

# RAILS AND ROADS

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Recommendations to the Interstate Commerce Commission  
as to effective Coordination with Railroad Service  
and Proper Regulation of Commercial Motor  
Transportation made by the

ASSOCIATION OF RAILWAY EXECUTIVES

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Railway executives bespeak the earnest and thoughtful consideration of the public for these policies, from the standpoint of national interest in maintaining in the highest degree adequate and efficient transportation in every form, with equal opportunity for all.

WASHINGTON, D. C., MARCH, 1981.

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## FOREWORD

At a session of the Interstate Commerce Commission, held in Washington, March 17, 1931, to consider its Docket No. 23400, being an inquiry instituted on the Commission's own motion into the coordination of motor transportation, the following specific recommendations as to the regulations necessary to coordinate rail and highway transportation were made by the Association of Railway Executives.

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.

Statements in support of the foregoing recommen-  
dations, made before the Commission

By

ALFRED P. THOM

*General Counsel, Association of Railway  
Executives*

and

C. S. DUNCAN

*Economist of the Association*

and statement

of

R. N. COLLYER

*Chairman, Traffic Executive Association,  
Eastern Territory*

## 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 oversupplied 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 Aus-



tralasian 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
	<hr/>
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 trans-continental 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. 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. 160.

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.

# STATEMENT

By C. S. DUNCAN

## RAIL AND HIGHWAY TRANSPORTATION

### I

1. These hearings were instituted by the Interstate Commerce Commission upon its own motion for a nation-wide investigation concerning the general matter of coordination of motor transportation of passengers and property upon the public highways by, or in connection, or in competition with rail carriers.

2. In opening the series of hearings on this docket, the Commissioner in charge stated as his opinion that the railroads of the country have been and are today the mainstay of our national transportation system and are essential to our national protection and to our economic welfare. He said also that recently other forms of transportation have come into use and that, therefore,

“some plan should be developed for the proper coordination of these services under public authority so that every transportation agency useful in serving the public may find its proper sphere.”

In the Annual Report of the Interstate Commerce Commission, 1930 (page 78), it is stated as the deliberate and considered opinion of the Commission—

“The country still needs its railways and can support them.”

3. The rail carriers recognize their responsibility as the main dependence for transportation service to the public and the necessity for them to



operate as economically and efficiently as is possible. It is apparent, of course, that the rail carriers must bear this responsibility and must meet the public transportation requirements under rates approved by the Interstate Commerce Commission.

4. The Commission has indicated in authorized public statements that they are conversant with the problems which the rail carriers now face in performing their necessary public transportation service under approved rate levels, due to the rise and extension of new competitors, not alone highway carriers but also water carriers, pipe lines and the development of high-power transmission of electricity.

5. The opening statement of the Commissioner in charge of this hearing included also the observation that the Commission had been advised by certain carriers subject to its jurisdiction of the legal and other difficulties which they have encountered in their attempts to coordinate motor with rail service and that

“the Commission had instituted this investigation for the purpose of securing in record form the pertinent facts.”

This observation evidently means that the Commission was not satisfied with the informal representations that had been made to it but wanted them formally presented so as to be of record in this proceeding. It is, therefore, now proposed to present the views of the railroads, as an industry and as the mainstay of the nation's transportation system, as to the existing situation as well as in the form of definite proposals, for the Commission's consideration.

## II

1. With special reference to the development of motor vehicle transportation, the respondent railroads have presented evidence which demonstrates that this form of competitive transportation service has reached the point where it has resulted in an elimination of local train service, passenger and freight, where it has, in consequence, resulted in the unemployment of many railroad employes and where it now seriously affects the ability of the railroads to maintain transportation service deemed necessary by the public and regulating bodies without substantial and irrecoverable losses.

2. The public and the Commission have apparently accepted motor vehicle transportation of passengers and of freight as a part of our national transportation facilities. The present public demand for highway transportation service is recognized. The rail carriers, as demonstrated by the evidence which they have presented to the Commission in this hearing, have engaged in certain activities in this field of transportation and in response to public demands for highway service by bus and by truck. There are elements both of competition and of coordination in this phase of activity, that is, many railroads are now operating motor vehicles both to supplement and as a substitute for rail service. Their experience has apparently shown that under certain conditions and for certain traffic motor transportation and rail service can be coordinated with considerable advantage both in reducing operating costs and in increasing and improving service to the public.

