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BEFORE THE

Interstate Commerce Commission

No. 23400

**COORDINATION OF MOTOR
TRANSPORTATION**

**BRIEF ON BEHALF OF THE
ASSOCIATION OF RAILWAY EXECUTIVES**

The views of the Association of Railway Executives as to the policies involved in respect to the matters being considered by the Commission in this proceeding have been expressed in a statement presented to the Commission by the Association's General Counsel, which need not be here repeated, but for convenience of reference is printed herewith as Appendix No. 1.

A summary from the evidence submitted herein has been made by Dr. C. S. Duncan, Economist of this Association, and is printed herewith as Appendix No. 2.

It is desired, however, to discuss further certain questions which arise on this record—some of law

(Italics herein are ours)

and some of policy—and accordingly advantage is taken of the Commission's permission to file a brief.

Individual rail carriers will doubtless file briefs also expressing directly any special views they may respectively entertain in regard to the matters here involved.

I

POWER OF CONGRESS TO REGULATE CONTRACT MOTOR TRUCKS ENGAGED IN INTERSTATE COMMERCE

It is universally admitted that it is within the constitutional power of Congress to regulate interstate commerce when carried on by common carriers; but in some quarters it is denied that Congress has similar power to regulate interstate commerce when carried on by a contract or other carrier which is not a common carrier. In other words, it is argued that the power conferred upon Congress by the Constitution to regulate interstate commerce only relates to such commerce when conducted by certain instrumentalities and not when conducted by other instrumentalities. No such limitation is contained in the commerce clause, and, if it exists, must be found in some other part of the Constitution.

This apparently is realized by the advocates of this theory, and accordingly they contend that the Fifth Amendment to the Constitution imposes such a limitation. In their view, a contract or other carrier on the highway not offering its services to the public as a common carrier, has a property right to engage in interstate commerce on any terms it pleases and without regulation; and to

prescribe terms and impose regulation would be to deprive it of a property right in violation of the provisions of the Fifth Amendment.

It is argued that no business can be regulated that is not "clothed with a public interest"; that the reason common carriers engaged in interstate commerce are subject to regulation is not solely because they are engaged in interstate commerce, but because, in addition to that, they are "clothed with a public interest," and that a carrier on the highway, which is not a common carrier, likewise engaged in interstate commerce, is not subject to regulation, although engaged in interstate commerce, and this for the reason that, according to the contention, it is not "clothed with a public interest."

A sufficient answer to this contention would be that any instrumentality engaged in interstate commerce is, in a constitutional sense, "clothed with a public interest." It is not necessary, however, in this case to rely upon the general proposition just stated. Entirely aside from that, it seems obvious that a contract motor truck engaged in interstate commerce is "clothed with a public interest" and is well within the class of agencies which may be regulated.

It is admitted, by those who take the opposite view, that the State, as highway proprietor, may regulate such contract motor trucks in all matters relating to the use of the highway, such as the weight, length, width or speed of the vehicle on the highway; but a distinction is attempted between the power to protect by regulation of the use of the highway and the power to regulate the business of the truck owner or operator in matters not con-

nected with the use of the highway, such as rates, practices and certificates of convenience and necessity.

It is said that if the issue of a certificate of convenience and necessity, amounting to a power of exclusion, is "a bona fide measure for the protection of the highways from undue congestion, improper wear and tear, dangerous use, and the like, it is highly probable that its validity will be sustained. . . . If, however, the power of exclusion is imposed not as a matter of highway safety or protection but as a regulation of the business of carriage, it is neither more nor less valid than a regulation of rates," both of which, it is contended, would be invalid.

It is insisted that, both as to rates and as to certificates intended as a regulation of the business of carriage, it is essential to valid regulation that the facility to be regulated must be "clothed with a public interest."

It is further insisted that the contract motor truck is not clothed with a public interest, because

1. It is not devoted to a public use;
2. It is not a virtual monopoly;
3. As between it and the person desiring its service, there is no inequality of bargaining power; and
4. There is an absence of public demand for its regulation.

Unless a facility of transportation satisfies one or more of the criteria just mentioned, it cannot, according to the argument of the opponents of regulation, be "clothed with a public interest."

We respectfully take issue with this conclusion. It appears in the record that there is a substan-

tially larger number of contract trucks in operation than of common carrier trucks, approximately 11 per cent of all trucks in operation being contract trucks, while only 7 per cent are common carrier trucks, and 82 per cent of the trucks in operation are owned outright by shippers.

The volume of traffic carried by trucks is justly described, by prominent opponents of regulation, as "tremendous" and it is argued that as this "tremendous traffic" is unregulated, regulation of common carrier trucks has "a very doubtful future." This can only mean that the volume of unregulated truck traffic is so great (a volume which it is contended there is no power in Congress to regulate) that the effective power of Congress to regulate what remains is for all practical purposes destroyed.

It is obvious that this is not only a just but a necessary concession.

While reliable and complete statistics are lacking, it is thought that about 40 per cent of less-than-carload freight now moves by trucks, and it appears from the record that a substantial volume of such carload commodities as cotton, live stock, fruits and vegetables, cement, gasoline, automobiles and parts, explosives and oil well supplies, moves by truck—some of it as much as 300 miles and some as much as 1,200 miles and some for a still greater distance. By far the larger part of this tonnage is handled by trucks which are not common carriers. If they cannot be regulated, they can destroy the common carrier trucks that are regulated and can impair seriously the efficiency of the railroads, which are regulated. They can underbid them as to rates and thus take the

business. The record shows that, while no definite information is available as to rate levels charged by motor trucks, the controlling factor as to rates is the contract and owner-operated trucks.

The latter, if they cannot be regulated, can set at naught the approved principles of regulation, which require reasonable rates, prohibit rebates, favoritism and unjust discrimination, and prescribe rules as to long and short hauls; and thus create the situation where a substantial part of the country's traffic will move in interstate commerce in defiance of the settled policy of Congress.

To deny the power of Congress to prevent this is to deny its power to prevent chaos in interstate commerce.

The power of unregulated carriers to break down the admittedly valid regulation by Congress of interstate commerce when moved by common carriers, demonstrates the fact that such unregulated carriers when engaging in interstate commerce are "clothed with a public interest."

The Fifth Amendment cannot protect them from regulation, not only for the reasons stated, but because, by voluntarily entering the field of interstate commerce, they assent to become subject to the regulatory power of Congress.

That they are "clothed with a public interest" is established not only by the consideration of the sound principles above indicated, but likewise follows from the many precedents in decisions of the Supreme Court of the United States where the subject has been considered.

In the case of *Budd v. New York*, 143 U. S. 517, the question was as to the power of a State to regulate elevator charges and to prohibit the operator

from making any profit on certain of his property and labor used in the process of elevation.

In the course of its discussion in that case, the court used or approved the statement of certain principles as to the conditions under which property or business must be considered as "clothed with a public interest."

It said that the Court of Appeals of New York had correctly stated that

"the underlying principle was, that business of certain kinds holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation." p. 533.

The relation of the business to the public interest is here made the criterion.

The case involved an elevator at Buffalo which was used as one of the agencies to transfer grain from lake vessels to barges operating through the Erie Canal. The Erie Canal was not a party nor involved in the case. It was a facility stated to be useful to the public in transportation. The court held that the public had an interest in the elevator charges because

"every excessive charge made in the course of the transportation of grain is a tax upon commerce; that the public has a deep interest that no exorbitant charges shall be exacted at any point, upon the business of transportation; *and that whatever impaired the usefulness of the Erie Canal as a highway of commerce involved the public interest.*" p. 533.

In this case the business of the elevator operator was held to be "clothed with a public inter-

est" for several reasons, among them being its effect upon a useful highway of commerce. The case affords a direct parallel with the case at bar. In the latter the business of the unregulated truck operator may impair the usefulness of common carrier agencies of interstate commerce and consequently is "clothed with a public interest" just as the business of elevators is so clothed because of its effect upon the usefulness of the Erie Canal.

In that case the Supreme Court said, in respect to the case of *Munn v. Illinois*, which involved the regulation of warehousemen:

"This Court further held, in *Munn v. Illinois*, that the business in question was one in which the whole public had a direct and positive interest; that the statute of Illinois simply extended the law so as to meet a new development of commercial progress; that there was no attempt to compel the owners of the warehouses to grant the public an interest in their property, but to declare their obligations if they used it in that particular manner; . . . that, the property being clothed with a public interest, what was a reasonable compensation for its use was not a judicial, but a legislative question; that, in countries where the common law prevailed, it had been customary from time immemorial for the legislature to declare what should be a reasonable compensation under such circumstances, or to fix a maximum beyond which any charge made would be unreasonable," etc. p. 536.

It is obvious that the public has no more "direct or positive interest" in the business of warehousemen involved in that case than it has in the

business of truckmen carrying interstate commerce on the highway which possesses the power of impairing other important agencies of interstate commerce and of destroying the ability of Congress to regulate effectively interstate commerce itself.

In that case it was stated that "the statute of Illinois simply extended the law so as to meet a new development of commercial progress." p. 536.

In this case, if the work of regulation is undertaken, the statute of Congress would also be simply extending the law so as "to meet a new development of commercial progress."

The principles thus declared in the case of *Budd v. New York*, 143 U. S. 517, were not at that time novel, but form the basis of many previous decisions of the Supreme Court. They also run through all its subsequent decisions.

In *County of Mobile v. Kimball*, 102 U. S. 696—a case prior to the *Budd* case—the extent of the power of Congress to regulate was considered. The Court said:

"That power" (referring to the power to regulate) "is indeed without limitation. It authorizes Congress to prescribe the conditions upon which commerce in all its forms shall be conducted between our citizens and the citizens or subjects of other countries, and between the citizens of the several States, and to adopt measures to promote its growth and insure its safety." pp. 696-7.

In the latter case it was considered as within the power of Congress to regulate "harbor pilotage, buoys, and beacons to guide mariners to the proper channel in which to direct their vessels,"

although these were "mere aids to commerce." Being aids helpful to protect commerce physically, they were held to be "clothed with a public interest." How much greater public interest must attach to agencies so situated, unless regulated, as to impair or destroy regulated interstate commerce itself, as to which Congress is under a duty "to adopt measures to promote its growth and insure its safety."

A striking illustration of what Congress may do to protect regulated interstate commerce is afforded by the case of *Houston & Texas Ry. v. United States*, 234 U. S. 342, commonly known as the Shreveport Case.

Congress admittedly has no original power to regulate intrastate commerce any more than it has original power to regulate a private business, but each of them may become so related to regulated interstate commerce as to come within the regulatory power of Congress.

In the Shreveport case, Shreveport, Louisiana, competed with Dallas and Houston, Texas, for the trade of certain Texas communities located between the Texas-Louisiana line and the cities of Dallas and Houston, in Texas.

The movement between Shreveport and the communities referred to was interstate and the rates applicable to it were fixed by the Interstate Commerce Commission under the regulatory power of Congress.

The movement between Dallas and Houston to these same Texas communities were intrastate and, as to it, rates were fixed by the Railroad Commission of Texas.

The Interstate Commerce Commission found

that the carriers maintained "higher rates from Shreveport to points in Texas" (which were rates fixed by the Interstate Commerce Commission itself) than were simultaneously in force "from cities in Texas to such points under substantially similar conditions and circumstances" (which were the rates fixed by the Texas Commission) and that thereby "an unlawful and undue preference and advantage" was given to the Texas cities and a "discrimination" that was "undue and unlawful" was effected against Shreveport. p. 347.

The Court held that this discrimination might lawfully be removed by maintaining the interstate rates as they were and as they had been declared reasonable by the Interstate Commerce Commission and protecting this lawful interstate commerce by raising the State-made rates which, if maintained, would have an injurious effect upon interstate commerce.

In discussing the regulatory power of Congress, the Court says:

"Congress is empowered to regulate—that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures to 'promote its growth and insure its safety' (*County of Mobile v. Kimball*, *supra*); 'to foster, protect, control and restrain' (*Second Employers' Liability Cases*, *supra*)." p. 351.

The Shreveport case was followed by an amendment of the Interstate Commerce Act expressly forbidding and declaring unlawful *any* unjust dis-

crimination against interstate commerce (section 13, paragraph (4)). This action by Congress was based on its constitutional power to protect regulated interstate commerce and to exert "an effective control of the interstate system." The validity of this amendment was considered by the Supreme Court in *Wisconsin R.R. Comm. v. C. B. & Q. R. Co.*, 257 U. S. 563.

The Court held that paragraph (4) of section 13 of the Interstate Commerce Act, in authorizing the Commission to remove, and in forbidding and declaring unlawful, "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," clearly contemplates that such discrimination, resulting from intrastate rates unduly low as compared with interstate rates as fixed under section 15a, and tending to thwart the purpose of that section, may be removed by the Commission (p. 586), "and that the raising of the intrastate rates in such case, is an incident to the effective control of the interstate system, and does not violate the proviso against the Commission's regulating traffic wholly within a State." p. 588.

Thus Congress exercises the power to reach out beyond its ordinary jurisdiction into the field of intrastate commerce and regulates that commerce if it injuriously affects interstate commerce.

Again, the Supreme Court, in the *Second Employers' Liability Cases*, 223 U. S. 48, gave its express approval to the following:

"Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient."

In the same case, at p. 51, it indicates that "the effect" of a thing "upon interstate commerce" is "the criterion of congressional power" over it.

If, as in the Second Employers' Liability cases, Congress has power to impose on an employer engaged in interstate commerce liability for an injury to its employee as a means of effectively controlling and protecting interstate commerce, there would seem to be little room for doubting its power to protect essential instrumentalities of interstate commerce from being broken down, and to protect interstate commerce itself, when performed by regulated agencies, from destruction by competitive unregulated agencies in the same field.

This power of regulation of a private business has been under consideration by the Supreme Court in a great many and a great variety of cases. The principles controlling it have been many times clearly stated and defined.

They were considered in connection with the regulation of the private business of insurance in *German Alliance Ins. Co. v. Kansas*, 233 U. S. 389.

In that case it was contended that the business of fire insurance is a private business; that, therefore, there is no constitutional power in a State to fix the rates and charges for services rendered by it; and that an exercise of such right is a taking of private property for public use.

In elaborating these contentions, the Court says:

"The basic contention is that the business of insurance is a natural right, receiving no privilege from the State, is voluntarily entered into, cannot be compelled nor can any of its exercises be compelled; that it concerns personal contracts of indemnity against cer-

tain contingencies merely. Whether such contracts shall be made at all, it is contended, is a matter of private negotiation and agreement, and necessarily there must be freedom in fixing their terms. And 'where the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.'" p. 405.

"We may put aside, therefore, all merely adventitious considerations and come to the bare and essential one, whether a contract of fire insurance is private and as such has constitutional immunity from regulation. Or, to state it differently and to express an antithetical proposition, is the business of insurance so far affected with a public interest, as to justify legislative regulation of its rates?" p. 406.

"It is said, the State has no power to fix the rates charged to the public by either corporations or individuals engaged in a private business, and 'the test of whether the use is public or not is whether a public trust is imposed upon the property and whether the public has a legal right to the use which cannot be denied'; or, as we have said, quoting counsel, 'Where the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.' Cases are cited which, it must be admitted, support the contention. The distinction is artificial. It is, indeed, but the assertion that the cited examples embrace all cases of public interest. The complainant explicitly so contends, urging that the test it applies excludes the idea that there can be a public interest which gives the power of regulation as distinct from a public use which, neces-

sarily, it is contended, can only apply to property, not to personal contracts. The distinction, we think, has no basis in principle (*Noble State Bank v. Haskell*, 219 U. S. 104), nor has the other contention that the service which cannot be demanded cannot be regulated." p. 407.

"They" (the cases) "demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation. And they demonstrate, to apply the language of Judge Andrews in *People v. Budd* (117 N. Y. 1, 27), that the attempts made to place the right of public regulation in the cases in which it has been exerted, and of which we have given examples, upon the ground of special privilege conferred by the public on those affected cannot be supported. *'The underlying principle is that business of certain kinds holds such a peculiar relation to the public interests that there is superinduced upon it the right of public regulation.'*" p. 411.

The Court held that the private business of life insurance came within this definition and was subject to regulation by the State even as to its rates and charges.

It will be observed that in this case the inquiry was as to the power of a State under its police power and not the power of Congress to regulate interstate commerce, and it was held that the Fourteenth Amendment did not invalidate the State's regulation.

In holding, as the Supreme Court did in the *German Alliance Insurance Company* case, that it is not true that "the service which cannot be de-

manded cannot be regulated" (p. 407), the Court expressly held that it was not necessary for a carrier to be a common carrier in order to be subject to regulation, for the services of a common carrier can always be demanded, and the Court held that services which cannot be demanded may be subject to regulation.

The power of a State even to fix the commissions of local insurance agents has been upheld because insurance is a business affected with a public interest.

O'Gorman & Young v. Hartford Insurance Co., 282 U. S. 257.

Instances may also be given of the regulation by Congress of the private business and charges of individuals because not to regulate them, in view of the special relation they and their business bear to interstate commerce, would deprive Congress of the power to regulate interstate commerce effectively.

