure fair and impartial economic regulation.

The report also recommended repeal of the rule of rate making (section 15a of the Interstate Commerce Act) and continuation of regulatory authority:

(1) To prescribe for common carriers subject to the Interstate Commerce Act minimum rates which would not be less than just and reasonable;

(2) To prescribe for such common carriers maximum rates which would not be more than just and reasonable; and

(3) To review existing and future rate relationships, including those between intrastate and interstate commerce, and where necessary, to require their adjustment to avoid unjust discrimination or undue preference.

These recommendations were embodied in bills introduced in the 84th and 85th Congresses. None has been enacted.

The objectives underlying them, nevertheless, are still of the utmost importance today. Competition constitutes a main

source of our economic strength. Unless regulatory policies permit maximum competition consistent with the admittedly necessary regulation of carriers who owe their existence to government franchise, our transportation system will be still further weakened.

The Interstate Commerce Commission seems to regard some price and service competition as an effective means of channeling traffic to modes of transportation best adapted to handle it. The Commission, however, does not appear to realize the full value of price and service competition as a source of strength for the system. Predatory competitive practices are recognized by the Commission as evils it has a duty to eliminate; but it condemns as predatory, competitive practices which elsewhere in the Government and the economy would be considered legitimate and a source of strength.

For example, the Commission apparently holds the view that in order to maintain a strong transportation system, as it is directed to do by the Congress, it must protect the lower cost carrier by preventing the higher cost carrier from reducing its rates below those of the former more than is necessary to compensate for differences in service. The Commission seems to have applied this principle particularly where the commodity involved, because of value or other characteristics, can stand a higher rate than would otherwise be set on the basis of mere size, weight and shape. This theory appears to be justified by the Commission on one or more of several grounds. It is claimed that price wars can best be prevented by stopping them before they start; or that the low cost carrier's profits must be protected to offset losses elsewhere; or that the public interest would not be served by a diversion of such traffic from a low cost to a supposedly less efficient (higher cost) carrier. Whatever the reason, competition is outlawed which would not be considered predatory outside of the transportation industry.

Conceding that in some respects these policies are paternalistic, the Commission appears to justify them partly on the ground that competitors need this kind of protection to prevent them from destroying themselves by competitive excesses.

This philosophy is not consistent with our basic economic principles and cannot be justified by the fact that carriers are public utilities which depend for their existence on government franchise.

To be prevented from destroying itself, competition admittedly needs regulation, but not regulation that injures or destroys what it seeks to preserve. Beyond the utility and transportation fields, the anti-trust laws prevent competitors from adopting practices which tend to eliminate competition or which have as an object the injury or destruction of a competitor. This type of regulation and this type alone is all that the Interstate Commerce Commission need apply (possibly with some adaptation) to prevent competitive excesses without preventing competition.

The legislation to implement the recommendations of the Presidential Advisory Committee in this area somewhat exceeded this limited requirement. It embodied the so-called "three shall not" rule which, if enacted, would have prevented the Commission, in determining what is less than a reasonable minimum charge, from considering (1) the effect of the charge in question on the traffic of another carrier, (2) its relation to the charge of any other carrier, and (3) whether the charge were lower than necessary to meet the competition of any other carrier.

Under this rule the Commission would appear helpless to prevent practices by carriers which could be stopped under the anti-trust laws if the competitors were not carriers. A "three shall not" rule, if made applicable outside the transportation field, would seem to conflict with provisions of the anti-trust laws applicable to the rest of industry, which require consideration of the effect of unreasonably low prices on competition.

The legislation to implement the Presidential Advisory Committee Report was offered merely as a study document for the consideration of the Congress. The Administration has also had it under study. As a result, it is now making a recommendation in place of the "three shall not" rule.

The recommendations of the Presidential Advisory Committee set forth above on page 9 are repeated. Instead of the "three shall not" rule, it is urged that the Congress enact legislation which would permit the Interstate Commerce Commission, in determining what is less than a reasonable minimum charge, to take into consideration the effect of a rate on competition or on a competitor only where its

effect might be substantially to lessen competition or tend to create a monopoly in the transportation industry or where the rate was established for the purpose of eliminating or injuring a competitor.

Acting under the guidance of a revised policy declaration emphasizing reliance on competitive factors in rate making, the Commission would then create an atmosphere in which price and service competition would produce better service at a lower cost and at the same time encourage the sound growth of all elements of the transportation system.