3. The primary purpose, not only of this in-

vestigation but also of the activities by the rail carriers, is to discover where each method of transportation is most economically serviceable. While technically the inquiry is apparently limited to the coordination of rail and highway transportation service, that is, the working harmoniously together of two or more systems in a common transportation service to the public, there are practically involved also the experiments by rail carriers in their competitive efforts to regain traffic lost or to retain traffic now handled and prevent diversion. The inquiry also involves the handicaps which prevent the rail carriers from a free and equal opportunity either to compete on fair terms for traffic or to enter under relatively fair conditions the field of motor vehicle transportation through their own operations on the highway.

4. The problems comprised in this hearing, therefore, may be divided into two distinct phases:

(a) Operating and traffic adjustments, including reduction of train mileage, closing of local stations, pick-up and store-door-delivery, experimental rate changes, use of containers, and the like; and

(b) The relative conditions under which operations are to be carried on, i. e. regulation.

5. Of these two general phases of the problem, the first requires an answer corresponding to the special or peculiar circumstances surrounding each situation. In other words, it is a problem for individual carriers to solve in view of the existing facts and conditions. The Commission has been informed in great detail as to what the carriers

are actually doing, are contemplating doing, and as to what they are subjecting to careful study and experiment.

6. The second phase of these problems, namely, the relative conditions under which operations may be carried on, is susceptible of general discussion and application. In an authorized public Declaration of Policy, the rail carriers have asked, among other things, for a new spirit and attitude on the part of legislative and regulatory authorities—

(a) through a recognition that the railroads are engaged in a business subject, as other business is, to the operation of economic laws and should, accordingly, be permitted to adapt themselves quickly to changes in economic conditions which confront them; and

(b) through a recognition that railroad operation is a fundamental public necessity and that the maintaining at all times of an efficient national system of transportation, adequate to the business needs of the public, is necessary, if we are to progress as a nation.

7. The problems which now confront the railroads in their relationship with interstate transportation on the public highways are due almost entirely to the fact that, while they themselves are regulated in every important phase of their activities, there is a lack of regulation and a consequent instability of motor transportation. If the railroads are to extend their motor operations beyond the present stage and perform a complete and modern transportation service, it is essential that motor transportation be placed on a sound economic basis. Under present conditions this can only be accomplished through proper regulation under public authority.

### III

1. In a consideration of the question as to what shall be the terms and conditions prerequisite for operation in interstate commerce over the highways, that is, proper regulation under public authority, so that competitive relationships may be fair and just and coordination most effectually achieved, there are these methods of approach:

- (a) To relax and liberalize certain regulatory provisions now applying to rail carriers;
- (b) To impose corresponding regulatory provisions over highway operations in interstate commerce; and
- (c) A combination of these two methods.

2. No program is being offered at this time for relaxing or liberalizing the present provisions of the Interstate Commerce Act, but attention is seriously directed to the following:

- (a) The need for the Commission to give due consideration to the new and menacing competition on the highways in administering the provisions of the Interstate Commerce Act;

- (b) The rigidity and inter-relationship of the present rail-rate structure and the handicaps which face the rail carriers from the progressive application of the transportation-at-cost, or zoning, or mileage rate theory;

- (c) The patent fact that the fundamental concept lying at the base of railroad regulation in the provisions of the Interstate Commerce Act, namely, a natural monopoly of transportation by railroad, is no longer tenable to the extent that an alternative choice of facilities is being offered to and utilized by the shippers of the country;

(d) The rail carriers are asking for an opportunity to enter the field of water transportation under proper supervision, but without handicap as compared with other transportation agencies, together with a sympathetic administration of Section 4 of the Interstate Commerce Act, to the end that a fair opportunity may be given rail carriers to obtain relief, after proper showing, and including transcontinental traffic; and

(e) The fact that as the volume of traffic available for rail carriers, due to diversion to competitive types of transportation, becomes smaller, the consequence may be the imposition of heavier charges upon that traffic, which must of necessity use rail transportation.