Thus, in the case of *Tagg Bros. v. United States*, 280 U. S. 420, persons buying and selling in interstate commerce live stock at a stockyard on a commission basis were held to be subject, as to their charges, to the regulatory power of Congress. This was based upon the power of Congress to protect interstate commerce by preventing the charges of these private parties from becoming an "undue burden upon, and obstruction of, that commerce." p. 439.

The Court cited as authority for its decision the cases of *Stafford v. Wallace*, 258 U. S. 495, 515, 516, and *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 34.

In the first of these cases, Congress undertook, by the Packers and Stockyards Act of 1921, to regulate the business of the packers done in interstate commerce, including the regulation of their charges (pp. 513, 514).

In discussing the question, the Court says (p. 515):

“Another evil which it is sought to provide against by the Act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards: all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate.”

“It” (the Act) “assumes that they” (the stockyards) “conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn v. Illinois*, 94 U. S. 113.” p. 516.

It was held that these sales and purchases of cattle in the Chicago stockyards by commission men and by dealers were in and of themselves intrastate commerce, but, notwithstanding this, were subject to be regulated by Congress because other-

wise it would be beyond the power of Congress to protect interstate commerce from the things that "obstruct and unduly burden" it. See this interpretation of the Stafford case in *Chicago Board of Trade v. Olsen*, 262 U. S. 34, 36.

In the last mentioned case, which is the second case cited by the Court as authority for its decision in *Tagg Bros. v. United States*, 280 U. S. 420, the constitutional validity of the Grain Futures Act, enacted by Congress in 1922, was drawn in question.

The Act undertook to regulate Boards of Trade which were not engaged in buying or selling grain, but only furnished an exchange and offices where such business could be done by its members and assembled quotations of prices which it delivered to telegraph companies. For this information it was paid by the telegraph companies. The Act on its face declares "that transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest" (p. 4). . . . and that "sudden and unreasonable fluctuations in prices are an obstruction to and a burden upon interstate commerce" (p. 5).

The Court held that these findings by Congress were not unreasonable (p. 38) and that the "Board of Trade conducts a business which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest" (pp. 40, 41).

The foregoing cases are merely illustrative of many decided by the Supreme Court.

Neither the business of elevation, of warehousemen, of fire insurance, of commission men in stock-

yards, of the packers nor of the Boards of Trade is the business of common carriage; and yet the Supreme Court holds that each of these is clothed with a public interest because each "bears such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation."

In none of them is its effect upon interstate commerce, which Congress has a power and a duty to protect, so direct as is the effect of unregulated motor vehicles engaged in interstate commerce on the highways but not as common carriers; for such unregulated motor vehicles seriously impair, if they do not entirely destroy, the power of Congress to regulate interstate commerce so that it will all move under rules deemed essential by Congress to the public welfare.

It seems clear from the principles and authorities here discussed that motor vehicles engaged in interstate commerce on the highway, whether or not they are common carriers, are "clothed with a public interest" and subject to Congressional regulation.

It is submitted, however, that, in the instant case, it is not necessary to resort to such reasoning and authorities, for the Constitution itself has impliedly defined all interstate commerce as "clothed with a public interest" in conferring upon Congress power to regulate it all without exception.

Equality of treatment and of commercial opportunity to all shippers in interstate commerce—equal and reasonable rates and protection against rebates, unreasonable preferences or advantages and unjust discriminations—are in the opinion of

Congress the cardinal principles of fairness in trade on which the system of regulation rests.

These would be impossible if a substantial part of interstate commerce remains unregulated and is permitted to move in defiance of the salutary principles referred to. Regulation of some of the instrumentalities of interstate commerce and requiring them to give to shippers equality of treatment and of commercial opportunity, while other instrumentalities are left free to make unreasonable rates, to give rebates and unreasonable preferences and advantages and to be guilty of unjust discriminations between shippers, would be unjust not only to the regulated carriers but also unjust to the shippers who must use them. It would also restore the power of the large shippers to obtain an advantage over their weaker competitors, by securing the distribution of their merchandise on special terms through their ability to command the services of a contract carrier which, not being a common carrier, would not be available to their competitors.

The importance of giving fair and equal treatment to all shippers alike has recently been emphasized by this Commission in the "*Container Service*" case, 173 I. C. C. 440, in which the Commission says:

"The obligation to treat each shipper fairly, to afford each shipper equal treatment, no matter how small his shipments may be in comparison with those of another shipper, is one which carriers cannot escape. We have no doubt that, if respondents afford, or continue to afford, container service at one point or to a set of shippers at one point, the provisions of section 3 (1) demand that, upon re-

quest therefor, they afford like service to a competing locality or to a competing set of shippers at another point served by them.”

If this is a sound principle of ethics and of duty as to a regulated carrier, in interstate commerce, and expresses a sound view as to the public interest in fair and equal treatment and opportunity in trade, it can hardly be successfully contended that the business of a carrier in interstate commerce, the operations of which defy it and break it down, is not “clothed with a public interest.”

It is accordingly submitted that a motor contract carrier electing to engage in interstate commerce, although not a common carrier, by entering the field, becomes subject to the regulatory power of Congress.

II

THE ANTITRUST LAWS

It is important that opportunity should be given for rail carriers to engage in commercial transportation on the highways on equal terms with other commercial motor vehicles and without discrimination against them or in favor of other transportation agencies in the same field.

Reasons for this were given in the statement of the General Counsel of this Association as a witness in this proceeding, and for convenience will be restated here:

“Many of the rail carriers are of opinion that, in order for them to participate fairly in transportation, it will be necessary for them to operate, either directly or through a subsidiary or otherwise, motor vehicles on the highways.

“Attention has hereinbefore been invited to the important part borne by the rail carriers in the development of the country and in the creation of the traffic now to be moved.

“Another important transportation agency has come into the field and is competing for and taking away a substantial part of this traffic. This is because this new agency is furnishing a service which is desired and found useful by the public. The result has been to raise serious problems as to the continued ability of the rail carriers to furnish adequate and efficient transportation if they are excluded from this field. As competition with the railroads by these new agencies is perfectly legitimate, so likewise it should be legitimate for the railroads to compete with them by offering to perform the transportation service in any way desired by the traveling and shipping public. If the public desires a pick-up and delivery service, the railroads ought to be allowed to furnish it. If the public desires a haul entirely or in part over the highway, in containers or otherwise, the railroads ought to be allowed to make it. This results not only from the equitable considerations growing out of their relation to the development of the country and the creation of the traffic, but also, and perhaps more importantly, from the necessity, in the public interest, of continuing the adequacy and efficiency of rail transportation, which is essential to the public welfare. With an object to attain so important as this, there would seem to be no possible justification for the policy of permitting every one else to establish or to acquire by purchase a motor transportation service on the highway, but withholding this power from the railroads.

“The Commission has endorsed the soundness of this view in its report in No. 18300, page 745, where it embraces this among its conclusions:

“Railroads, whether steam or electric, and water carriers, subject to the Interstate Commerce Act, should be authorized to engage in interstate commerce by motor vehicles on the public highways. . . . To the extent that a certificate of public convenience and necessity is an antecedent to the operation of other common-carrier motor vehicles, steam and electric railroads, and water carriers, subject to the Interstate Commerce Act, should be required to obtain a certificate of public convenience and necessity in like manner.

“This could be objected to only on the ground that some public interest would be prejudiced by permitting the railroad to enter this field—such as the ultimate deprivation of the public of this new transportation convenience growing out of its possible abandonment by the railroad when competition of other motor vehicles shall have been destroyed—but this loses sight of the fact that the railroads are strictly regulated and can be required to continue a service which they have once undertaken and which is reasonably necessary.

“In fact, the railroad operation of such a service is much preferred by many of the users of highway transportation and is likely to be superior to that offered by others, by reason of the greater experience of the railroads in transportation, of the training of their managers in organization, of their resources and responsibility, and of their ability to quickly and successfully coordinate into a single transportation service rail and motor agencies.

“In the opinion of many, the time for destructive and wasteful competition has passed and the time for cooperation and coordination has arrived. This perhaps is one of the reasons which caused the Commission to enter on the pending inquiry. The object cannot be attained by destroying or improperly hampering any useful form of transportation. It must come from coordination, from the ascertainment of the proper sphere of usefulness of these several agencies and in so systematizing them that each will find its proper place and do its appropriate work in coordination with the others. The object of coordination will be thwarted—not advanced—by excluding the railroads from transportation service on the highway.

“It must be noted that the Commission, in its report in No. 18300, made the following finding:

“There should be a definite coordination of all existing transportation agencies on land, water, and air. The Nation’s transportation machine must be kept at its highest efficiency so as to advance the prosperity of the country and promote the happiness and welfare of its citizens in peace and in order that it may be prepared to respond as a tremendous factor in the national defense in time of war.

“This view is emphasized by the testimony of Colonel Taylor in the pending hearing.

“But there can be no coordination between order and chaos—between a regulated system of transportation and one without order or regulation. Coordination is essential in the public interest, but to bring it about there must be regulation of both factors to be coordinated—one cannot be rigidly regulated and the other left free.

“In view of the changes wrought by the new forces brought into existence by the genius and industry of man and operating on our industrial and social life, it may well be that there must be a broader conception of the sphere of usefulness of the railroads and that they must not be merely carriers by railroad, but become carriers by any agency in the whole field of transportation—in other words, must cease to be merely railroad companies and become transportation companies in the larger sense. In this view, it must be observed that in advocating a proper system of regulation for motor vehicles operating for hire on the highways, they are in effect advocating regulation of themselves, for many of them have already entered this field and many more, and perhaps all, will doubtless do so—at least, they are asking the opportunity.”

If the opportunity to operate on the highways on equal terms with others is to be given to the rail carriers (as, it is submitted, it should be both out of fairness to them and also in the interest of the public, because it will make for better and more stable transportation), it becomes necessary to consider whether, in order to permit it, there should not be a modification of the antitrust laws.

It is obviously in the interest of the public that the highways should not become unduly congested or overcrowded. One of the objects in requiring a certificate of convenience and necessity is to prevent this.

If a route is already occupied by one or more motor vehicles holding a certificate of convenience and necessity, it might not be considered desirable to grant another, and the rail carrier, if subject to the requirement of a certificate and confronted

by this obstacle, must, under such circumstances, remain out of the field or purchase an existing route for which a certificate has been granted to another and is in existence. If it is important, as we respectfully submit it is, that the stable and efficient service on the highways under trained railroad management and responsibility should be available to the public, then the power of purchase should be given.

The first paragraph of section 7 of the Clayton Antitrust Act is as follows:

“That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.”

It may be that a corporation, the stock of which is to be purchased, may be considered to be in competition with the rail carrier desiring to make the purchase. The obstacle to such a purchase of stock created by the above quoted provision of the Clayton Antitrust Act should be removed, as the competition which might be lessened by the acquisition might be of substantial importance. Inasmuch, however, as the rail carrier is strictly regulated, such lessening of competition could not compare in importance to the public with the greater stability and efficiency in transportation which the public would gain from railroad operation of the motor vehicle service on the highway.

III

THE POWER OF CONGRESS TO REQUIRE THAT A CARRIER ON THE HIGHWAYS IN INTERSTATE COMMERCE SHALL BECOME SUBJECT TO THE CONDITIONS IMPOSED BY STATE AUTHORITIES UPON INTRASTATE OPERATIONS ON SUCH HIGHWAYS

This Commission in No. 18300, at page 744, expressly recognizes the predominantly local character of motor transportation on the highways, and at page 746 makes this the basis of its conclusion that original jurisdiction in the administration of regulation over motor bus lines operating in interstate or foreign commerce as common carriers over public highways should in the first instance be vested in State regulatory bodies.

The State is the owner of the highway and as such should have the right to exact reasonable compensation for its use from those using it for profit, and should also have a larger power over the character and the terms of the use than it would ordinarily have over matters of commerce.

The Supreme Court has recognized the differences above mentioned and in a series of cases has upheld a much larger exercise of State power, in the case of traffic on the highway owned by the State, than it possesses in respect to the regulation of interstate carriers which do not use the State's highway.

For convenience a list of pertinent cases is here inserted:

Kendrick v. Maryland, 235 U. S. 410.

Kane v. New Jersey, 242 U. S. 160.

Packard v. Banton, 264 U. S. 140.

Michigan Com. v. Duke, 266 U. S. 570.

Buck v. Kuykendall, 267 U. S. 307.
Bush v. Maloy, 267 U. S. 317.
Frost Trucking Co. v. Commission, 271 U. S. 583.
Morris v. DUBY, 274 U. S. 135.
Hess v. Pawloski, 274 U. S. 352.
Clark v. Poor, 274 U. S. 554.
Interstate Busses v. Blodgett, 276 U. S. 245.
Sprout v. City of South Bend, 277 U. S. 163.

It is manifestly unfair that a motor vehicle licensed in a single State should be permitted to use for profit the highways of other States without proper contribution to the construction and upkeep of these highways. While there should be no power in a State to discriminate against interstate commerce, there should be a power in the State, in order to meet the special conditions of the problem, to subject interstate motor vehicles on the highways to the same exactions as to license fees and taxes, as well as to other provisions of State laws enacted in the exercise of the State's police powers, as apply to similar vehicles engaged within the State in intrastate commerce.

(a) *What the State may do in the absence of permissive action by Congress.*

As to registration, license fees, taxes and a fair contribution to the cost of constructing and maintaining the public highways, it is settled that the State already has this power.

Thus it is said in *Sprout v. South Bend*, 277 U. S. 169:

“It is true that in the absence of Federal legislation covering the subject, the State may

impose, even upon vehicles using the highways exclusively in interstate commerce, non-discriminatory regulations for the purpose of insuring the public safety and convenience; that licensing or registration of buses is a measure appropriate to that end; and that license fees no larger in amount than reasonably required to defray the expense of administering the regulations may be demanded.” (p. 169.)

“It is also true that a State may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways.” (p. 170.)

While, independently of permissive action by Congress, a State cannot refuse a certificate of convenience and necessity to a motor carrier seeking to do an interstate business on the highway, with the view of limiting or excluding competition (*Buck v. Kuykendall*, 267 U. S. 315), the authorities indicate that, with a view to the safety or conservation of the highway and to prevent undue congestion, a State may require such certificate even of an interstate motor carrier, if it is bona fide required for the purpose indicated and not applied in a discriminatory manner against interstate commerce.

Thus, in *Buck v. Kuykendall*, *supra*, the Court points out in that case that

“its” (the State statute’s) “primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition.” (p. 315.)

In a later case the Court, while recognizing the validity of the rule announced in *Buck v. Kuykendall* as to certificates of convenience and necessity proceeds as follows:

“They” (the plaintiffs) “insist that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the State; that it is without power to require that before using its highways they apply for and obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them . . . for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the State to insure safety and convenience and the conservation of the highways. . . . Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such purpose. . . .

“The plaintiffs did not apply for a certificate or offer to pay taxes. They failed or refused to do so, not because insurance was demanded, but because of their belief that, being engaged exclusively in interstate commerce, they could not be required to apply for a certificate or to pay taxes. Their claim was unfounded.” *Clark v. Poor*, 274 U. S. 557, 558.

See also *Johnson Transfer & Freight Lines v. Perry*, 47 Fed. Rep. (2d Ser.) 902.

While the refusal of such a certificate to a motor carrier on the highways engaged in interstate commerce cannot be made as a means of regulating the business or preventing competition, it is submitted that such certificate will not be granted as a matter of course if the State's requirement is employed as a means of protecting the safety and convenience of the highway and preventing it from becoming overcrowded.

Thus the main purposes of subjecting interstate carriers to the laws of the several States may be accomplished without permissive action on the part of Congress. These main purposes may be enumerated as control of the size, weight and speed of the vehicles, nondiscriminatory laws relating to license fees, registration, and reasonable charges as a fair contribution to the cost of constructing and maintaining the highways. It is also likely that it would be held, without such permissive action by Congress, the State may subject such vehicles to a requirement of a certificate of convenience and necessity exacted for the purpose of protecting the safety and convenience of the highways and of preventing them from becoming overcrowded.

(b) What the State may do under permissive action by Congress.

It is submitted, however, that, in addition to the above, Congress may subject such motor carriers to the full exercise by the State, as to them, of its police powers.

Precedents for subjecting interstate commerce to the laws of a State, to the extent indicated, will

be found in the Webb-Kenyon Act, and in the Wilson Act which preceded it.

The Webb-Kenyon Act was entitled "An Act divesting intoxicating liquors of their interstate character in certain cases."

Omitting extraneous words in the statute, it is interpreted by the Supreme Court, in *Adams Express Company v. Kentucky*, 238 U. S. 199, to read as follows:

"The shipment or transportation of . . . intoxicating liquors from one State . . . into another State . . . which intoxicating liquor is intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State . . . is hereby prohibited."

This statute has been construed and its validity upheld in a number of cases, among which may be cited the following:

Adams Express Co. v. Kentucky, 238 U. S. 190.

Clark Distilling Co. v. Western Maryland Ry. Co., 242 U. S. 311.

Seaboard Air Line Ry. Co. v. North Carolina, 245 U. S. 298.

The argument was made against the validity of this law that it amounted to a delegation to the States of power to regulate commerce. In response to this the Supreme Court said, at page 326 of the *Clark Distilling Co.* case:

"The argument as to delegation to the States rests upon a mere misconception. It is true that regulation which the Webb-Ken-

yon Act contains permits State prohibitions to apply to movements of liquor from one State into another, but the will which causes the prohibitions to be applicable is that of Congress, since the application of State prohibitions would cease the instant the act of Congress ceased to apply.”