Temporary Financial Assistance

For various reasons, many railroads have been unable adequately to modernize and improve their plant, facilities and equipment, including rolling stock. In times of good business, railroads have often suffered from a shortage of freight cars; and, in periods of both good and bad business, substantial economies which could have been brought about by the purchase and use of improved facilities, equipment and freight cars have been deferred or given up because of lack of money. Many of these improvements would earn substantial rates of return on the investment, but the funds to finance them have not been available.

1. In order to assist in making additional investment capital available to railroads which have been unable otherwise to secure it, the Government should be authorized to guarantee up to 100% of loans by private lending institutions in an aggregate amount not to exceed \$500 million, the proceeds of which would be available for capital additions to and improvement of plant, facilities and equipment other than rolling stock. Such loans should have a maturity of not more than 5 years. To be eligible for such a loan, the borrower should be required to establish that the anticipated savings from the additions or improvements would in 5 years be sufficient to equal or exceed the amount of the loan.

Such a guarantee would be made by the Secretary of Commerce on terms and conditions prescribed by him with the approval of the Secretary of the Treasury, but only after the Secretary of Commerce has satisfied himself:

(a) Upon consultation with the Interstate Commerce

Commission, that the proposed capital additions and improvements are feasible and should result in the required savings;

- (b) that the railroad has actively sought to obtain the needed funds from private sources and has been unable to obtain them on reasonable terms otherwise than with the requested Government guarantee; and
- (c) that there is reasonable assurance of repayment of the loan.



2. In order to assist in increasing the available supply of freight cars, the Government should be authorized to guarantee equipment obligations of individual railroads or groups of railroads issued for the purpose of financing the acquisition of freight cars. Each guarantee should be limited to not more than 10% of the purchase price and the aggregate amount of all guarantees should not exceed \$200 million. These guarantees should, to the extent possible, be confined to purchasers who will specify improved performance capabilities when placing their orders.

Such a guarantee would be made by the Secretary of Commerce on terms and conditions prescribed by him with the approval of the Secretary of the Treasury, but only after the Secretary of Commerce has satisfied himself:

- (a) upon consultation with the Interstate Commerce Commission, as to the improved performance capabilities of the freight cars to be purchased;
- (b) that the railroad or group of railroads would not be able to make the purchase, or obtain the funds therefor, on reasonable terms otherwise than with the requested government guarantee; and
- (c) that there is reasonable assurance of payment of the equipment obligations to be guaranteed.

The authority of the Secretary of Commerce under both 1 and 2 above should terminate on June 30, 1961.

The Administration recommends, therefore, that legislation be enacted authorizing the Secretary of Commerce to guarantee loans and equipment obligations as outlined above.

The Secretary of Commerce should render semi-annual reports of his operation under these authorities to the President and the Congress.

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In conclusion, I should like to comment on some other suggested solutions of the railroad problem.

One such solution relates to mergers and consolidations. The law as it now stands permits mergers and consolidations of common carriers where the Interstate Commerce Commission finds such mergers and consolidations to be consistent with the public interest. Where the Commission has made such a finding, the anti-trust laws do not apply. The Administration concludes, therefore, that existing law does not unduly interfere with the opportunity to merge and consolidate, and that, while merger or consolidation would doubtless be of substantial benefit to some segments of the railroad industry and should where appropriate be encouraged, no legislative change is necessary.

Another suggested solution is the imposition of charges on competitors of the railroads and others who use transportation facilities supported by the Federal government. The Administration recently transmitted proposed legislation to the Congress for a program of charges on the users of the Federal airway system. The Department of Commerce has underway a study of the question of imposition of charges on the users of Federally improved inland waterway facilities. Charges are now collected by the Federal government from the users of Federal aid highways and the Department of Commerce at the request of Congress is currently engaged in a



study of the equitable distribution of highway costs among the several classes of highway users. The Administration, therefore, is not recommending anything further in this area at this time.

In this connection, it should be made clear that highway user charges, proposed airway user charges and possible additional user charges, although they might conceivably have a beneficial effect on railroads, are not and should not be fixed or collected by the Federal government to achieve any such effect. Instead, they are to provide and only to provide appropriate payment for such government improvements by those who benefit from them.

The Administration is confident that the measures recommended by it here will be of material assistance in solving the special problems of the railroads and in strengthening the transportation industry as a whole.

Sincerely yours,


Secretary of Commerce