3. In order to emphasize the last statement given above, an excerpt is quoted from a report of the Australasian Railway Commissioners that bears directly upon this point. This statement says:

“It is beyond question that the road-motor form of freight transport can not 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 railways are crippled this foundation will be rendered insecure, and in turn the financial stability of Australia and New Zealand will be gravely depreciated.”

The Railway Commissioners for New South Wales add this note in connection with the above quotation:

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

4. With respect to the suggestion that motor transportation service be placed under proper regulation of public authority, five general inquiries have been raised in the course of these hearings. They are—

(a) Why should there be regulation of motor vehicles operating on the highways?

(b) What is meant by regulation?

(c) To what kind of motor vehicle operations should regulation apply?

(d) Would regulation as suggested increase the rates, fares and charges of motor carriers?

(e) Would regulation of motor transportation bring back traffic to the railroads; if not, why should railroads advocate regulation; if so, how would the results be achieved?

5. It is now proposed to give answers to these inquiries. These answers and the general program which the railroads have to offer are based upon the following considerations:

(a) The primary aim is to secure an efficient and adequate system of transportation for the country, with a more effectual coordination of rail and motor transportation service;

(b) The rail carriers are asking for adequate authority themselves to operate motor transportation facilities, without discrimination in favor of other transportation agencies in the same field;

(c) The highways belong to the individual states and the responsibility for obtaining revenues to improve and maintain them, as well as for protecting them and for promoting public welfare through their use, rests with the individual states;

(d) No interstate operation, because it is interstate, ought in justice to escape any requirements deemed wise and proper by any state in meeting its responsibility as the owner of the highway over which such operation is carried on; and

(e) The use of the improved highway for commercial purposes in interstate commerce is clearly distinct from the use of such highways by the private passenger motor vehicle.

#### IV

*Why should there be regulation of motor vehicles on the highways?*

1. The public needs and is entitled to the use of any and all forms of transportation which can justify themselves on grounds of efficiency and economy when maintained on a self-sustaining basis. If any of the existing forms of transportation, whether by rail, by water, by highway, or by air, is uneconomical, inefficient or unnecessary, there is no obligation on the part of the public to use or support it. To say whether or not any or all forms of transportation should be regulated must be determined in the light of this public interest.

2. Transportation by railroad and, to a limited extent, transportation by water in conjunction with railroads, have been regulated for many years by the Interstate Commerce Act. Since the passage of the Shipping Act, transportation by water has been regulated, although not in such detail as transportation by railroad is regulated under the Interstate Commerce Act. The transmission of intelligence by wire and wireless, transportation



by express and sleeping car companies, and transportation by certain electric railways and by pipe lines have been brought under certain regulatory provisions of the Interstate Commerce Act from time to time as such regulation appeared desirable in the interest of the public.

3. The first regulation was applied to railroad transportation alone because at that time the railroads were the only important transportation agency engaged in interstate commerce.

4. The chief purposes of regulation have been—

(a) To prevent the charging of excessive rates and the enforcement of unreasonable rules, regulations and practices.

(b) To prevent discrimination by rebating or by charging different rates to different shippers based on the amount of their tonnage.

(c) To prevent the unnecessary addition or abandonment of transportation lines by requiring certificates of public convenience and necessity; and

(d) To assure adequate and efficient transportation service.

5. The goal sought by enactment of the Interstate Commerce Act was to end the policy of the "survival of the fittest" which had existed in connection with the country's most essential medium of conducting interstate commerce, namely, the rail carriers. The Shipping Act, applying to carriers by water, was passed to accomplish the same result. This is also true with respect to the regulation of the other agencies engaged in interstate commerce.

6. The public sought railroad regulation. That

regulation has resulted in benefits and burdens to both the railroads and the public. Regulation, no doubt, has increased costs of operation which have necessarily been reflected in railroad rates. If regulation of railroad transportation is in the interest of the public, then the increased cost of transportation which has resulted from this regulation is likewise in the public interest.