In that case, an argument was also made against the law’s validity based on the claim that it resulted in a lack of uniformity and hence was contrary to the Constitution.

As to this the Supreme Court says, on page 327:

“It is settled, says the argument, that interstate commerce is divided into two great classes, one embracing subjects which do not exact uniformity and which, although subject to the regulation of Congress, are in the absence of such regulation subject to the control of the several States (*Cooley v. Board of Wardens*, 12 How. 299), and the other embracing subjects which do require uniformity and which in the absence of regulation by Congress remain free from all State control (*Leisy v. Hardin*, 135 U. S. 100). As to the first, it is said, Congress may, when regulating, to the extent it deems wise to do so permit State legislation enacted or to be enacted to govern, because to do so would only be to do that which would exist if nothing had been done by Congress. As to the second class, the argument is, that in adopting regulations Congress is wholly without power to provide for the application of State power to any degree whatever, because in the absence of the exertion by Congress of power to regulate, the subject-matter would have been free from State control, and because, besides, the recognition of State power under such circumstances would be to bring about a want of uniformity.”

In the case the Court held that the case of *Leisy v. Hardin*, relied on to sustain the argument, merely refuted it, stating that that case

“in the most explicit terms declared that the power of Congress to regulate interstate commerce in intoxicants embraced the right to subject such movement to State prohibitions and that the freedom of intoxicants to move in interstate commerce and the protection over it from State control arose only from the absence of congressional regulation and would endure only until Congress had otherwise provided. Thus in that case in pointing out that the movement of intoxicants in interstate commerce was under the control of Congress despite the wide scope of the police authority of the State over the subject, it was said (p. 108): ‘Yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action.’”

It is pointed out by the Court that the States would have no power over such commerce *unless Congress “allowed the States so to do”*; that “*the States cannot exercise that power without the assent of Congress*”; and, further quoting from the case of *Leisy v. Hardin*, the Court says:

“But notwithstanding it is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of

property therein, if in its judgment the end to be secured justifies and requires such action.”

The Court then proceeds:

“And finally, after pointing out that the States had no power to interfere with the movement of goods in interstate commerce before they had been commingled with the property of the State, it was said that this limitation obtained ‘in the absence of congressional permission’ to the State.” (p. 124.)

The Court held, at page 330, that the very regulation made by Congress in enacting the Wilson law was

“to divest such shipments of their interstate commerce character and to strip them of the right to be sold in the original package free from State authority, which otherwise would have obtained. And that Congress had the right to enact this legislation making existing and future State prohibitions applicable, was the express result of the decided cases to which we have referred, beginning with *In re Rahrer, supra.*”

Reference was further made (p. 331) to the fact that Congress had considered the nature and character of our dual system of Government, State and Nation, and instead of absolutely prohibiting, had so far conformed its regulation as to produce cooperation between the local and national forces of government to the end of preserving the rights of all. In this case the power of Congress to divest interstate traffic in liquor of its interstate character, to the extent of making the laws of the States apply, was distinctly upheld.

The question arises whether there is anything in the nature of intoxicants to justify the action of Congress in allowing the State's laws to apply which is lacking in respect to interstate commerce conducted on its highways.

The Supreme Court has in many cases pointed out the enlarged power which the State has over agencies engaged in interstate commerce, growing out of the State's ownership of the highway. The ownership and the predominantly local character of the traffic would seem to indicate that there is a power in Congress as great in the case of motor transportation on the highways of the State as in the case of intoxicating liquors.

Obviously, it would be inappropriate to permit the State to fix the rates on interstate commerce but there seems to be no just reason for doubting the power of Congress to permit the State to exercise, in respect to interstate commerce on the highways, all of its ordinary police powers.

IV

THE POLICY OF REGULATING TRUCKS

It is conceded by some of the most important thinkers in the automobile world that motor buses acting as common carriers in interstate commerce should be appropriately regulated, as their service is comparable with the service of the rail lines; but it is denied that it is proper to regulate motor trucks similarly engaged in interstate commerce, this denial being based upon the contention that trucks thus engaged do not now and never will furnish a system of transportation comparable with rail transportation.

The underlying conception on which these contentions are based is that there should be no regulation unless the service to be regulated is comparable with the service furnished by the rail carriers.

Is this proposition sound?

Granting, for the sake of the argument, the similarity alleged in one case and denied in the other, does that concession determine the wisdom of the policy of leaving trucks unregulated?

It is respectfully submitted that there are cogent reasons for regulation other than that above advanced by representatives of the automobile industry.

A conclusive reason in favor of regulation would seem to be that, without it, Congress cannot maintain as to interstate commerce the salutary principles of regulation which forbid unreasonable rates, rebates, unreasonable preferences and advantages and unjust discriminations, and, without it, shippers cannot be assured of the equality of treatment and commercial opportunity which appropriate regulation would provide.

Another conclusive reason is that it is important in the interest of the public that rail transportation should be "fostered and preserved in full force and vigor." There can be no question on this record that these important and useful agencies of transportation on the highways have raised a real question as to whether, if left free of regulation while the railroads are strictly regulated and prevented from offering the attractions to traffic which their competitors are left free to offer, the railroads can continue to give the service which the public needs.

The foregoing considerations relate to the public interest alone, but, in addition thereto, it is submitted that it is not fair to the owners of the railroads which have made vast expenditures to furnish an adequate and efficient service in transportation, to bind them by restrictions and limitations as to what they may do to get and handle traffic, and leave their important competitors for the same traffic free from all restrictions and limitations whatever. To do so would be to deny them equality of opportunity.

None of the reasons here given is based on a similarity of service between the system of transportation furnished by the railroads and that furnished by their competitors on the highway, and yet it is submitted that these reasons are sound and should prevail.

Objection is made to regulation of contract carriers on the additional ground that no system of regulation is enforceable. If such regulation is desirable and important, it will not do to surrender to that argument. It would be simply an acknowledgment of the breakdown of government in this regard. There are many conceivable means by which such regulations may be enforced. It is easy to imagine that the regulations would be observed if the penalty of violating them were made the forfeiture of the vehicle or even of the license to do business, with no power to secure a reissue for a substantial period, such as a year.

V

ONLY FAIR REGULATION DESIRED

In order that there may be no mistake as to the attitude of the railroads in respect to proposed regulation of motor vehicles on the highway, the following declaration, expressly authorized by representatives of the Association of Railway Executives, taken from the presentation of the General Counsel before this Commission in this inquiry, is here repeated:

The public's right to the selection of the agency of transportation which it wants and which it finds most useful must be respected, and the railroads will be no party to an effort to strangle and destroy, under the guise of regulation, any new agency of transportation which the public wants and which can serve it usefully. All that they ask is that the terms of competition shall be fair and that nothing shall be done which will impair or destroy existing agencies essential to the commerce of the people. Whatever is done must be done to improve transportation, not to impair or destroy it. No one can properly ask that any of the problems involved shall be solved in a way to give special privilege or special protection to any private interest. The supreme test must always be the interest of the public.

But, subject to these limitations, the railroads believe that there should be equality of opportunity between the various agencies which serve the public in transportation. If one is regulated, the other should be similarly and appropriately regulated, but regulated fairly and not with a view of destruction but simply of establishing equality of opportunity for every agency that is found valuable to the

public welfare. All the railroads ask is this equality of opportunity. The public should not be content until this equality between the various agencies of distribution of the products of human industry is firmly and finally established.

Respectfully submitted,

ALFRED P. THOM,
ALFRED P. THOM, JR.,
Counsel.

Washington, D. C.,
May 25, 1931.

APPENDIX NO. 1

STATEMENT

By ALFRED P. THOM

I am General Counsel of the Association of Railway Executives. I appear here, at the instance of the Association, to present certain conclusions which it has reached in respect to matters involved in this inquiry. As to any individual road, however, it must be understood that the statement I present must be modified or qualified to the extent that it is not consistent with the views presented by it at this Washington hearing.

The subject, broadly, is commercial transportation by motor vehicles on the highways and its relation to transportation by the railroads.

As an introduction to the presentation of the Association's views, it may be useful to make a brief survey of the conditions which now exist in the transportation field.

At the time of the enactment of the Interstate Commerce Act, and for many years prior thereto, the railroads were considered to have, and for all practical purposes did have, a monopoly of transportation by land. This monopoly had become so important in the public mind that, in order to prevent disastrous abuses of the monopolistic power, it was considered essential, in the interest of the public, that it should be strictly regulated by law, as was originally done in the Interstate Commerce Act and has since been continued by that Act as amended.

The railroads themselves accepted the view that they possessed, for all practical purposes, a monopoly of transportation by land in the United

States and a consequent obligation under the law to provide facilities entirely adequate to the needs of commerce. This conception, with the consequent realization of their duty and of their opportunity, has caused them to provide facilities fairly adequate to the entire land transportation needs of the country. The responsibility to provide for and to handle the transportation on land required by the public did in fact rest solely upon them until within the last ten—perhaps it would be more accurate to say until within the last five—years, when other important agencies of transportation appeared and came into more or less general use. These new agencies have deprived the railroads of their monopoly and have come to handle a substantial and constantly increasing part of the commercial movement of persons and commodities.

The result has been that the railroads, in attempting to perform their duty of supplying themselves with adequate facilities, on the theory that they were solely responsible to take care of the needs of the country, find themselves in possession of facilities which may prove largely in excess of the requirements of the traffic which would be left to them if competing agencies continue to make the inroads upon them which they have recently been making. These facilities have been provided by the investment of huge amounts of capital, and the railroads are now confronted with the problem, under conditions which have come to exist, whether or not they are justified in making further enlargement of their facilities; for perhaps, if conditions now apparent continue to grow in importance, they may find themselves vastly over-supplied with transportation capacity, and yet, in

that event, charges for capital used in producing the facilities must continue to be provided.

In so far as this condition would affect private investors, the public has no concern beyond the effect upon the public welfare of disaster to investments so huge in amount and so widely distributed among the public generally; but, if transportation by railroad continues to be essential to the public welfare notwithstanding the appearance of these new agencies of transportation, the public is fundamentally concerned that the railroads shall continue capable of furnishing adequate and efficient transportation.

The first question, therefore, to be squarely met and fairly answered is whether the railroads are, notwithstanding recent developments in transportation, essential to the adequate and efficient transportation which the public needs.

It is fair to say that it is the universal judgment of mankind that the new forms of transportation cannot provide for the entire transportation needs of the public and that railroad service is, and will, so far as human foresight can reveal, continue to be essential to the public welfare.

It may be well to obtain a detached view of this question. The subject has been recently under careful and intelligent study in New South Wales. In the report of the Commission of that State on Government Railways and Tramways for the year ended June 30, 1930, the Commission says:

Attention has been drawn by the Commissioners in their Annual Reports for some years past to the effect of motor competition on the earning powers of this State's railway system. . . .

The importance of this matter justifies a repetition of the final clause in the Australasian Railway Commission's statement quoted in the last report:

"... it is beyond question that the road motor form of freight transport cannot pretend, in the final analysis, to cope with primary production, and as it is upon the value of such primary production that the foundation of the Commonwealth and the Dominion rests, it is obvious that if the railroads are crippled this foundation will be rendered insecure and in time the financial stability of Australia and New Zealand will be gravely depreciated."

The justification of this warning is now coming home to all Australasia.

In his very thoughtful statement made in this hearing, Colonel Brainerd Taylor, Quartermaster Corps, War Department, says:

The fundamental basis of a national system of transportation in the United States, upon which a national transportation policy and all transportation laws and regulations should be based is obviously an arterial system of railways with due regard to the relation of terminal area operations to trunk-line operations and to the coordination of rail, water, air and highway transportation.

In fact, this Commission, in its able report in No. 18300—Motor Bus and Motor Truck Operation—made the following finding:

Steam railroads are, and so far as now can be discerned will remain, the backbone of the national transportation system. They alone can be relied upon for mass transportation and long distance hauls of passengers and goods.

While hauls by buses and trucks have become longer in recent years, the conclusion as to the importance of the preservation of transportation by railroad, made in the foregoing report, still remains entirely sound.

Conceding, then, as it seems we must, that transportation by railroad is and will continue to be essential to the public welfare, it becomes important to consider how the continuance of this essential public agency is to be assured. It must live on what it earns. If a substantial part of the traffic which it has heretofore enjoyed is attracted away from it by competing agencies, it must earn enough on what is left to enable it to perform adequate and efficient service. This, unless some means can be found to avert it, would involve generally increased charges on the traffic which remains—a result which both the public and the railways are anxious to avoid, if possible.

The relationship of the various agencies of transportation to each other and to the business of the country accordingly becomes, from the public standpoint, a matter of supreme importance.

The railroads were the largest material agency in developing and building up the country. Outside of the human forces involved, the volume of traffic which now exists is very largely due to railroad pioneering and railroad service. It is highly equitable, therefore, that they should have an opportunity to participate in its carriage equal to that of the new agencies which now appear. In other words, all these competing agencies should operate under equal laws.

This equality does not exist. As has been forcibly said by another, the only monopoly the

railroads now have, as to interstate commerce, is a monopoly of regulation.

Attention has been recently called, by an intelligent student of the question, to the historical fact that at the time of the adoption of the Constitution railroads were unknown, the only known methods of transportation being transportation by water and on the highway. These methods of transportation were the ones directly in view when power to regulate commerce among the States and with foreign nations was, by the Constitution, conferred upon Congress.

It is accordingly no new suggestion that important transportation agencies operating on the water and on the highway should be appropriately regulated. This is fair as between the several transportation agencies themselves. It is essential from the standpoint of the public if adequate and efficient rail transportation is to be preserved.

As heretofore stated, the railroads have equipped themselves by vast expenditures of capital to meet their responsibilities and to perform their duties as to adequate and efficient service.

For this purpose they have expended for capital account nearly twenty-six billions of dollars.

In April, 1923, the railroads, in meeting, after referring to the necessity for the greatest improvement and expansion possible of the country's transportation facilities to meet the growing demands of commerce, and after calling attention to the fact that there had been expended for the year 1922, for cars, locomotives, trackage and other facilities, an aggregate of \$440,000,000 authorized expenditures for equipment and other facilities of \$1,100,000,000 for the year 1923, divided as follows:

For cars	\$ 515,000,000
For locomotives	160,000,000
For trackage and other facilities	425,000,000
Total	\$1,100,000,000

and stated:

that they were raising this enormous amount of additional capital, largely through borrowed money, on an abiding faith in the fairness of the American people and reliance on the continuance of the policy announced in the Transportation Act of 1920, as a measure of reasonable protection to investment in railroad property.

Since that meeting and the action then taken, they have invested about five billion dollars—a part of the twenty-six billions above mentioned—in providing additional facilities so as to bring their supply up to the transportation needs of the country. They are now performing a service which is universally commended as satisfactory and adequate.

But a large part of their transportation capacity, created to take care of the entire commercial movement of traffic and to give the public adequate and efficient service, is now unused.

Out of 56,477 locomotives, 6,213 were stored as of the first of January, 1930 (the year before the depression), and, as of the same date, there was a surplus of 476,234 freight cars out of a total of 2,264,448.

They have also a vast unused train, shop, yard and track capacity.

They are equipped to handle the entire land

traffic of the country, but a substantial part of it is now diverted to other transportation agencies. Their obligation to meet the charges on the capital used to produce these facilities, however, still continues.

At one time a railroad manager, while always feeling apprehension about the constant increase in his taxes, in the wages of labor and in other operating expenses, was able to find comfort in the steady growth of his traffic, as exemplified by the fact that in the three decades preceding 1920, revenue ton-miles of the railroads increased in each decade on an average of over 76 per cent, and passenger-miles increased during each of those decades an average of over 61 per cent, while for the period from 1920 to 1929 (which omits any falling off of traffic due to the business depression of 1930) revenue ton-miles increased only 8.8 per cent, and passenger-miles actually decreased 34.2 per cent.

During the entire period referred to there was a steady and large increase in the general volume of production and of traffic. The railroads simply did not get it as theretofore. Where it went is shown by the following figures.

During the period last mentioned, namely, that from 1920 to 1929, when the railroad traffic showed such alarming declines, the number of motor passenger cars, including motor buses, increased from 8,225,859 in 1920 to 23,121,589 in 1929, or 181.1 per cent, the approximate number of motor buses increasing between the two years mentioned by 825 per cent; and the number of motor trucks increased from 1,006,082 in 1920 to 3,379,854 in 1929, or 235.9 per cent.

It is true that the entire loss of rail traffic did not go to motor vehicles on the highway, for transcontinental tonnage through the Panama Canal increased in 1929 over 1921 by 637.3 per cent, and traffic handled over the inland waterways, excluding the Great Lakes, increased in 1928 over 1920 by 93.5 per cent.

There were also other factors contributing to this decline in rail traffic, such as pipe lines and power transmission lines.

While, therefore, the entire loss of traffic which the railroads have suffered is not due to motor vehicles on the highways, it is apparent from the figures above given—and we know from other sources—that a very large and important body of traffic has been taken by this competing highway service.