7. Regulation has tended greatly to stabilize railroad transportation and rail rates. Every shipper now knows what his competitors' rates are and all shippers in the same community must be placed on an equality. The rates as between communities may not be preferential or prejudicial.

8. So long as transportation by motor vehicle was limited in scope, it was not important and did not materially affect commerce. During the course of these extended hearings, held in important cities in various parts of the country, the Commission has been placed in possession of sufficiently complete statistical information to show the severe losses in traffic which have been sustained by rail carriers during the past ten years and the diversion of traffic from rail to highway in the same period.

9. Facts have been presented showing the vast sums of money expended for the improvement of public highways and the rapid extension of the network of improved highways throughout the country largely paralleling the main trunk railroad lines. The testimony further reveals the rapid increase in the number of motor vehicles rolling over these improved highways, together with striking illustrations of improved designs, increases in weight, length and capacity of buses and

trucks, and the trend toward operation of truck trains.

10. The effect upon rail carriers, illustrated by the decline in passenger revenues of \$414,000,000 in 1929 as compared with 1920, is indicative of the seriousness of the present situation. A greater part of this loss has been due to the private passenger automobile. As presented in detail, the railroads have likewise suffered severe losses of freight revenues to highway transportation during the past ten years. While the greatest loss here has been in less-than-carload traffic and particularly in the shorter hauls on this freight, the evidence is clear that within recent years, due to developments in types of trucks, with pneumatic tires, with special equipment, and with constantly improving highways over which to operate, these trucks have not only increased the length of their haul but also have made serious inroads into the field of carload traffic, in competition with the rail carriers.

11. Hence, the question arises as to whether or not, in the interest of the public as a whole, regulation should now be applied to motor transportation as has been done in the case of all other methods of carrying on the commerce of the country.

12. It is conceded that the railroads are still the mainstay of the country's transportation system. It is possible, however, that loss of traffic to unregulated motor vehicles may so deplete the revenues of the railroads as either to require an increase in rates or to result in curtailed or less satisfactory rail service for that traffic which must move by railroad. Either result would certainly be contrary to the public interest.

13. Unregulated motor transportation may result in discrimination as between shippers in the same community. The shipper with large tonnage may get lower rates than the shipper having a small tonnage. The shippers in the larger communities, because they naturally attract the motor truck operator, may have motor transportation that is not available to those located in smaller communities.

14. Motor vehicle rates can now be made so as to discriminate between commodities while motor vehicle transportation remains unregulated.

15. Motor vehicle rates can be so made as to discriminate between communities so long as motor vehicle transportation is unregulated.

16. There can be so much duplication of service that no one may be able to operate with reasonable profit and so be able to provide efficient service. And, as another result, the highways may become congested with more motor vehicles than are necessary. Some such highways may become overloaded, while others remain under-loaded.

17. Thus, every important consideration that required and justified regulation of the other important agencies of commerce now applies to motor vehicle transportation.

## V

### *What is meant by regulation?*

1. The regulation of motor vehicle transportation which seems wisest is that sort of regulation which meets the requirements set forth above. Among these requirements are the placing of motor vehicle transportation upon a sound economic

basis, the stabilization of rates, the prevention of undue discrimination as between individuals and of undue preference or prejudice as between communities and commodities, the unnecessary and unwise duplication of transportation service, with the consequent effect in unprofitable and inefficient operation.

2. Regulation should be sufficiently comprehensive as to subject the transportation of persons and property for hire by motor vehicles on the public highways to the jurisdiction and regulatory powers of State and Federal commissions.

## VI

*To what kind of motor vehicle operation should regulation apply?*

1. Regulation of motor transportation on the highways should apply to all transportation for hire of persons and property. This will include both common carriers and private contract carriers.

2. If regulation is applied only to motor vehicle common carriers, it is obvious that many of them will withdraw from common carrier service because they will be unable to meet the unregulated competition of the contract carriers. They will themselves become contract carriers.

3. The contract carrier by motor vehicle, without regulation, can indulge in all the practices that will result in the evils which regulation seeks to avoid. Anyone, regardless of his responsibility, financial or otherwise, who can make a small partial payment, can secure a motor vehicle and take

any traffic he desires at any rate he pleases, thereby

(a) weakening other transportation agencies, including common carriers by motor vehicle;

(b) unnecessarily duplicating existing transportation services;

(c) increasing congestion and danger on the public highways; and

(d) creating discriminations as between individuals and communities, either as a matter of expediency or as a result of the influence of powerful shippers.

All these things would be to the detriment of the public as a whole.

4. While the unregulated operation of contract motor carriers is admittedly of advantage to individuals, such advantage should not be permitted to outweigh the interest of the public as a whole. This public interest requires that every necessary transportation agency should be adequately supported, so that it may take its proper place in the country's transportation system in the most efficient and economical manner.

5. It is of the highest importance that all transportation service, by whatever agency furnished, should be on a well-ordered and wisely systematized basis. This is particularly true for the orderly, responsible and economically sound development of these new forms of transportation, which are not yet thoroughly seasoned or adequately tested by the vicissitudes of business-like operation.

## VII

*Would regulation as suggested by the railroads increase the rates, fares and charges of motor vehicle carriers?*

1. There are no statistics now available to serve as the basis for an authoritative answer to this question. Motor vehicle transportation on the highways at the present time is not stabilized. There is no means of determining whether as a whole the industry is operating on a sound economic basis.

2. Probably some highway transportation services are so operated. A critical analysis and comparison of the operating conditions, of rates, fares and charges, and the operating results of companies operating in states where regulation exists, with those of motor vehicle carriers operating where there is no regulation, might provide an answer. Such an analysis and comparison can not be made at this time. The general level of rates, fares and charges for motor transportation is unknown.

3. An increase in rates, fares and charges would not necessarily result from regulation unless the industry as a whole is now operated on an unsound economic basis. Regulation would tend, by the elimination of unfair competition and of irresponsible motor vehicle operators, to stabilize the industry. It would also prevent the increase of rates, fares and charges beyond what was necessary to enable the industry to operate on a sound economic basis. Certainly, it would be in the public interest to have motor vehicle transportation so operated. While increases in the cost of transportation services to some individuals might re-

sult, the individual interest should not outweigh the general public interest.

4. General increases in rates have been authorized for the railroads from time to time in order to enable them to continue operation. Individual rates also have frequently been increased to remove discrimination. In both of these cases the results are acknowledged to be in the interest of the public as a whole. If necessary to increase rates in order to maintain adequate transportation service, such increase is in the interest of the public. In other words, inadequate and inefficient transportation would be more costly to the public than any reasonable increase of rates.

## VIII

*Would regulation bring back traffic to the railroads; if not, why should railroads be advocating it; if so, how would the result be achieved?*

1. Regulation does not imply that all of the traffic, nor even a large proportion of the traffic, now carried over the highways by motor vehicle would be forced or would gravitate back to the railroads.

2. The railroads are not advocating regulation as a means of legislating motor vehicles off the highways or as a means of forcing an increase in all the rates, fares and charges of motor vehicles to the level of railroad rates, fares and charges. This is obvious from the fact that the rail carriers are asking for adequate authority themselves to operate such facilities.

3. What the rail carriers desire is regulation as a means of placing motor vehicle operation as a whole on a sound economic basis to the end that the proper sphere of operation of the railroads and



the motor vehicles can be intelligently determined. When the proper sphere of operation is determined, it will result in the retirement of either the railroads or the motor carriers from those fields in which they can not compete at the rates or can not give the service provided by the more efficient carriers.

4. Regulation would require each carrier to operate on a sound basis and prevent either carrier from competing destructively for such traffic as the other could carry more economically and efficiently. The result would be an advancement of the best interests of the railroads, the motor carriers and the public. Whether or not it would mean the return of any traffic to the railroads can not now be determined with any degree of certainty.

5. The railroads believe that proper regulation of motor vehicle transportation service would probably mean the return of some traffic to the rails. They are advocating regulation, however, more particularly in order that unrestrained and unfair competition of motor vehicles may not lead to such further losses of traffic as to impair the ability of the rail carriers to supply the efficient service required by those who of necessity must depend on railroad transportation for essential "full community" service, for national protection, security and welfare.