It follows from the very seriousness of the loss from this source, that motor vehicles on the highways are found by the public to be a very valuable transportation facility and to furnish a very convenient and important transportation service.

It is universally admitted that they have come to stay—that they will be permanently an important agency in the transportation field. They will continue to be a formidable competitor of the railroads for the important varieties of traffic which they are equipped to transport. It is important to find the place in transportation which they can most economically fill.

The railroads do not ask that this competition be removed or destroyed. All they ask, and this the interest of the public imperatively demands if the adequacy and efficiency of rail transportation is to be preserved, is that the terms of competition be equal and fair.

The railroads are now strictly regulated by law. Their rates and charges are required to be reasonable, are fixed by the government and must be posted and filed with the Commission. While these rates are required to be fixed by the government at levels which, while embracing only rates that are reasonable, will give the owners of the property, as nearly as may be, a fair return on its value, the question of what amounts to a fair return is left by the law to a governmental commission.

The value of the transportation property on which a fair return is sought is fixed by the government. In fixing this fair return the governmental commission is required to see that the management of the carriers is "honest, efficient and economical" and that their expenditures for maintenance of way, structures and equipment are reasonable.

No stock or bonds can be issued by them except with the approval of the government.

All unjust discrimination and favoritism toward any of their patrons are strictly forbidden.

Complete and accurate accounts, in forms prescribed by the government, are required to be kept, and monthly and annual reports, in forms prescribed by the government, are required to be filed, so that full information of all the carrier's operations is open to the public.

They are required, by express terms of the statute, to maintain adequate facilities to move the traffic of the country and to furnish adequate service.

They are fixed to the earth in definite and permanent locations.

They are without power voluntarily to discontinue their operations, and they can abandon no part of their roads without government permission.

On the other hand, motor vehicles on the highways, engaged in interstate commerce, are now subject to no regulation whatever. The railroads are tied by regulation; this very important competitor is left free.

Manifestly, their relations to the public and to other competing carriers, not only justify but require proper regulation.

It has been charged that the railroads are seeking to subject them to impossible restrictions so as to remove them as competitors. This is an entire misconception. The meeting of the representatives of the Association of Railway Executives which requested me to make this presentation, expressly adopted the following as the spirit in which the presentation should be made:

The public's right to the selection of the agency of transportation which it wants and which it finds most useful must be respected, and the railroads will be no party to an effort to strangle and destroy, under the guise of regulation, any new agency of transportation which the public wants and which can serve it usefully. All that they ask is that the terms of competition shall be fair and that nothing shall be done which will impair or destroy existing agencies essential to the commerce of the people. Whatever is done must be done to improve transportation, not to impair or destroy it. No one can properly ask that any of the problems involved shall be solved in a way to give special privilege or special protection to any private interest. The supreme test must always be the interest of the public.

But, subject to these limitations, the railroads believe that there should be equality of opportunity between the various agencies which serve the public in transportation. If one is regulated, the other should be similarly and appropriately regulated, but regulated fairly and not with a view of destruction but simply of establishing equality of opportunity for every agency that is found valuable to the public welfare. All the railroads ask is this equality of opportunity. The public should not be content until this equality between the various agencies of distribution of the products of human industry is firmly and finally established.

We believe, as stated, that there should be regulation. The following would constitute, at this time, in our opinion, the outline of a fair system of regulation of motor vehicles operating in interstate commerce on the highways for profit:

The Railway Executives believe—

1. That regulation should extend to passenger common carriers and charter buses (but not to taxicabs, school buses or hotel buses), and to common carrier and contract motor carrier trucks operating on the highways for compensation or hire, but do not at this time recommend that it be applied to owner-operated trucks operated solely in the business of the owner.

2. That such regulated motor carriers should be required to obtain from the Interstate Commerce Commission certificates of convenience and necessity and that in determining on the issue of such certificates the Commission should give proper consideration to—

(a) The quality and permanence of the service to be offered by the applicant;

(b) Existing transportation service, requiring that a showing be made, satisfactory to the Commission, of the necessity for and convenience to the public of the proposed operation;

(c) The financial responsibility of the applicant, including adequate provision for surety, or insurance, for the protection of the public.

3. That (a) an applicant to whom a certificate of convenience and necessity is granted by the Commission should be required to comply with all the conditions in each State that duly authorized State authorities impose upon intrastate operations on its highways;

(b) proper accounts, in forms prescribed by the Commission, should be kept and reports be periodically made;

(c) adequate requirement should be imposed to secure just and reasonable rates, both maximum and minimum, with provision for the publication thereof and adherence thereto and proper inhibition against undue and unjust discrimination.

4. That opportunity should be given for rail carriers to engage in such motor vehicle service on the highways on equal terms with others and without discrimination in favor of, or against, other transportation agencies in the same field.

Brief comment will be made on certain items of the foregoing proposal.

I

Certificates of convenience and necessity and the considerations which should be taken into account by the Commission in determining whether such certificate should issue in any individual case.

There would seem to be little room for difference of opinion as to the importance of all the elements above enumerated. Attention is especially called, however, to the requirement that consideration must be given to "Existing transportation service." It may be that, in any given locality, there is already in existence a transportation service the continuance of which is absolutely essential to the community, and that this service might be destroyed by the establishment and operation of the proposed additional facility. If there is not business enough for both and a choice must be made between them, their relative importance to the public should be the determining factor in reaching a conclusion as to whether the certificate applied for should issue.

This idea is expressed in the regulatory statute of South Dakota as follows:

In determining whether or not a certificate or permit should be issued, the Board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and

indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

In its report in 18300 this Commission arrived at the same conclusion, saying:

In conformity with our existing practice in determining whether or not public convenience and necessity require the granting of a certificate to operate, reasonable consideration, among other pertinent matters, should be given to available transportation service by any other existing transportation agency operating in the same territory, and to the effect which the proposed service may have upon any such existing transportation agency, the continued operation of which is important to the community served by it.

It is important that this aspect of the matter be considered in order to avoid economic waste as well as to avoid destruction of facilities essential to communities which they serve.

II

The requirement that the applicant shall comply with all the conditions imposed by State authorities upon intrastate operations therein.

It is obvious that the operation of motor vehicles on the highway is a matter of far greater local concern than the operation of railroad trains on the railroad's own right of way, roadbed and rails.

The State owns the highway. It constructs and maintains it. It is used by a great number of people and in a great variety of ways. It is essential to the public interest that it be kept orderly

and safe; that it shall not be unduly injured by heavy weights and over-use; that the use of it by the general public shall not be unduly interfered with by the size and speed of the vehicles of some of the users; that the State shall receive proper compensation from persons who use its highway for profit and that such persons shall pay their proper proportion of taxation to keep it up and for general purposes.

On the other hand, the railroad owns, constructs and maintains the right of way, roadbed and rails on which it operates. There is no other user of it. If it is injured by improper or over-use, the railroad alone bears the consequences, and it is taxed by the State.

It would follow, therefore, that in the case of motor vehicles, operating for profit in interstate, as well as those operating in intrastate commerce, the local aspect of the service should be fairly recognized and the general police power of the State should, as far as possible, be unimpaired.

This view is upheld by the Commission in No. 18300, where, at page 744, it recognizes the predominantly local character of motor transportation, and at page 746 makes this the basis of its conclusion that original jurisdiction in the administration of regulation over motor bus lines operating in interstate or foreign commerce as common carriers over public highways should in the first instance be vested in State regulatory bodies.

In addition, the State, as owner of the highway, should have the right to exact reasonable compensation for its use from those using it for profit.

The Supreme Court has recognized the differences above mentioned and, in a series of cases,

has upheld a much larger exercise of State power, in the case of traffic on the highway owned by the State, than it possesses in respect to the regulation of interstate carriers which do not use the State's highway.

For convenience a list of the cases is here inserted:

Kendrick v. Maryland, 235 U. S. 410.

Kane v. New Jersey, 242 U. S. 160.

Packard v. Banton, 264 U. S. 140.

Michigan Com. v. Duke, 266 U. S. 570.

Buck v. Kuykendall, 267 U. S. 307.

Bush v. Maloy, 267 U. S. 317.

Frost Trucking Co. v. Commission, 271 U. S. 583.

Morris v. Doby, 274 U. S. 135.

Hess v. Pawloski, 274 U. S. 352.

Clark v. Poor, 274 U. S. 554.

Interstate Busses v. Blodgett, 276 U. S. 245.

Sprout v. City of South Bend, 277 U. S. 163.

A precedent for subjecting interstate commerce, to a certain extent, to the laws of a State will be found in the Webb-Kenyon Act, which was entitled, "An Act divesting intoxicating liquors of their interstate character in certain cases," and in the Wilson Act, which preceded it.

See *In re Rahrer*, 140 U. S. 545; *Adams Express Company v. Kentucky*, 238 U. S. 190; *Clark Distilling Company v. Western Maryland Ry. Co.*, 242 U. S. 311; *Seaboard Air Line Ry. v. North Carolina*, 245 U. S. 298.

It seems that, under the principles established by these cases, a way can be found to subject interstate motor vehicles on the highways to the same exactions as to license fees and taxes, as well as to

other provisions of State laws enacted in the exercise of the State's police powers, as apply to similar vehicles engaged within the State in intrastate commerce.

It does not seem fair that a motor vehicle licensed in a single State should be permitted to use for profit the highways of other States without proper contribution to the construction and upkeep of these highways.

For example, I personally know of a Florida truck which makes weekly trips to Washington with a load of oranges which are sold here upon the streets. In its weekly journeys back and forth it uses, in addition to the roads of Florida, in which State it is licensed, the highways of Georgia, South Carolina, North Carolina, Virginia and the District of Columbia. Similar vehicles licensed and doing intrastate business in those several States and in the District pay a charge. Why should not the interstate user for profit pay a similar charge?

The recommendation is therefore submitted that proper regulation would require the applicant, to whom a certificate of convenience and necessity is granted by the Commission, to comply with all the conditions in each State that are imposed by the State on intrastate operations within its borders.

III

The requirement that proper accounts, in forms prescribed by the Commission, shall be kept and reports periodically made.

While I have not been able to follow the developments in these hearings closely or in detail, I un-

derstand that a question has arisen as to whether motor vehicles operating for profit on the State highways make proper contribution, in the way of taxes, towards their construction and maintenance. Of course, this question cannot be determined by comparing taxes paid by all users of the highway with taxes paid by the railroads, for the question is, not what all users of the highways pay, but how much do the commercial users pay for its use in comparison with what it costs the railroad for the use of its right of way and roadbed?

Quoad the commercial users of the highway, the taxes paid by the other highway users are properly classed with the taxes paid by the taxpayers generally, for it is important to know how great a contribution is made by the commercial users of the highway, on the one hand, and, on the other, how great the contribution of other taxpayers is towards highway construction and maintenance. Manifestly, this requires a knowledge of the extent of the use of the highway by the commercial motor vehicles and a segregation of the taxes they pay from those paid by other users of the highway. This knowledge can be derived only from accounts which are not now open to the public, and the public is consequently at a disadvantage in ascertaining the exact facts.

What their right of way, roadbed and rails costs the railroads is accurately known. It costs them the taxes they pay on it plus the expense of its maintenance and plus interest on the cost of construction. With this aggregate the contribution of the commercial users of the highway towards its maintenance and construction should be compared in order to justly distribute the tax burden.

Such information can only be obtained by the public generally from accounts properly kept and reports periodically made to the Commission on forms prescribed by it.

The propriety of such a requirement is upheld by the Commission at page 747 of its report in No. 18300, in the following statement:

Provision should be made for the promulgation of a uniform system of accounts to be used by motor-bus lines operating in interstate commerce and for the filing of such reports as may be found necessary in the discretion of the Commission.

IV

That adequate requirement be made to secure just and reasonable rates, with provision for the publication thereof and adherence thereto and proper inhibition against undue and unjust discrimination.

The principal reason which caused the adoption of the policy of governmental regulation of railroads was the prevention of rebates and undue and unjust discriminations. These cannot be wrong if indulged in by the railroads and right if indulged in by their competitors.

It must be borne in mind that the influence of the latter upon the movement of traffic is so great as to have caused this Commission to make, on its own motion, two extended inquiries on the subject, one in 1926 and the other that in which hearings are now being held.

It is important enough to have caused similar investigations by governmental authorities thorough-

out the commercial world, even in those countries in which the railroads are government-owned, as notably in Switzerland, in New South Wales and in the other provinces of Australasia.

The principle of equality in trade, with no unfair advantage to one user of transportation over another, either hidden as in the case of rebates or open as in the case of other forms of unjust discrimination, is insisted upon by the government as fundamental in the case of the railroads. Should that sound policy be abandoned in respect to the immense volume of traffic carried now (and in the future the volume may possibly be greater still) by commercial motor vehicles operating on the highways? If it is not to be required of commercial vehicles on the highway, how can it be justified as a proper requirement of the railroads?

And yet there is no difference of opinion as to the soundness of the governmental policy forbidding rebates and undue and unjust discriminations. In the case of the railroads this sound governmental purpose is accomplished by the means of the governmental control of rates and practices, the requirement for their publication and that when fixed they must be adhered to until lawfully changed. The basis thus created and made public is used as a criterion to ascertain whether there are unjust discriminations. What other basis can be suggested for attaining the same ends in respect to commerce by motor vehicles on the highway?

If, then, the fundamental government purpose of fairness in trade and equal opportunity for all users of transportation is not to be abandoned, what escape is there from the conclusion that the

rates and practices of these important agencies of transportation must be fixed and known and must be faithfully adhered to?

As to motor bus lines, the Commission, at page 747 of its report in No. 18300, announced the following conclusion:

The law should require that the Interstate fares and charges of motor bus lines be just, reasonable, not unjustly discriminatory, and not unduly preferential or unduly prejudicial. Requirement should be made that tariffs be filed and posted.

No question can be made as to the soundness of the policy. The trouble arises out of the difficulty of applying it to the unsystematized motor vehicle commercial business, but, inasmuch as not thus to apply it would involve a practical abandonment of the governmental policy against rebates and unjust discrimination, it is respectfully submitted that a method must be found of making the application. A large part of the traffic of the country cannot be allowed to move subject to rebates and the granting of unjust discriminations, while these are forbidden as to the balance, for by such a course the evil against which the conscience and the purpose of the public is set, would not be eradicated.

If, instead of being eradicated, this evil is to be permitted to continue and motor vehicles operating for profit on the highways are still to be allowed to indulge in rebates and to make unjust discriminations, the alternative is obvious: Relieve the railroads of the restrictions which the Government refuses to put on their competitors. Give them the power of flexibility as to terms they

can offer shippers which is possessed by their competitors.

Outside of the wrong to the shipping public involved in the giving of rebates and the handling of traffic for some shippers on terms different from and unjustly discriminatory as against others, there is a serious wrong to the railroads in allowing their competitors to take away their traffic by underbidding their known and published rates and by offering special and discriminatory advantages to shippers. In a larger aspect, this is a wrong to the general public also, for it must manifestly result in impairing, and perhaps in destroying, the transportation capacity of the railroads, the continuance of which in adequate force and vigor is essential to the public welfare. Otherwise, the railroads, in respect to the attractions they could offer to obtain business, would be tied, while their competitors would be left free. It must be remembered that the giant Gulliver, when bound, could be conquered and destroyed by Lilliputians, and the competitors of the railroads are by no means Lilliputians.

V

Opportunity for rail carriers to engage in commercial transportation by motor vehicles on the highways on equal terms with other commercial motor vehicles and without discrimination against them or in favor of other transportation agencies in the same field.

Many of the rail carriers are of opinion that, in order for them to participate fairly in transportation, it will be necessary for them to operate,

either directly or through a subsidiary or otherwise, motor vehicles on the highways.

Attention has hereinbefore been invited to the important part borne by the rail carriers in the development of the country and in the creation of the traffic now to be moved.

Another important transportation agency has come into the field and is competing for and taking away a substantial part of this traffic. This is because this new agency is furnishing a service which is desired and found useful by the public. The result has been to raise serious problems as to the continued ability of the rail carriers to furnish adequate and efficient transportation if they are excluded from this field. As competition with the railroads by these new agencies is perfectly legitimate, so likewise it should be legitimate for the railroads to compete with them by offering to perform the transportation service in any way desired by the traveling and shipping public. If the public desires a pick-up and delivery service, the railroads ought to be allowed to furnish it. If the public desires a haul entirely or in part over the highway, in containers or otherwise, the railroads ought to be allowed to make it. This results not only from the equitable considerations growing out of their relation to the development of the country and the creation of the traffic, but also, and perhaps more importantly, from the necessity, in the public interest, of continuing the adequacy and efficiency of rail transportation, which is essential to the public welfare. With an object so important as this, there would seem to be no possible justification for the policy of permitting every one else to establish or to acquire by

purchase a motor transportation service on the highway, but withholding this power from the railroads.

The Commission has endorsed the soundness of this view in its report in No. 18300, page 745, where it embraces this among its conclusions:

Railroads, whether steam or electric, and water carriers, subject to the Interstate Commerce Act, should be authorized to engage in interstate commerce by motor vehicles on the public highways. * * * To the extent that a certificate of public convenience and necessity is an antecedent to the operation of other common carrier motor vehicles, steam and electric railroads, and water carriers, subject to the Interstate Commerce Act, should be required to obtain a certificate of public convenience and necessity in like manner.

This could be objected to only on the ground that some public interest would be prejudiced by permitting the railroad to enter this field—such as the ultimate deprivation of the public of this new transportation convenience growing out of its possible abandonment by the railroad when competition of other motor vehicles shall have been destroyed—but this loses sight of the fact that the railroads are strictly regulated and can be required to continue a service which they have once undertaken and which is reasonably necessary.

In fact, the railroad operation of such a service is much preferred by many of the users of highway transportation and is likely to be superior to that offered by others, by reason of the greater experience of the railroads in transportation, of the training of their managers in organization, of

their resources and responsibility, and of their ability to quickly and successfully coordinate into a single transportation service rail and motor agencies.

In the opinion of many, the time for destructive and wasteful competition has passed and the time for cooperation and coordination has arrived. This perhaps is one of the reasons which caused the Commission to enter on the pending inquiry. The object cannot be attained by destroying or improperly hampering any useful form of transportation. It must come from coordination, from the ascertainment of the proper sphere of usefulness of these several agencies and in so systematizing them that each will find its proper place and do its appropriate work in coordination with the others. The object of coordination will be thwarted—not advanced—by excluding the railroads from transportation service on the highway.

It must be noted that the Commission, in its report in No. 18300, made the following finding:

There should be a definite coordination of all existing transportation agencies on land, water, and air. The Nation's transportation machine must be kept at its highest efficiency so as to advance the prosperity of the country and promote the happiness and welfare of its citizens in peace and in order that it may be prepared to respond as a tremendous factor in the national defense in time of war.

This view is emphasized by the testimony of Colonel Taylor in the pending hearing.

But there can be no coordination between order and chaos—between a regulated system of transportation and one without order or regulation.

Coordination is essential in the public interest, but to bring it about there must be regulation of both factors to be coordinated—one cannot be rigidly regulated and the other left free.

In view of the changes wrought by the new forces brought into existence by the genius and industry of man and operating on our industrial and social life, it may well be that there must be a broader conception of the sphere of usefulness of the railroads and that they must not be merely carriers by railroad, but become carriers by any agency in the whole field of transportation—in other words, must cease to be merely railroad companies and become transportation companies in the larger sense. In this view, it must be observed that in advocating a proper system of regulation for motor vehicles operating for hire on the highways, they are in effect advocating regulation of themselves, for many of them have already entered this field and many more, and perhaps all, will doubtless do so—at least, they are asking the opportunity.

VI

The effect of regulation on the level of transportation rates.

The contention is frequently made that the effect of regulation will be to increase transportation cost to the public; that it will result in increase of rates.

No certain or confident prediction can be made as to the effect of regulation on individual rates. It can, however, be stated with assurance that under a proper system of governmental regulation no rate *that is not too low* will be advanced. How-

ever it may appeal to the selfish interest of some individual shipper, it is obviously not to the interest of the public that a rate which is too low should be continued, for the public must pay for it in some other way.

On the other hand, I believe it can be safely anticipated that the cost to the public of transportation, as contra-distinguished from the individual rate, will not be increased by regulation. Obviously, under regulation, rates will not be made too high. If the rates of the motor vehicles are too low to afford a fair compensation for the service, the carriers by motor vehicle on the highway will not be in a position to bear their fair share in the cost of the highway and the deficit must be borne by the public generally in the shape of taxation; and thus the cost of the transportation is not only the applicable rate but the rate paid by the user plus the expense to the taxpaying public of providing and maintaining the highway which is a part of the transportation service. Moreover, if the rates are low enough to attract a substantial part of the traffic away from the railroads, the railroads must either cease to furnish an adequate and efficient service or increase their rates on the traffic that remains.

In the latter event, the cost of the highway service which is too low is not only the rate paid by the user but, in addition thereto, the increase of cost to the nonuser of the highway service arising out of the increased amount which he has to pay the railroad on his traffic. This would be a transfer of a burden from the shoulders of the user, where it belongs, to the shoulders of the nonuser, where it cannot justly or fairly rest.

In the former event, namely, where the result is inadequate and inefficient railroad service, the cost of the service over the highway would be not only the inadequate rate which is paid by the user but, in addition thereto, the cost to the public of inadequate and inefficient rail service, which would likewise be the shift of a burden from the shoulders of the user, where it properly belongs, to the nonusers composing the general public, where it does not belong.

Unnecessary and wasteful competition in transportation always results in added cost to the public.

How great the cost is to the public of inadequate and inefficient transportation, is indicated by the following statement taken from testimony given before this Commission by President, then Secretary Hoover, in a case where the inadequacy of transportation grew out of the car shortages of 1922:

For the past five years we have had no consequential expansion to our railway transportation machine. With but one interval of nine months in 1918 and 1919, we had a car shortage throughout the whole of the years 1916, 1917, 1918, 1919 and 1920. The shortage rose to as high as 160,000 cars, with a corresponding shortage in motive power. We paid tremendous sums in commercial losses and unemployment in consequence.

* * * *

I wish to emphasize that unless we can have an immediate resumption of construction and equipment, *our commercial community will pay treble the cost of the whole of them in their losses of a single season.*

The very moment that we reach anything

like normal business, we shall see a repetition of car shortages, followed by an increase in the cost of coal to the consumer from one to three dollars a ton; we shall again see premiums of 20 cents a bushel for the use of cars for moving grain; we shall in fact see a shortage of commodities to the consumer; and we shall see gluts upon the hands of the producers. We shall see factories filled with orders again closed for lack of cars; we shall see large intermittency in employment; and we shall see the usual profiteering in commodities due to a stricture between the producer and consumer.

There would be no difficulty whatever, by basing such losses on the experience we have already had, to calculate *a loss to the American people of a billion dollars for each one of these periodic transportation shortages.*

This is the estimate, placed on the value of adequate and efficient transportation service and on the losses that would follow the lack of it, by an eminent and intelligent student and observer of the problem.

It by no means follows that a low rate means a low transportation cost. It may very well be that a rate that is too low will involve a very high transportation cost; and, if the volume of traffic moving on the inadequate rate is sufficiently large, the cost will be destructive.

VIEWS OF MR. RALPH BUDD

Mr. Budd, President of the Great Northern Railway, made an address before the Des Moines Chamber of Commerce on January 7th on the subject of "The changing transportation situation."

From this address I take the liberty of quoting the following condensation of some of his important statements, made by the Traffic World:

Many things have happened which, while representing progress, are affecting and will continue to affect the traffic of the railways.

Railway executives know that transportation by water, highway, pipe line, and air will continue to develop, each in its economic sphere, as a matter of normal progress.

Regulation is absolutely necessary for the railways, and it is likewise necessary for other public transportation agencies.

Proper regulation will tend to strengthen rather than to weaken the development of other transportation agencies.

It is a mistake, however, to believe that regulation of the competitors of the railways will solve the problems of the railways.

Other forms of transportation should be so operated as to give the public the benefit of their potentialities, but the public should understand the basic proposition that such traffic as is left to be handled by the railways must bear the burden of operating and maintaining them so long as they remain in private ownership.

Railways should be permitted to operate ships, busses, and trucks in an effort to coordinate all forms of public transportation for the sake of improved service efficiency and avoidance of waste.

The interest of the public, in respect to transportation, lies in system and order, not in disorganization and chaos.

How to introduce this order into the field covered by these new agencies of transportation by proper regulation presents difficult problems, but

these difficulties are not insuperable and must be overcome. A well ordered and coordinated transportation system is essential to the public welfare. That cannot exist with an essential part of it strictly regulated and another important agency in the same field left unregulated. Steps now taken may, in the light of experience, have to be retraced. Steps in advance of anything now done may have to be taken hereafter. It is hardly to be expected that human intelligence is adequate to the task of measuring the problems accurately and completely at once and of striking off at a single stroke a perfect system of regulation. This was not done with the railroads. The system of regulation applied to them was a matter of evolution. It must be a matter of evolution also in respect to these new transportation agencies. It is hoped that the Commission will conclude that the time has now arrived for it to recommend as long a step forward as is consistent with its satisfied judgment.

In taking this step, it must be borne in mind that the commercial methods of the railroads are made rigid by regulation, while the methods of their competitors are entirely flexible. The coming of these new transportation agencies has revolutionized transportation and has altered the conditions under which the existing system of regulation was adopted. The time has come for careful study of the legal restrictions upon the railroads with a view of giving them proper elasticity in dealing with the transportation requirements of the public and in meeting the competitive conditions which now confront them. Testimony here given indicates that some flexibility is desired by

the shipping public. Careful consideration should therefore be given to the recommendations of traffic officers advocating the loosening up of regulation on the railroads in some substantial respects and giving to them greater opportunity to meet quickly changes in economic and commercial conditions.

It will be observed that all the suggestions herein made in respect to the regulation of motor vehicles on the highways engaged in interstate commerce have already been approved as to motor buses, by this Commission in No. 18300, except the suggestion relating to the imposition on interstate motor vehicles of the requirements imposed by the State on motor vehicles operating intrastate on its highways.

It is respectfully submitted that the reasons for including motor trucks in the scheme of regulation and for subjecting interstate motor vehicles to the requirements of each State, whose highways it uses, to the extent here suggested, are entirely sound and are conclusive.

There is much involved in this hearing. Circumstances have placed on me the responsibility of speaking for a great cause.

In urging the preservation of the adequacy and efficiency of rail transportation in proper coordination with other useful agencies in the same field, I speak for that large number of thrifty Americans who, either directly or through savings banks and insurance companies or their general interest in the soundness, safety and stability of our financial structure, have a deep concern respecting the fundamental industry of rail transportation; for the vast body of producers whose energy and in-

dustry supply the needs of mankind and whose welfare is dependent on adequate and efficient means of the distribution of the products of their labor; for the consumers of the world, who, in a land of plenty, would perish if they could not rely, through means of adequate distribution, on access to the resources and supply created by the industry of their fellow men; for the entire body of American citizens, who have a vital interest in the adequacy and coordination of the forces which have created and now support the foundation of their social order.

I am authorized to state that Mr. Pelley, President of the New York, New Haven & Hartford Railroad, wishes the testimony given by him in this proceeding modified so as to be in accord with the statements here presented.

APPENDIX NO. 2

**PROBLEMS OF RAIL-HIGHWAY
TRANSPORTATION**

**Summary from Evidence
Offered in I. C. C. Docket No. 23400
"Motor Vehicle Coordination"**

By

C. S. DUNCAN
Economist,
Association of Railway Executives

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PROBLEMS OF RAIL-HIGHWAY TRANSPORTATION

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I

INTRODUCTION

The discussion that follows is based upon evidence presented to the Interstate Commerce Commission at its hearings held in important trade centers throughout the country from November 17, 1930, to March 17, 1931, on I. C. C. Docket 23400—Motor Vehicle Coordination.

Rail carriers were made respondents in this case and highway operators as well as other interested parties were invited to contribute to the discussion. The preponderance of the evidence was offered by railroads, although at certain hearings bus operators, truck operators, shippers, state regulatory bodies and others gave testimony.

The endeavor in this discussion has been to set forth the chief problems connected with the relationship of rail and highway transportation as presented in the evidence, together with the activities that have been undertaken and the suggestions that have been offered to find a proper solution for them.

II

PRESENT SITUATION: RAILROADS

Extensive evidence was offered by railroad respondents with respect to (a) passenger traffic, (b) freight traffic, (c) capital expenditures, (d)

surplus equipment, (e) depleted revenues and (f) the existing threat to rail transportation service.

Passenger Traffic. The Commissioner in charge of the hearing, in his opening statement, pointed to the decline in railroad passenger revenues of \$414,000,000 in 1929 as compared with 1920. The evidence of railroad witnesses corroborated this decline in revenues and added thereto the further decline in 1930. It was shown that passenger revenue losses had been sustained from around 30 per cent on up to 100 per cent on certain short lines, paralleled from end to end by improved highways, where all passenger service had been abandoned. Losses had been suffered in varying degrees, depending upon different conditions, in all parts of the country. It was a nation-wide experience.

It was further pointed out to the Commission that local train service had been abandoned to a considerable extent, resulting in a material decline in train mileage, but that, owing to the difficulty of abandoning rail service, due both to the necessities for carrying mail and express and to the demands by the local communities for a continuation of the service, many local trains were being run at a loss. In a number of instances the figures demonstrated that the passenger revenues on certain local trains were not sufficient to pay the wages of the train crews.

As to the longer haul Pullman rail service, the situation, according to evidence offered, was different. Generally speaking, Pullman travel held up fairly well throughout the ten-year period ending with 1929, although it too had suffered a decline as a result of the business depression in 1930 and 1931. It seemed apparent, however, that the

chief loss was in local service other than commutation service, which, like the Pullman service, had held up fairly well.

It was testified that this loss in passenger revenue was due to motor transportation on the highway. There was general agreement that the chief source of loss was due to the private passenger automobile; some estimates allocating 75 or 80 per cent of the loss to this factor. There was some disagreement in the testimony as to the effect of motor bus transportation upon the diversion of passenger traffic. Some witnesses took the position that motor buses were directly and completely competitive with rails, others that the buses were competitive only to a certain extent, while still others claimed that the motor buses developed their own traffic or competed with the private automobile. One carrier, from its special investigation, declared that its loss in 1929 directly attributable to the motor buses was about two million dollars in revenue.

There was general agreement, therefore, that most substantial losses in passenger revenues are being suffered by the railroads due to highway transportation in some form. All agreed that the losses have been progressively greater year by year. Somewhat similar losses were testified to also as to mail and express.

Freight Traffic. Evidence presented demonstrated a strikingly rapid decline in the rate of increase of freight traffic as compared to the increase in general production and business of the country. While it was not contended that the total decline in rate of increase in freight traffic was due to new competition, it was held that a very large

part had resulted from such competition. The new competition was not only in the form of motor trucks on the highways but also the waterways and pipe lines. There was general agreement, as to motor trucks, that they had made serious inroads into the field of railroad freight traffic which had been nurtured and developed by rail transportation.

The chief loss in freight traffic is centered in less than carload freight. Witnesses pointed out that Class I steam railroads handled 89,901,495 tons of less than carload freight in 1920. It had decreased by 1926 to 68,224,846 tons, or 24.11 per cent. In this period, of course, had occurred the change in statistical reports by the Interstate Commerce Commission. From 1926 on, however, there had been a continued decline as follows:

<i>Year</i>	<i>No. of tons carried</i>
1927	65,838,043
1928	63,260,249
1929	62,429,601

It was felt that these figures did not fairly represent the actual decrease in freight traffic, due to the fact that freight formerly shipped in carload lots was being shipped in less than carload lots during these years on account of the prompt and regular service and the merchandising policy of hand-to-mouth buying.

There was evidence, however, in all parts of the country to the same effect, that l. c. l. freight was being diverted, to a serious extent, from rails to highways; that there was a progressive loss in this freight and that local freight train service was being discontinued where possible, although many

local freight trains, like local passenger trains, were still being operated at a loss.

There was striking testimony also as to the diversion of carload traffic to the highways. Entrance into the field of carload traffic became particularly noticeable, according to railroad witnesses, in 1928 and has become increasingly important since that time. The operation here was attributed to the further development of hard-surface highways and to the improvement in the truck, particularly with respect to pneumatic tires. Some trucks are operated with trailers and even trains of trucks have made their appearance with greater and greater frequency.

In this connection, the question of length of haul by truck was raised, numberless instances were given of relatively long hauls, 500 miles being not uncommon and 1200 the extreme. Witnesses experienced in truck operation testified that, on traffic adaptable to road haul, economic operation can now be had up to 250 or 300 miles.

As the matter was developed in the earlier hearing in 1926, it appeared that the character of traffic adaptable to truck haul was limited. In this hearing, however, testimony indicated that while truck operators sought high-grade traffic readily adapted to transportation by truck, the kinds of traffic handled by this form of transportation have been greatly increased during the past few years. The hauling of livestock, noted in the earlier hearing, has meanwhile greatly increased in amount and in length of haul. Fruit and vegetables also are being increasingly handled by truck. During the past two years trucks have entered the field of cotton transportation, having hauled during the past sea-

son some one million bales to the gulf ports. As one witness expressed it, trucks now haul all kinds of traffic from butter to brick.

Capital Expenditures. Testimony was offered as to the great expenditures made by rail carriers for additions and betterments in order to increase their service to the public. Railroads in all parts of the country have made these expenditures and the resulting improvement in service has met with the approbation of shippers. These expenditures have been made in the face of the diversion of traffic to the highways.

Surplus Equipment. Attention was called to the excess or surplus equipment of rail lines, represented by idle cars and locomotives in white lead, as well as by local stations and freight depots for which there is now no use. One of the most striking features of the testimony offered by rail witnesses was in respect to the closing of local stations.

Depleted Revenues. Evidence showed that even during the prosperous years the railroad revenues had not increased proportionately to the increase in capital expenditures and that at no time had the railroads as a whole realized the fair return contemplated by law. It was also made clear that, due to the character of railroad business, with its large proportion of fixed capital, the diversion of traffic accentuated by business recession had a cumulative and disastrous effect upon net revenue. There was likewise the additional drain on revenues due to the required operation of unremunerative local passenger and freight service. Meanwhile taxes were constantly increasing. A part of these taxes were allocated, through the general tax fund, to the construction and maintenance of the

highways over which their competitors were operating. There is also a serious drain upon rail carriers' funds for railroad-highway crossing protection and elimination, thus increasing for railroads not only capital expenditures but also taxable property, with little or no return thereon, and yet with safety protection to competitive highway operations.