6. The crucial test of all proposals by railroads or others is adequate and efficient transportation service. Such service must not be broken down by wasteful competition. To prevent competition from being wasteful, it should be regulated and systematized. No temporary advantage derived from unreasonably low rates will compensate the public for the loss or deterioration of transportation service essential to its welfare.

## LAND GRANT RATES AND FARES

*By C. S. DUNCAN*

1. On several occasions the question of grants of land in aid of railway construction has been introduced into this hearing. While we are aware that this subject is not really pertinent to the hearing and while we are aware that the essential facts with respect to it are not unknown to the Commission, we feel a decided responsibility in meeting the statements and charges which have been made in connection with it.

2. We have made an examination of the reports and records filed in the government General Land Office and have compiled certain figures therefrom. These figures show as of June 30, 1930, an area patented or certified totaling 132,173,224 acres. From this acreage deductions are to be made to the extent of 1,919,956 acres contained in grants for Muscle Shoals river improvement, the Des Moines River grant, the Osage Reservation and the Des Moines Valley river improvement grant. A further deduction of not less than 2,000,000 acres is to be made representing the acreage reconveyed to the government. The railways have received, therefore, up to June 30, 1930, title to approximately 128,000,000 acres of land.

3. Public lands were granted in aid of railway construction in twenty-six states, over a period extending from September 20, 1850, to March 3, 1871. Sales of public land for cash in these states for the period beginning July 1, 1850, and ending July 30, 1871, show receipts of about ninety-four cents per acre.

4. In order that there may be a clear understanding of the reasons for the adoption of a so-called land grant policy as well as of the object in view, I desire to quote briefly from statements made by members of Congress in connection with bills for land grants.

5. Speaking in the United States Senate on behalf of the grant of land to the Illinois Central Railroad, Senator Stephen A. Douglas said:

“It is simply carrying out a principle which has been acted upon for 30 years, by which you cede each alternate section of land and double the price of the alternate sections not ceded, so that the same price is received for the whole. These lands have been in the market for 15 to 30 years; the average time is about 23 years; but they will not sell at the usual price of \$1.25 per acre, because they are distant from any navigable stream or a market for produce. A railroad will make the lands salable at double the usual price, because the improvement will make them valuable.”

6. In dealing with this same subject, Senator Henry Clay said:

“With respect to the state of Illinois—and I believe the same is true to a considerable extent with reference to Mississippi and Alabama, but I happen to know something personally of the interior of the state of Illinois—that portion of the state through which this road will run is a succession of prairies, the principal of which is denominated the ‘Grand Prairie.’ I do not recollect its exact length; it is, I believe, about 300 miles in length and but 100 in breadth. Now, this road will pass directly through that Grand Prairie length-

wise, and there is nobody who knows anything of that Grand Prairie who does not know that the land is utterly worthless for any present purpose—not because it is not fertile but for want of wood and water and from the fact that it is inaccessible, wanting all facilities for reaching a market or for transporting timber, so that nobody will go there and settle while it is so destitute of all the advantages of society and the convenience which arise from a social state. And now, by constructing this road through the prairie, through the center of the state of Illinois, you bring millions of acres of land immediately into the market, which will otherwise remain for years and years entirely unsalable.”

7. In discussing the general policy of Federal land grants in aid of railway construction, Thomas H. Benton said:

“From the consideration which I gave to that subject at that early day, it appeared to me that it was a beneficial disposition for the United States to make of her refuse lands, to cede them to the states in which they lay. Lands which had been 20 or 25 years in the market at the minimum price, and had never found a purchaser up to that time, were classed as refuse, and it was deemed that the state, as a local authority, might be able to make some disposition of them, which the general government, without the machinery of land offices, could not. The principle of the bill before the Senate is to take the refuse lands and appropriate them to a great object of internal improvement, which, although it has its locality in a particular state, produces advantages which we all know spread far and

wide, for a good road cannot be made anywhere without being beneficial to the whole United States.

“But, Mr. President, with respect to the general proposition, this application rests upon a principle that young states are made desolate, in a great degree, by having lands in their midst that pay no taxes, undergo no cultivation, that are held at a price that nobody will pay, and which, in fact, in some parts of the country become jungles for the protection of wild beasts that prey upon the flocks and herds of the farmers.”

8. In 1856 the Select Committee of the House on Pacific Railroad and Telegraph made the following statement:

“No better example can be given of the benefits resulting from the construction of railroads, to both public and private property, than that of the Illinois Central. On the line of that road the public lands have been offered for sale for many years without finding a purchaser, and were at last reduced to the lowest minimum price, 12½ cents per acre. Even this reduction was not sufficient to induce their sale; but after the government had given away one-half to assist in building the road, the other half was very readily sold for \$2.50 per acre. Similar results have followed the building of nearly every other railroad in the country, although in many instances the roads came in direct competition with river and canal transportation. A railroad across the continent would open up a vast extent of country to settlement, and much of what is now believed to be sterile and barren will, no doubt (as in California), be found to yield bounti-

fully to the agriculturist. These lands are now totally without value, no matter how fertile they may be, and to the government, worthless. By giving away one-half for the construction of the proposed roads the government will thereby attach a value to the remainder; and whatever that value may be will be the amount the government is gainer by the transaction."

9. While these lands are generally referred to as land grants, it is, of course, to be recognized that they are not gifts. In almost all cases they are bargains in which there was a *quid pro quo*. In almost all cases the bargain driven was a hard one, with the advantage to the government. I refer to the conditions attached requiring a reduced rate by these railroads which received grants of land on government mail, government materials and government troops.

10. We have undertaken a study of the amount representing the savings to the government year by year from reduced rates and fares on account of land grants, for the purpose of developing a more definite idea as to what the government has received and is receiving in return for these grants of land. It is to be regretted that the information available to us is not sufficiently complete to enable us to present an approximately full statement of the benefits and returns received by the government for these land grants. The information which we have is, however, sufficient to show that these benefits and returns are very large and to indicate that they are far in excess of the value of these lands. Originally land grants applied to

about 21,500 miles of road, but this figure was reduced by inability to comply with the conditions imposed. This small mileage is to be contrasted with the 240,000 miles of Class I roads.

11. Reduced rates due to land grants apply to mail, to government materials and to troops. In 1876, Congressman Holman, of Indiana, caused to be inserted in an appropriation bill a clause declaring that railroad companies which had been given land grants by Congress shall receive only eighty per cent of the compensation otherwise authorized. From that date to this the eighty-per cent rate has applied to some 14,410 miles of road.

12. More than fifty years ago a decision of the Supreme Court declared that the clause, which commonly appears in the Act granting land for the construction of railroads, should be interpreted as meaning that government materials and troops should be carried at fifty per cent of the commercial rate. Railroads with grants differently worded have had to transport materials and troops one hundred per cent free. Certain contracts between carriers and the government growing directly or indirectly out of these land grants have also given the government reduced rates.

13. We have been able to secure figures on the difference between the commercial rate and the eighty-per cent government rate on mail for the five-year period 1924 to 1928, inclusive, covering 13,255 miles of road out of the total of 14,410 miles. This difference between the commercial rate and the eighty-per cent government rate on mail aggregated for the entire five-year period \$10,250,000, or an average of \$2,050,000 per year. For the year

1928 the difference between the commercial rate and the eighty-per cent government land grant rate amounted to \$2,150,000.

14. Certain carriers, representing 4,893 miles of road out of the total of 14,410 miles to which the eighty-per cent rate applies, have returned to the government through reduced mail rates from 1876 to 1928, inclusive, the aggregate sum of \$16,682,-722.54. This is equal to \$3,429.53 per mile of road for mail alone. Information covering the entire period is not available from other carriers.

15. We have also been able to secure figures representing the savings to the government from land grant rates on materials and troops for the five-year period 1924 to 1928, inclusive, covering 228,-830.64 miles of road out of a total of Class I roads amounting to 240,429.41 miles. This means that 11,598.77 miles of road have not reported. These figures represent not only the savings from the mileage to which land grants directly apply but also the savings from land grant equalization rates. Data have been compiled by the billing road from rate bills used in annual settlements with the government and the amounts reported cover all reductions to the government, whether or not the billing road or some connecting line absorbed the reduction.