Threat to Service. Witnesses called attention to the combined effect of all these factors upon rail service to the public. They were of the opinion that the railroads would not be able for long to maintain the high quality of rail service that had been given the shippers and which the public was demanding, unless an adequate remedy was found for the existing situation.

III

PRESENT SITUATION: HIGHWAYS

Evidence introduced by witnesses included information with respect to the development of improved highways and of traffic over the highways, both of passengers and of freight.

1. *Highway Improvement and Cost.* It was pointed out that the total certified mileage of highways in the United States was 3,016,281 miles. Of this amount, 315,000 miles were included in the state highway system, leaving to county and local roads 2,701,281 miles. The total mileage surfaced at the end of 1929 was 660,000 miles, of which 210,000 miles were comprised in state highways and 450,000 miles in local roads. The total mileage surfaced in 1929, including resurfacing and reconstruction, was 50,000 miles. The total expenditures

for the year were \$1,500,000,000. The annual Federal authorization for the Federal-State highway system in 1930 was \$125,000,000, the same amount to be available for the years 1931, 1932 and 1933. The total mileage completed with Federal aid at the end of 1929 was 78,096 miles, out of a total mileage "approved" by the Government of 188,857 miles. Capital expenditures 1915 to 1929, inclusive, on state highway systems have amounted to \$4,005,444,928. Total Federal funds paid to states 1921 to 1929, inclusive, equal \$719,582,994.

2. *Highways Paralleling Railroads.* These improved highways, for the most part, parallel the trunk rail lines. Map after map placed in evidence by railroad witnesses showed graphically rail lines and improved highways almost side by side, although in most instances the highway system did not serve all the smaller towns served by railroads. The basis for direct competition between rails and roads with respect to all important trade centers, however, was evident.

3. *Motor Vehicle Registration.* Figures with respect to annual registration of motor vehicles were likewise presented by railway witnesses in all parts of the country. These figures demonstrated the rapid increase in the number of private automobiles, of buses and of trucks. The number of passenger automobiles registered in 1929 was 23,121,589, of which 92,500 were buses. There were also registered in 1929 a total of 3,379,854 motor trucks.

4. *Bus and Truck Operation.* Revenue passenger miles of motor buses in 1929 between cities were estimated at 6,797,000,000 and the number of passengers carried between cities 422,000,000. It

was also pointed out that 78 steam railroads were operating 2,389 buses.

Comparable figures were not available for the motor truck, either as to ton mileage or as to the number of tons handled. Information with respect to individual carriers located in different parts of the country demonstrated beyond a doubt the importance of truck competition with the railroads. For example, one carrier, from special investigation, was able to determine specifically a loss in freight revenues to the trucks of more than \$6,500,000 for 1930.

5. *Local and National Competition.* Testimony with respect to improved highways was given by witnesses in all parts of the country. The same story was repeated as to the increase in number of competitors on these improved highways. Similar competitive conditions are nation-wide, varying in intensity as local situations offered an opportunity for highway transportation, as to either the character of the traffic or the density of the traffic, or the distance between trade centers.

It was apparent from the evidence offered that motor bus competition, while sometimes local in character, extended to long distance travel and even to transcontinental movements. Intensity of competition has increased with the density of traffic available where serviceable highways have been built. It was shown that a network of highway bus operation, extending throughout the country, is now a fact.

6. *Selective Truck Service.* Railway witnesses from all parts of the country testified to the fact that motor truck operators sought out the traffic most adaptable to their service, not only merchan-

dise but compact, heavy freight of high value, and either refused or did not solicit lower grade traffic of less value, and therefore less remunerative, for transportation service.

7. *Motor Vehicle Operating Costs.* Very little evidence was presented in these hearings with respect to the costs of operation over the highway, either by motor bus or motor truck.

The testimony that was given indicated a variation in cost of operating the motor bus per mile from 20 to 32 or 35 cents. This cost of operation varied in different parts of the country and under different circumstances, such as the character of the highway and the taxes imposed by various states.

The figure for cost of operating a motor truck per mile seemed to be about 25 cents. There was great variation in this regard, due to the same conditions affecting cost of bus operation.

It was frequently stated that many operators, both of buses and trucks, were incapable of keeping accurate accounts and failed to give any or adequate consideration to depreciation. Instalment buying of new and used equipment at a low initial payment was frequently cited.

IV

CAUSES OF DIVERSION OF TRAFFIC

1. *Service and Rates.* Inquiry was repeatedly made of railway witnesses as to the cause of the diversion of traffic from railroads to roads. In general, the reply to this inquiry was the same, namely, service and rates.

2. *Buses.* This reply differed somewhat for

motor bus from that applying to motor truck. As to passenger traffic, it was suggested—

(a) that the public had become automobile minded;

(b) that the motor bus was in reality a community, passenger automobile car;

(c) that there was greater personal contact between the motor bus operator and passengers than could be had between operators and passengers in rail service;

(d) that passengers could see both the road ahead and the country through which they were being carried;

(e) that there was greater frequency of service, and, therefore, increased convenience by motor bus;

(f) that the motor bus stopped more frequently and carried the passenger to a more convenient point at destination; and

(g) that on the whole the rates were sufficiently lower than rail rates to appeal to an economic class who felt that they could not afford rail service.

3. *Trucks.* As to diversion of freight traffic to motor trucks:

(a) The consensus of opinion seemed to be that service and rates were about equally effective in securing a diversion of traffic to the highways.

(b) Numerous instances were cited of quicker, more convenient over-night service from store door to store door.

(c) The traffic unit for the motor truck, it was pointed out, was also much smaller and the service far more flexible than on the rails.

(d) As to rates, it appeared that within a radius of fifty to seventy-five miles the charges were lower by motor truck than via rail, when

hauls at origin and destination were included, and largely because of rail-terminal expenses. As the haul extended beyond such radius, the lower cost of operation by rail became more and more evident. There are many exceptions here, however, in those cases where speedier and more convenient service by truck secured the traffic at higher than rail rates.

Special and extra-transportation service by motor trucks was also cited, such as emergency operations and the merchandising operations by the motor truck driver. There was the fact, too, that commodities having been loaded on the truck at the farm, orchard or off-line plant, were not willingly unloaded at the freight station if the truck could continue the service to destination. The buying and selling of commodities hauled in a truck, usually by the owner-operator, was frequently cited.

Evidence indicated a great lack of stability as to rates, both by motor bus and by motor truck. Even common carrier motor buses in intrastate operation and under state regulation seemed to find it necessary, due to keen competitive conditions, to adjust rates quickly, either with or without the consent of regulating bodies. Unregulated interstate operation of motor buses showed fares changed to meet highway or highway-and-rail competition. Bus rates, on the whole, were below rail rates for day-coaches.

No definite information was made available as to rate levels charged by motor trucks. This was due to the fact that the controlling factor was the contract and owner-operated truckman. Where common carrier motor trucks were regulated, the

stipulated just and reasonable rate was usually the station-to-station rail rate on the first four classes of freight.

A particularly disturbing factor in motor truck operation was the appearance of otherwise unemployed trucks, due to the business depression, seeking some employment on the highways. These trucks had been released from operation on the farm, in lumber industry, paper industry and elsewhere. The "unemployed truck" was cited particularly in the southwest and southeast. These inexperienced truckmen, it was said, were making any rate necessary to get the traffic.

V

COMPETITION AND COORDINATION

Although held under the caption "Coordination of Motor Transportation," the most important question raised in the course of the hearings had to do with competition.

Competition in transportation means a duplication of facilities and service. Competitors seek the same business. Competing transportation agencies seek the same traffic. Rails and roads are in competition. The information developed in the hearings, showing the trend of traffic from railroads to highways, is the obvious explanation of the fact that competition is the most important question involved.

Coordination must evidently be distinguished from competition. It implies harmony of action rather than a competitive struggle for the same business. It involves the utilization of different facilities in performing the same transportation

service without duplication. The use of motor vehicles in trade centers, both at origin and destination, for service not performed by rail carriers, the use of motor vehicles as feeders to rail lines and the use of motor vehicles in substitution for rail service all lie within the field of coordination. It involves also through routes and joint rates.

Entirely different problems arise, however, in connection with competition from those involved in coordination. Both sets of problems have been presented to the Commission by witnesses.

VI

PROBLEMS OF COMPETITION

The progressive loss of traffic, both passenger and freight, brought to the forefront the competition with railroads that had developed upon the highways of the country. The growth of highway competition, with consequent diversion of traffic, while continuous, has not been a steady growth. A highway paralleling a rail line becomes an approved project for hard-surfacing. As this improvement is carried on, it may happen that the parallel rail line handles the materials for grading and surfacing. When this parallel highway, however, is completed through from one trade center to another, the impact of the new competitive force upon it is almost instantly felt by the paralleled rail line.

The competing facilities on the improved highways have taken the form of

- (a) The traveler's own facility, i. e., the private passenger automobile;

(b) The bus or so-called community passenger automobile; and

(c) The truck, varying in size and capacity, often with trailers and sometimes constituting a highway train.

These competing highway facilities are of different types of operation. There are common carriers, both buses and trucks, operating over a fixed route and between fixed termini and holding themselves out to the public as common carrier transportation agencies. In some states there are certificated trucks operating for hire on irregular routes, without fixed termini, or even with the privilege of operating anywhere for hire. There are school buses for hauling school children to the centralized rural schools; there are taxicabs; there are charter buses; there are so-called contract carriers, hauling under definite contract for one or more shippers; and there are owner-operated trucks. All of these highway facilities, under whatever type of operation, enter the picture of competition with rail carriers.

It is reported that in 1929 there were 92,500 motor buses in the United States, classified as follows:

Common carrier	46,000
School	42,000
Sight-seeing	2,350
Private and miscellaneous	2,150

Common carriers buses are grouped as

Intercity but intrastate	27,250
City	12,750
Interstate	6,000

Of the 3,379,854 motor trucks registered in 1929, it is estimated that about five per cent are common

carrier trucks, fifteen per cent contract carriers and eighty per cent owner-operated trucks. The operations, however, of the common carrier and contract carrier trucks are far more extensive per unit than the owner-operated trucks. The last class consists of the great multitude of small trucks operated as plant, farm or store facilities.

These competitive highway facilities are operated under different types of control. There are highway transportation companies with charters for the specific purpose of carrying on highway transportation service. This applies both to motor buses and motor trucks and such facilities are generally operated as fleets.

It is reported that 78 steam railroads were operating 2,389 buses in 1929 and that 55 railroads were operating 5,900 trucks, exclusive of the 9,759 trucks operated by the Railway Express Agency. Practically all such railroad operation is carried on through subsidiaries owned and controlled by railroad companies. Some rail carriers have a financial interest less than control in independent highway transportation companies. The respondent rail carriers reported an investment of more than \$40,000,000 in highway operations as of 1929.

There are a great many trucks operated under individual ownership and some buses are still so operated, although the decided trend for some years has been toward fleet bus operation.

Certain large distributing companies, such as chain stores, publishing companies and others, lease or rent the truck facilities for handling their commodities. This relationship may mean that the truck operation is under a single contract, the trucker devoting all his time and truck capacity

to one service. Sometimes a trucker under a single contract may seek and secure a return load at such rates as will secure for him the traffic.

These highway facilities, one and all, of whatever type, in whatever kind of service and under whatever control are competing to a greater or less degree with rail carriers. This is true for all parts of the country. Again, it is a nation-wide situation. There is competition even in highway operations through railroad subsidiaries.

The important specific problems raised by this competitive situation are:

1. *Rates.* Relative rates are of equal or of greater importance than relative service in most of the competitive situations between highway and rail transportation. In competing bus operation the rail carriers have found, according to testimony of witnesses, that rates are generally lower than rail rates, particularly on the longer hauls, that these rates are unstable in that they are immediately modified by competitive conditions, especially where unregulated in interstate commerce but also in intrastate operations. For example, a regulating body has found that a just and reasonable bus rate between St. Louis and Kansas City is \$7.50 while actual rates as published on bulletin boards by bus companies have been made as low as \$2.00.

It was made clear that common carrier bus service under state regulation is facing the same kind of rate cutting competition from unregulated highway operation as are the railroads facing from all kinds of highway bus operation.

Rate competition with respect to highway trucks represents a far worse situation than do

the buses. It is not unusual for common carrier trucks, under regulation of state commissions with power to determine just and reasonable rates, to have imposed upon them by such regulatory body station-to-station rail rates for Classes 1 to 4, inclusive. These common carrier trucks, however, meet unregulated competition on the highway from contract carriers and owner-operated trucks. Not only do these contract carriers and owner-operated trucks cut rates to the point where they get the traffic on the haul from point of origin to point of destination but, as the evidence shows, seek a return haul at rates that are merely nominal. Such a situation has rendered the rate structure chaotic.

The rail carriers, however, not only face the unregulated and chaotic competition of the contract and owner-operated trucks which the common carrier trucks also face, but face, in addition, the rate competition from common carrier trucks who perform for the rail rate a pick-up and store-door delivery service. There are also the situations where common carrier trucks by crossing state lines present themselves as interstate commerce carriers and beyond the jurisdiction of state regulatory bodies.

Insufficient evidence has been presented to ascertain whether the rates by highway in competition with rail rates are compensatory. The consensus of opinion seemed to indicate that by and large they were not compensatory generally, either to buses or to trucks.

The problem, therefore, facing rail carriers is what can be done by them under the provisions of regulation covering their operations to meet the

rate competition on the highway with respect both to passenger and freight traffic.

2. *Schedules.* The bus and the truck are relatively small transportation units operated by one or two men. It is, therefore, evidently possible for more frequent service on the highway than is possible by railroad even where electric gasoline engines are used. As a matter of fact, bus and truck schedules are more frequent and are more readily adjustable than are train schedules. This is an important element in competition for passenger and freight traffic between these two agencies.

A very important element in competition for freight traffic between trucks and railroads is the over-night service generally offered by the truck. It has been stated that a greater amount of service throughout the country is carried on at night by the truck than is carried on in the daytime. Operations are begun by the truck throughout the afternoon and until late at night.

Here comes also the flexibility of bus and truck operation. By the very nature of its plant the railroads are bound to a transportation service between fixed termini. Over this route schedules, of course, can be adjusted in accordance with public demands to a very considerable extent. Bus and truck operation, however, can readily be diverted here and there as convenience, necessity or public demand may indicate and thus, with readily adjustable time schedules, create a complicated competitive situation.

3. *Length of Service Hours.* While the railroads operate under the Hours of Service Act, their competitors on the highway have no such

limitations. At any time of the day or of the night they are free to offer their services to shippers. It is true, however, that where there have developed freight depots in established truck service, there is some limit to the hours of service to shippers. In far the greater part of such operation, no such facilities are used and the truck operator and particularly the owner-operator is quite free to serve when and where he will.

Rail carriers, on the other hand, usually close their freight stations around four-thirty and open their freight stations around eight o'clock in the morning. Frequently a shipper to have his freight loaded the same day must deliver it to the rail freight station by three-thirty at the latest and at destination the consignee can not secure his freight before the freight house is opened in the morning.

Here is another important element in competition.

4. *Wages.* Compensation to employes constitutes more than fifty per cent of the operating expenses of the rail carriers. The wages paid to railroad employes, formerly determined by the Railroad Labor Board, have, since 1926, been matters of arbitration under the Railroad Labor Act.

Attention was called during the hearings to the difference in wages paid to railroad employes and to bus and truck operators. One witness testified that bus operators were paid no more than railroad porters, or at the rate of \$4.00 per day. Specific figures were furnished by request of the Examiner for wages to rail employes and to bus drivers on the comparable service by one railroad engaged in both enterprises. These figures showed an average compensation per hour for engineers

of \$1.88, for firemen \$1.43, for conductors \$1.51, for baggagemen \$1.15 and for brakemen \$1.08, while the amount paid bus drivers per hour during the same period was 72 cents.

This, too, is an element in the competitive situation.

5. *Business Changes.* Attention was directed by witnesses to changing business practices and especially with respect to distribution. These changes include the widening radius of jobbing markets, the direct distribution by manufacturers to retail stores and the generally increasing practice of wholesalers and retailers to buy in small amounts but more frequently than formerly, thus holding inventories at a low level. All of these changes in practices have affected the demand for transportation service.

As a result of these business changes, motor trucks have been handling a greater and greater proportion of merchandise freight from jobbing centers to a widening circle of retailers. As the radius of truck distribution has increased, and as the jobbing markets have overlapped, more railroads have been included within a single jobbing market. Some small jobbing centers have, therefore, suffered disastrously in this new competition, with consequent loss of traffic to rail carriers into these trade centers. These changing conditions have been particularly striking in the Middle West and Southwest.

The direct effect upon rail carriers has been in the loss of merchandise traffic to jobbing centers and to retailers out of these jobbing centers. Local freight service has been particularly affected.

While it was contended that this new transpor-

tation service had developed a new demand for such commodities as fresh fruits and vegetables, with a consequent increase in the rail transportation of such products from distant origins to jobbing centers, the evidence indicates clearly that where points of origin are within trucking distance this business is rapidly passing to the trucks.

6. *Kinds of Commodities.* It appears that formerly railroad traffic men felt that truck competition was narrowly limited to certain types of merchandise. Evidence presented in these hearings, however, indicated beyond a doubt that trucks were soliciting more and more kinds of commodities. While still selective in their solicitation, the truck operators are apparently finding that with better roads and new types of equipment they can handle such traffic as formerly it was not possible for them to carry.

So diverse are the kinds of commodities now being hauled by truck it is not possible to give a complete list. These commodities include, however, over and beyond general merchandise of every kind attractive to truck operators, such commodities as livestock, fruits and vegetables, oil well supplies, oil products, dairy products, cotton, tobacco, coal, canned goods, road materials, furniture and office fixtures, automobiles and parts and others.

As to kinds of commodities, while concentrated upon l.c.l. or merchandise freight and while generally selective in character, the list is progressively extending to all kinds of traffic which truck operators feel can be handled by that agency. Limits of competition in this respect have not yet been found.

7. *Packing and Crating.* An important element in the competitive situation between railroad and truck transportation has to do with the matter of packing and crating. Through long years of experience the railroads have developed comprehensive rules and regulations governing the packing and crating of commodities which they handle. Trucks, on the other hand, with a much smaller capacity unit, have greatly reduced or have eliminated packing and crating requirements. Since packing and crating are an expense to the shipper and unpacking and uncrating are an additional expense to the consignee, this factor becomes important in the competitive relationship.

8. *Selective Service.* It was frequently pointed out that truck competition was on the basis of a selective service. Without responsibility to give a full community service on the highway, the trucks skim the cream of the traffic in their competition with rail carriers. They solicit only the traffic that will pay best and, where not required by regulation to handle it, refuse traffic less remunerative.

In competition with rail carriers the trucks not only skim the cream of traffic where they operate but also enter and leave districts for the purpose of securing certain traffic that temporarily attracts them.

This selective character of service has become an important element in competition.

9. *Rail Handicaps.* In this competition between trucks on the highways and rail carriers, certain handicaps to the rail carriers have been pointed out.

(a) *Rigidity of Rates.* There is the general rigidity of rates for rail carriers as the results of

a structure carefully balanced throughout the country. If a rail carrier undertakes to meet competitive rates locally, there is a liability of disturbing the general balance of rates and affecting in manifold ways movements wholly unconnected with the local competitive situation.

It was pointed out, for example, that under the Commission's decision in I. C. C. Docket 13535, applying to the Southwest, if a carrier undertook to reduce rates to meet a local competitive situation created by a truck operation, then numberless adjustments would have to be made in other traffic to conform to the rate pro-rate principle in that decision. Inevitably the losses that would be sustained not only by the carrier immediately affected by the truck competition but by other carriers in other movements would far outweigh the local situation.

As a further illustration of this competitive element, one carrier cited the movement of 10,000 to 12,000 tons of sugar per year from Philadelphia out to a destination 55 miles distant. This sugar is now handled by trucks which secure a return load of products from this sugar of from four to five thousands tons a year. The carrier felt that it could make a rate that would have retained both the sugar and the products if it had been free to do so. It was restrained, however, by the fact that if this reduction was made to meet this local competitive situation, it would probably disrupt the rates on sugar from New York to Allentown, Bethlehem, Wilkesbarre and Scranton and from Baltimore into the Reading District and extend so as to disrupt the whole sugar rate structure east of Pittsburgh and might extend into the New Or-

leans district and ultimately involve even the Pacific Coast rates on sugar.

(b) *Provisions of Interstate Commerce Act.* - The rail carriers testified that they were further handicapped in competition with highway transportation by provisions of the Interstate Commerce Act, at least to the extent of its administration by the Commission during recent years. Attention was called to the Commission's interpretation of discrimination under Section 2, which would be brought to the front by any efforts at rate competition with local truck operations. This was true also of the administration of Section 3. Section 4, the long and short haul clause, is a limitation upon the rail carriers which does not apply to highway transportation. Section 6 of the Act requires notice with respect to rate changes and suspensions are provided for in Section 15, thus delaying rail efforts to meet competitive situations that have suddenly developed, from which limitations also highway operations are exempt. The Act calls for an observance of freight classifications, which provisions likewise do not apply to their unregulated competitors on the highways.

The difficulties that grow out of this condition of railroad regulation, as contrasted with the unregulated highway transportation, are of paramount importance. Under severe penalty railroads must comply with the Commission's interpretation of those provisions in the Act, Sections 2, 3, and 4, which deal with rate discrimination and undue prejudice as to persons, commodities and localities. All shippers must be treated alike and charged rates known to all. The evidence shows conclusively, however, that highway operators can

and do with impunity discriminate as to persons, as to commodities and as to places. Those very evils which were publicly condemned by the insistent public demand for regulation of rail carriers are today in existence and are of growing importance in highway transportation. Successful competition under such conditions appears to rail witnesses to be practically impossible.

(c) *Common carrier responsibility.* The rails as common carriers have responsibility for meeting fully the public requirements for transportation service. A corresponding responsibility does not attach to their competitors upon the highways.

These competitors can operate or cease to operate when they so desire.

A particular feature of this responsibility is the operation of trains at a loss. In many instances train schedules are under the regulation of a state and trains can only be eliminated by consent of the regulatory body. In consequence, many local train operations today pay little or no more than for the wages of train crews. They must, however, be operated. There is the further obligation for carrying express and mail which the rail carriers can not escape.

(d) *Non-productive capital expenditures.* Attention was directed to the large capital expenditures required of rail carriers from which little or no benefits are derived. Instances of these expenditures are for safety appliances such as signal devices and automatic train control devices. Of more importance, and of increasing importance, are the expenditures for elimination of highway grade crossings. Every year the expenditures by the rail carriers for the protection and elimination

of grade crossings increase. The irony is that these safety expenditures, of little or no benefit to the rail carriers, make directly for safer operation by their competitors on the highways.

(e) *Government subsidizing of competitors.* Many rail witnesses testified to their belief that highway operations in competition with rail carriers were being subsidized by the state and Federal governments through the expenditures for improvements and maintenance of improved highways out of the general tax fund. To this tax fund the rail carriers are compelled to contribute liberally. Thus, the operating expenses of the rail carriers are increased while their competitors are relieved from legitimate operating charges and pay nothing in taxes to the railroads. Opposing witnesses pointed to the traffic created for rail haul by roadbuilding and the automobile industry.

It is apparent that all these handicaps create problems in the competitive relationship between railroads and highways.

10. *Railroads Competing With Themselves.* In describing the operations on the highways through subsidiaries owned and controlled by rail carriers, witnesses stated that in many instances these highway operations paralleled and competed with their own rail lines. While it was the judgment of some witnesses that buses either developed their own traffic or secured their traffic from the private automobile, the majority admitted that these buses actually took some passengers from the rail lines.

11. *Absorption of Pick-up and Store-door Delivery Costs.* A number of instances were cited where railroads, through contracts with local truckmen, were engaging in pick-up and store-door

delivery service. Where the truck rate was the station-to-station rail rate, it seemed obvious that the charge by the railroad, including pick-up and store-door delivery service could not be greater since the truck performed this entire service at that rate. In consequence rail carriers testified that through necessity they were absorbing out of local rates the cost of pick-up and store-door delivery.

12. *Disregarding Classifications.* There were charges made that in instances where rail carriers, having entered into contracts with local truckmen for pick-up and store-door service, were carrying merchandise without classification. This is a frequent practice with a truck line and it was declared that competition had forced this practice on the rails. The trucks handle commodities without classification to the freight house where they are loaded into a car, run through to destination and are distributed without regard to classification at destination. The question was raised as to the relation of this practice to the published tariffs.

13. *Through Routes and Joint Rates.* Rare instances were cited of the establishment of through routes and joint rates between rails and highway transportation. As to buses, it appeared to be the general practice that rail tickets were good upon parallel bus operations through subsidiaries but generally bus tickets were not good on rail lines. Most frequently also, where a passenger purchased a rail ticket but rode on the bus, baggage would be handled without additional charge by rail. In some instances a charge was made.

It was a rare instance that a rail carrier entered into an agreement for through routes and joint

rates with an independent highway operator. Where this occurred there was a combination fare, out of which the railroad got its full local fare.

Instances were cited where bus operations by railroad subsidiaries issued through tickets good over other bus lines. In most instances these other bus lines were also railroad subsidiaries but this was not always the case.

14. *Rails Subsidizing Highway Operations.* Testimony of rail witnesses with respect to the financial results of subsidiary highway operations led to the charge that railroads were subsidizing these highway operations. It was pointed out that practically no highway operation by railroad was actually self-sustaining from a financial standpoint. These operations were justified not on the basis of net returns from the highway operation itself but from the fact that the savings in train operation were substantially greater than the losses sustained from highway operation. This was the basis for the charge that railroads were subsidizing their highway operations.

It was also pointed out that railroad subsidiary operation on the highways had advantages that were not available for independent highway operation. For example, the railroad highway subsidiary might have the use of passenger stations and freight depots, of the soliciting force of the railroads, of its legal department, its medical department, its mechanical department. While in some cases effort was made to allocate charges for this service to the highway operation, in many instances no such attempt was made.

As to competition as a whole between railroads and highways, certain rail witnesses and certain

bus operators testified that this competition exists in passenger traffic only to a very small extent. The real competition here, it was contended, lies between buses and private automobiles. One witness stated that the development of bus operation on the highway offered no more competition than would have been offered to rail lines if the electric railroads had continued to prosper and develop. A considerable amount of bus travel, it was held, was new travel developed by educational advertising on the part of bus operators themselves.

It was held generally also with respect to freight competition by witnesses representing highway operation that merchandise traffic up to 150 miles was definitely lost to the rails, that much of the business handled by trucks was new business, that the service offered by truck was so different from rail service as to be non-competitive.

15. *Failure of State Regulation.* As an important element in the competitive situation was cited the failure in properly administering existing state regulation of highway operations. In all but one state there are regulatory laws applicable to bus operation and in thirty-four states regulatory laws applicable to truck operation. In some states railway witnesses testified that the laws themselves provided for fair competitive conditions as between railroads and common carrier highway operations.

Almost universally, however, the testimony was that the existing laws were not adequately enforced. While no charge was brought of willful failure on the part of regulatory bodies, it was generally pointed out that appropriations were insufficient to provide ample and competent forces for policing highway operations. To the extent

that the regulatory provisions remained unenforced, they were only a dead letter on the statute books and thus left the competitive relationship between railroads and highways with an unfair advantage to the latter.

VII

PROBLEMS OF COORDINATION

Coordination of rail and highway service means a harmonious operation for common interest and benefit and is distinguished from competition, which involves antagonistic economic interests.

The aim of coordination is to ascertain where each facility can operate most economically and perform the best transportation service. It probably implies the exclusion of each service from those fields in which the other service is most economical and most satisfactory to the public.

Activities of rail carriers to achieve coordination have been recorded. These activities are controlled by an adopted policy on the part of each carrier. As representative of these policies, from the evidence, are the following:

1. To offer the public a thoroughgoing alternative service by rail or highway for both passenger and freight, usually confined to the territory served by rail but with such interchange of traffic as becomes necessary.

2. To substitute highway for some rail service, thus removing train service to that extent and filling the gap with highway service.

3. To supplement rail service with highway service, thus giving an additional service to the public and often extending highway operation beyond the rail-head.

4. To use highway facilities for performing a new and additional service to the public as, for example, in terminal areas for pick-up and store-door delivery.

Inevitably, with such varying policies, activities and practices are variant. Each raises its own peculiar problems for consideration and solution. The more important problems are:

1. *Rail-Highway Organization.* In attempting to coordinate rail with highway transportation a question is raised as to what form of organization the highway operation should take and what should be the relationship, financial and otherwise, between the railroad and the highway operation. There are instances of attempted coordination where there is independence of the railroad on the one hand and of the highway operation on the other, the coordinating activity being by mutual consent and agreement or by contract. In some cases there is a common financial interest as to highway operation. There are other instances where highway operations are carried on through organizations wholly owned and wholly controlled by the railroad, i. e., subsidiaries. This is the usual relationship that now exists. Some instances may be found where the highway operation is an integral part of the rail operation, the highway facilities being directly owned by the railroad and operated as a part of its general organization.

The problem is raised as to what is the best method for the future in the development of coordination between these two transportation services.

2. *Rail-Highway Territory.* Where a railroad, through subsidiaries or otherwise, has entered upon highway transportation, the problem pres-

ents itself as to whether or not such highway activities should be restricted to the territory served by that individual rail line. In general, the policy expressed was that such restriction upon highway activity should be made by the rail carrier. A number of instances were cited, however, where such was not the case. Railroad subsidiaries and independent companies in which railroads were interested are actually operating beyond the rail-head and in the territory of other carriers. In some cases the highway, which in general does not parallel the rail line, passes through trade centers located on a competitive rail line. The rail-highway operation over such a highway necessarily enters the field of a competing railroad.

3. *Through Routes and Joint Rates.* Thoroughgoing coordination between rail service and highway service involves the question of through routes and joint rates between these two. As before noted, there is some such relationship in existence today, although of small amount. The principal problem raised is, however, as to the future. Should there be in contemplation an extensive or even a nationwide network of through routes and joint rates between highways and railroads and should such through routes and joint rates be required or be permissive? Any extensive commitment on the part of a railroad to a system of through routes and joint rates, so long as highway transportation is either independent, unregulated or irresponsible, is a matter of doubt in the minds of many rail witnesses.

4. *Pick-up and Store-door Delivery.* Evidence in these hearings indicates a sporadic giving of pick-up and store-door delivery service. The prac-

tice, however, is spreading, an application now being pending before the Commission for an extensive service of this character in the Southwest. As noted heretofore, the pressure for such service comes from competition by trucks on the highway that now offer it.

Two problems are brought forward by this situation. The first is that if a railroad on local hauls undertakes pick-up and store-door delivery, such additional service must be given at the station-to-station rates for the reason that this is the maximum rate charged by trucks. The second problem is that, if this service is offered in certain trade centers, will or will it not constitute in the mind of the Commission a case of undue discrimination against those where it is not given?

5. *Using Railroad Organization and Facilities.* Activities on the part of rail carriers, through every kind of relationship with highway carriers, in an attempt at coordination appear to involve the use by the highway operation either of the facilities or of the organization of railroads, or of both. In practically all instances cited in these hearings, use, to a greater or less extent, was made by the highway operation both of the organization and of the facilities owned by the railroad. Thus, the traffic solicitors, the station agents, the passenger stations and freight depots, the legal organization, the mechanical force, the medical force and even the credit and finances of the railroad organization may be placed at the service of the highway operation. As noted heretofore, some attempts have been made to allocate to the highway operation a portion of the expenses for such use. In general, however, this is not undertaken.

In the case of consolidating companies, which apparently have enjoyed remarkable expansion in recent years, the charge has been made that these companies are permitted to collect their carload lots at the freight house of the railroad for shipment, either without expense or at a nominal expense. Some rail witnesses denied this to be true.

6. *Is Highway Operation Through a Railroad Subsidiary a Railroad Operation?* It was stated by the Commission in the record that motor transportation service by rail carriers within terminal areas was under their jurisdiction. The question, however, that remained for a complete answer is whether or not an operation by a railroad, say in substitution for rail service, and from station to station on that rail line, is in fact a railroad operation. Since the highway operation is indefinitely regulated or wholly unregulated while the railroad operation is strictly regulated in all important phases, this question becomes a most pertinent one.

Instances were cited in the hearings of situations where railroads were operating, in lieu of local train service, station-to-station service by motor truck without pick-up and store-door delivery. Usually truck operations were by contract with independent truckers.

7. *Consolidating and Express Companies.* Under circumstances where a railroad makes a contract with a trucking concern to collect merchandise into the freight warehouse for consolidated carloading and under a similar contract delivers the merchandise to store-door at destination, the question was raised with respect to the tariffs under which such operations were carried on. Apparently the tariff issued is a railroad tariff be-

tween two points. The relationship of the independent truckers, on the other hand, is a private contract between the railroad company and such highway operations. The witnesses for rail carriers held either that such operations were in the nature of express service or in the nature of a consolidating operation such as is carried on by consolidating companies. It seems apparent that the exact status of such operations remains yet to be determined.

8. *Regulated Versus Non-regulated Service.* As in relation to competition, so with respect to coordination, the comprehensive regulations imposed upon rail carriers in contrast with the nominal regulation or freedom from regulation on the part of highway carriers developed one of the most important problems in the hearing. Many rail witnesses testified to the effect that proper coordination between these two services could not take place without a corresponding regulation for each. On the other hand, it was testified that a type of regulation for highway transportation and whether or not any regulation should be applied thereto, should be determined irrespective of railway operation. It was the apparent thought in this connection that the railroad, through a subsidiary or otherwise, could interest itself in highway operation and meet the situation as it there existed, fighting the competitive battle with the weapons there found. The consensus of opinion, however, was that coordination would be handicapped without stability in the highway transportation service and that stability in the highway transportation service required proper regulation.

Reference was made to the fact that without reg-

ulatory provisions, or with regulations applying only to common carrier highway operations, the proper responsibility for rendering service and the necessary stability in rates were impossible. It seemed to be problematical to many rail witnesses as to whether or not it would be feasible or wise for railroads, through subsidiaries or otherwise, to enter the unstable and chaotic highway transportation situation.

As in respect to competitive conditions between railroad and highway operation, so with regard to the question of coordination, regulation of the railroads while their competitors are left free with particular reference to just and reasonable rates, undue discrimination and undue prejudice as to persons, commodities and places, covered by regulatory provisions in the Interstate Commerce Act, stands perhaps as the chief obstacle in the way of effectual coordination. Any connection that a rail carrier may have through financial interest or through joint operation is inevitably affected by the fact that a rail carrier is under severe penalty to meet the requirements of these provisions in the Interstate Commerce Act as administered by the Commission, while the highway operation is free from them. To many rail witnesses it seems impossible to achieve successful coordination between these two transportation agencies while such discrepancy between them exists with respect to regulation of rates.

It should be noted that some carriers, after extensive investigation, have been unable to see any chance of financial success from highway operation, either of buses or of trucks, and so have decided for the present "to stick to the rails."

VIII

SOLUTIONS: TRIED AND PROPOSED

Evidence was given by rail witnesses—

(A) as to what activities have been undertaken by rail carriers and what activities are contemplated by them under existing conditions, and

(B) as to what changes should be made in existing relationships in order that competition might be fair and coordination might be made effectual.

1. *Operating and Traffic Adjustments to Meet Existing Conditions.* Activities have been undertaken by rail carriers to meet the existing situation both on the basis of competition and to secure coordination of rail and highway service.

(a) *Efforts to Meet Competition on the Highway without Coordination.*

(1) *Fare and Rate Reductions.* One of the first efforts by rail carriers and, perhaps, the most widespread, was a reduction in passenger fares. In all parts of the country experiments were made by rail carriers, by reducing passenger fares, to lower than the standard 3.6 cents per mile in an attempt to bring back passenger traffic to the railroads. Practically all efforts of this kind on local hauls have been signal failures. Passenger traffic has not returned to the rails.

More recently reduced fares on long haul travel have been undertaken by carriers, first on trans-continental movements and later to be applied to system movements other than local hauls. The results of these recent experiments are not yet available.

As noted before, the entrance of trucks into car-

load traffic became apparent in 1928 and has increased since that time. In order to meet this situation and especially in the Southwest and Southeast, radical reductions in freight rates have been made as an experiment and for a limited period. These reductions were made under the provisions of Section 6 of the Interstate Commerce Act. With special reference to cotton, evidence indicates that reductions as high as 54 per cent have been made. The testimony shows that these reductions, while not wholly successful, both prevented diversion of further traffic and in many cases secured a return of traffic to the rails. The information is not now available as to whether total revenues or net railway operating incomes were thereby increased.

There was no indication from the testimony offered by witnesses that they felt the real solution of the competitive problem could be found through rate reduction. These reductions were compelled reductions due to highway competition.

(2) *Excursions.* Closely allied with passenger fare reductions on regular schedules are special excursion rates. It appears from the evidence that railroads in all parts of the country have experimented with special excursion rates during the past two or three years. The practically uniform experience has been that these excursions, well planned and well timed, will attract passengers. Witnesses stated that such excursions must not occur too frequently or they will lose their appeal. It is a means of securing intermittent additional passenger travel and of increasing passenger revenues. Apparently, therefore, there is a group of traveling public to whom lower fares, with less luxurious service than is offered by the finer trains, make an effective appeal.

(3) *Reducing Operating Expenses.* Efforts by rail carriers are also recorded in an attempt to meet competitive conditions by reducing operating expenses. These efforts include the closing of many local stations, the taking off of local trains and the substitution of electric-gasoline cars for steam trains, particularly on branch lines.

(4) *Changing and Speeding Up Schedules.* Competition on the highway with railroads in handling freight is particularly keen in the area where over-night service is possible by truck. This area, which is widening year by year, has now reached a radius of from 150 to more than 200 miles. In order to meet this situation rail carriers have undertaken to speed up their freight schedules in many instances and also to change their freight schedules so as more directly to meet this competition.

One carrier testified to the fact that the local way freight train schedules had formerly left origin point at seven o'clock in the morning to arrive at jobbing points more than 100 miles out at five or six o'clock in the afternoon. These way freight train schedules were changed, in order to meet over-night competition, to leave the origin point in the evening to arrive at the same jobbing centers early in the morning. This change in schedules to meet highway competition, even where rail rates were about five cents per hundred pounds higher, had the effect, according to the witness, of stopping the loss of merchandise freight by this railroad to the highway and had also resulted in showing an increase in this class of traffic. In connection with the changes in train schedules there was an active campaign of freight solicitation in the territory.

(b) *Efforts to Meet Competition on the Highway with Coordination.*

The efforts indicated above had to do with meeting competition on the highway directly by such adjustments as were possible in railroad operation. In addition to these efforts there were others involving to some degree a coordination of highway facilities with railroad facilities but prompted by the need to meet the general competitive conditions on the highways.

(1) *Substituting Highway for Railway Train Operation.* Perhaps the most widespread effort throughout the country involving some element of coordination has been the substitution of motor bus service and motor truck service for train service. These efforts have all been practically limited to local operations. Very few of the through freight or through passenger trains have been affected by them.

In the local hauls, however, a large number of local passenger trains have been discontinued and their places have been taken by parallel motor bus operations. In some cases the motor bus operation substituted for the train service has resulted in more frequent schedules by bus.

In freight service there has likewise been considerable utilization of the motor truck in the place of local way freight service, resulting either in the discontinuance of trains or in the elimination of local way freight stops. While the discontinuance of way freight has largely been due to the loss of merchandise freight to trucks and without the substitution by railroads of additional service, some substitution of this character has

taken place. In connection with the elimination of way freight stops there has been a development where truck service has been introduced making station-to-station hauls in lieu of steam train service to local stations. In this way terminal service has been relieved by transferring local hauls out from large trade centers to highway trucks and in other cases the freight schedules have been speeded up due to the fact that fewer stops were found necessary.

(2) *Pick-up and Store-door Delivery Service.* Somewhat sporadic development has occurred in a pick-up and store-door delivery service on a line rail haul in different parts of the country. This development has been particularly noticeable in the far west, in the southwest and in New England. The general arrangement has been for the pick-up and store-door delivery by truck to be undertaken by contract with rail carriers. These contracts are made with independent truckmen at the local stations. Competition generally has forced the railroads to absorb the cost of this additional service out of local rates.

A number of railroad witnesses testified that in their experienced opinion this additional service was absolutely necessary on the part of the rail carriers in order to meet the truck competition on the highways. The recent application by carriers in the southwest to put in that service extensively over their systems is indication that the managements of these roads have been convinced that such additional service is necessary.

(3) *Use of New Facilities by Railroads.* Particular attention was directed by certain rail carriers to the possibilities of using new facilities on

the railroads involving, to some extent, a coordination of highway trucking service. These new facilities were of two kinds: one, a vehicle which could be operated both on the rails and on the highways, the other, a container which could be handled either on a freight car or on a truck and readily transferable from one to the other.

Experimentation with the vehicle that could use either rails or highway was narrowly confined to one carrier. The container idea, however, developed by large systems in the east was attracting the attention of railroad men almost everywhere. It was the testimony of witnesses representing the carriers that had made use of the container that it was successful as a method of meeting highway competition, as well as a successful method of coordinating the two services. The advantages claimed for the container are:

- a. Reduction in transportation cost,
- b. Reduction in terminal charges,
- c. Elimination of expense of packing and crating,
- d. Eliminating unnecessary handling of commodities,
- e. Reducing expenses of billing,
- f. Ample protection against loss, damage and pilferage, and
- g. Expediting service.

There were two types of container that were described in detail for the record. One type was a relatively small container weighing about three thousand pounds and having a cubic capacity of 438 feet, with a maximum capacity of ten thousand pounds. This container is loaded by shipper and handled by truck to freight platform where

it is lifted by crane onto a flat car, hauled by rail to destination and removed by crane. The number of containers installed by the carrier introducing this service has increased from 278 in 1922 up to 47,886 in 1930.

The other type of container is generally referred to as representing a truck body, also removable from the truck by crane to a freight car, handled by rail to destination and removed from the freight car to the truck chassis by crane. This is a heavier type of container with larger capacity. The use of this type of container is reported to be successful and to be rapidly increasing. The carrier using it contemplates the rapid extension of its service to the principal trade centers on its system.

(4) *Development of Consolidating Companies.* Closely analogous to the use of containers for handling the merchandise traffic is the operation of consolidating companies that collect from various sources merchandise freight into carload lots securing a reduction in transportation charges to the shippers by the difference between carload rates and less-than-carload rates. Evidence presented indicated a rapid development in consolidating companies and in the amount of merchandise traffic so handled. In many instances the operations of these companies involve, either at origin or at destination, and frequently at both, a use of motor truck service. To this extent there was involved here also an element of coordination.

(5) *Comment as to Experiments Tried.* The evidence presented as to the results from the various experiments that have been tried to meet highway competition and to achieve coordination leads to the following conclusions:

a) Highway competition for passenger traffic, both by private automobile and by bus, continues to divert the short-haul day-coach travel to highways; the short-haul bus operations apparently not increasing and perhaps decreasing; long-haul bus operations increasing; private automobiles increasing in number, though affected by business depression; Pullman travel more nearly holding its own but likewise affected by business depression; passenger revenues continuing to decrease.

b) Railway operation on the highways through subsidiaries rapidly extending, with increased investment; operations generally not financially successful as highway operations but fully justified by savings in train operation for which there has been bus substitution; increasing coordination in this service, with use of railroad facilities as an aid to highway operation.

c) Highway competition for freight growing rapidly keener from highway truck operation, extending beyond l.c.l. business into carload business; length of truck hauls rapidly increasing due to improved roads and improved equipment; truck capacity increasing, with an increasing number of trailers and truck trains; railway freight revenues seriously affected.

d) Competitive fares and rates between railroads and highways in chaotic condition; railroad passenger fare structure and rate structure being undermined and disorganized.

e) Confidence in ability to meet highway competition for freight on the part of the railroads under existing conditions largely confined to use of containers, with pick-up and store-door delivery service; strong efforts being made by several car-

riers to introduce the additional service of pick-up and store-door delivery through contracts with local truckmen, the railroad absorbing the cost out of local rates.

f) Consensus of railroad judgment that the disadvantages in competitive relationship with highway competition such as to make it impossible under existing conditions for railroads to continue present standard of service and prevent further diversion of traffic.

2. *Remedial Changes Proposed.* Railway witnesses testified that they were seeking two things: First, fair competitive conditions as between highways and rail transportation service and, second, a means of achieving effectual coordination between these two services. In order that these purposes might be realized, it was suggested that there should be changes on the part of the Commission in the administration of certain provisions of the Interstate Commerce Act, that there should be certain changes made in the law, that new regulatory legislation was required and that the subsidies to highway transportation should be eliminated.

(a) *Changes in Administration of Interstate Commerce Act.* It was urged from the point of view of the railroad traffic officer that the Commission's administration of the Interstate Commerce Act with respect to certain provisions should be changed and liberalized. Particular reference was made to Sections 2, 3, 4 and 6 of the Act and it was suggested that the Commission in interpreting discrimination and prejudice should give consideration to these new forms of transportation. It was also thought that local

competitive situations should be considered in and of themselves and not used as a rule or yardstick to affect the entire rate structure. It was declared to be necessary also that the railroads should be permitted much more liberally to make changes in their rates than has heretofore been possible under Section 6.

In this same connection, attention was directed to the rate theory presently held by the Commission, illustrated by their decisions from recent classification studies. The result has been that rates are increased to the carriers on those commodities in the higher brackets where the highway competition is keenest and, at the same time, reduced in the lower brackets where there is not the same competition and for which traffic the highway transportation is not well adapted. The latter kind of traffic is not solicited by highway operators.

(b) *Changes in Law.* It was held by some witnesses that the present administration of Section 4 of the Interstate Commerce Act should be very considerably liberalized so that the carriers might be better enabled to meet the new forms of competition on the highway and elsewhere, which operations are not subject to the restrictions of Section 4. Testimony went to the extent of urging an absolute repeal of Section 4.

(c) *New Regulatory Legislation.* Witnesses generally agreed that there was urgent need for new legislative action that would apply regulatory measures to highway competition. It was urged that neither fair competition nor effectual coordination could be achieved without highway operation being stabilized and that stabilization of high-

way transportation service could be secured only by proper regulation. Among the proposals for new legislative action were the following:

- 1) Definite statutory authority for the railroads to enter the field of highway transportation.
- 2) Proper regulation for highway transportation, both for buses and for trucks.

In connection with proposals for regulation of the highway, there was considerable divergence of view. On the one hand, there were those who took the position that highway transportation should be considered independently of all other forms of transportation, that it was a new, different and popular service and should be left to develop naturally, logically and economically. Those who took this view held that, as far as bus operation was concerned, it was now ready for appropriate regulatory measures. Truck operation, however, had not yet developed to the point where proper regulatory measures could be applied to it. Further study and observation, therefore, should be given to truck operation before legislative action was taken.

An intermediate position was taken by some witnesses to the effect that regulation should apply generally to common carrier service by bus and should be restricted to common carrier service by truck.

Another view presented was that the situation now called for a complete regulatory set-up for buses and for common carrier and contract trucks. This was the position finally taken in the name of the railroads as a whole.

The suggestions for regulation of common carrier service by bus, as generally agreed upon, were contained in the so-called Parker Bill, which was before the last session of Congress. To that bill, however, it was suggested that provisions should be added giving definite statutory authority for the railroads to enter the field and adequate power for unification of highway service with rail service.

As to regulation of truck operation, it was suggested for the railroads as a whole that there should be a requirement for certificates of convenience and necessity, applying both to common carrier and contract trucks in interstate commerce, with adequate provisions requiring each operation to comply with all the conditions imposed upon intrastate operation in each state, proper accounts, published rates, power to determine maximum and minimum rates, and proper inhibition against undue and unjust discrimination. Some witnesses went to the extent of suggesting limitation as to hours of service of truck drivers and the weight, size, length and speed of trucks.

Certain witnesses who were themselves operators of motor buses and motor trucks, agreed to the proposed regulation of motor bus operation and, with some exceptions, objected most decidedly to any attempt to regulate motor trucks. It was held that it was not now legally possible to regulate either the contract truck or the owner-operated truck and that any regulation applied to the common carrier truck would, therefore, be ineffective.

It should be noted that the spokesman for the National Industrial Traffic League testified to the

effect that the representatives of the shippers in that Association believed that regulation of the motor truck could not be made effective and, in so far as it was made effective, would destroy the flexibility of that service which the shippers desired and would be restrictive of its proper and economical development. Other spokesmen for shippers and shippers' associations, as well as witnesses for associations of truck operators, were in practical agreement with the position taken by the traffic spokesman.

In contrast with the silence on the part of the spokesman for the industrial traffic managers, railroad witnesses repeatedly laid emphasis upon the fact that all of those great principles involving just and reasonable rates, undue discrimination and undue prejudice as to persons, commodities and places were placed in jeopardy while important and growing railroad competitors were free to discriminate. It was urged that neither fair competition nor effectual coordination could be achieved unless the same principles of justness, reasonableness and fair practice should be applied to all those engaged in the public business of commerce. No one advocated that the railroads should be relieved from the provisions in the Interstate Commerce Act which might permit a return to the distressing conditions prior to that act but urged in fairness the same principles should be applied to their competitors on the highways.

(d) *Eliminating Subsidies to Highway Operation.* It was contended by many rail witnesses that a most unfair element in the competitive situation between railroads and highways is the fact that the Government, State and Federal, was now sub-

sidizing highway transportation. It was pointed out that motor vehicles using improved highways for hire and profit paid for the roadway over which they operated only through taxes. Any comparison, therefore, between taxes paid by motor vehicles and railroad tax accruals was unfair because the railroads, in addition to the tax accruals, had to build and maintain their own private roadways.

It was contended also, in this connection, by railroad witnesses that the amount of taxes paid by commercial vehicles on the highway through the medium of special taxes, such as license fees, registration fees, privilege taxes and gasoline taxes, were wholly inadequate to meet the public cost of the improved roads which they used. This deficit was made up from the general tax fund and from contributions by the Federal Government to the Federal-aid highway system for both of which rail carriers are heavily assessed.

Motor bus and truck operators, the Director of the Bureau of Public Roads and the automobile manufacturers expressed the opinion that commercial vehicles were now adequately paying their way. They cited the annual cost of the highways used by commercial motor vehicles and the total amount of special taxes paid by them. In criticism of this attitude, however, it was pointed out that all the figures presented allocated the total amount of special taxes, including the special taxes paid by motor vehicles operated within city limits and constituting at least one-half of total highway operation, to the rural highway system, that is, the roads outside of the cities and excluding local and county roads. At the same time, the figures pre-

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sented to prove that commercial motor vehicles were paying adequately for the use of the highway nowhere set up a figure representing the cost of the city streets used by commercial motor vehicles.

While no definite legislative remedy was suggested for this subsidy to a competitor of the railroads, it was felt by many rail witnesses that it was part of the picture which should be presented to the Commission.