16. The figures cover separately the savings to the government on freight, that is, government materials, and on troops, that is, passengers. The figures for the 228,830.64 miles of road are as follows:



SUM REPRESENTING DIFFERENCE BETWEEN COM-  
MERCIAL RATES AND GOVERNMENT RATES  
ACCOUNT LAND GRANTS

	<i>Freight</i>	<i>Passenger</i>
1924 .....	\$1,658,778.63	\$ 527,737.69
1925 .....	1,787,733.48	492,913.04
1926 .....	1,589,497.22	474,945.06
1927 .....	1,714,624.91	632,149.95
1928 .....	1,783,104.46	417,455.93
Totals .....	\$8,533,738.70	\$2,545,201.67

17. It will be noted from the above table that the total savings to the government from land grant freight rates and fares for troops for the five-year period were \$11,078,940.37, which represents an average per year of \$2,215,788.07. For 1928 the figure is \$2,200,560.39.

18. When the figures given in the above paragraphs are combined, they show that for this five-year period the savings to the government, representing what the government has been receiving in return for land grants and including mail, government materials and troops, were \$21,328,940.37, or \$4,265,788.07 per year. In 1928 the aggregate savings to the government from these sources were \$4,350,560.39.

19. From the best figures obtainable it appears that these land grant rates represent a reduction to the government of about 12 per cent on materials and troops from the corresponding commercial rates.

20. It will be recognized, of course, that these figures represent the savings to the government from substantially less mileage than that to which

the rates actually apply, both with respect to government materials and troops and to mail. It will also be recognized that the period covered includes years of peace and not of war, in which latter time the government activity is most pronounced. Certainly, if the entire mileage were represented, the annual savings to the government from land grant rates and representing only the direct monetary savings which it receives from these ancient land grants would be substantially five million dollars per year. When it is also remembered that some of these reductions have extended over a period of nearly seventy-five years, it will be evident that the total savings to the government during all this period of time when the land grant rates have been in operation is a most substantial figure.

21. The government records show that the average amount received by the government for land disposed of between 1850 and 1870, which is the period during which land grants were made, was about 94 cents per acre. It is certainly true that a considerable part of this land could not have been disposed of at all if the railroads had not been projected and built and that an increased price would obtain for land made available for settlement because of railroad construction. Even if 94 cents per acre be taken as the value of the land received by the carriers for the purpose of railroad construction, an illustration obviously unfavorable to the carriers, the total acreage patented to the carriers up to 1930 would have equaled \$120,320,000. At a payment of five million dollars per year, this amount of \$120,320,000 would have been fully repaid in twenty-four years and would have been repaid several times during the long

period in which the land grant rates have been operative.

22. Even aside from the consideration that the country could not have been developed without the rail carriers and that the benefit to the government and to the people of the country from this marvelous development has many times repaid for the value of lands granted, it is obvious that there has always been a direct give and take in these grants. They can affect the transportation cost today and in the future only favorably to the government, because in this clear-cut trade between the United States and the railways the government no longer gives but continues to take. Under existing law, these benefits from the land grants will continue to accrue to the government for all the future.

# STATEMENT FOR RAILWAY TRAFFIC EXECUTIVES

*By* R. N. COLLYER

The Eastern railroads assembled a considerable volume of data respecting motor-bus and motor-truck competition which make it clear that except in the mountainous regions where competitive traffic may be sparse and where the highway conditions make motor truck operation difficult, these competitive agencies have developed an aggressive competition throughout Eastern territory. Every type of railroad car has its highway counterpart.

Eastern carriers have considered plans for making a joint presentation of the territorial extent of this competition but the magnitude of the data presented in this case by individual carriers and the universal development of this competition as presented, make it unnecessary to burden the record with testimony summarizing the facts. We had planned to illustrate the extent to which specific rates have been published to meet motor-truck competition, by plotting the commodities and line of movement on our territorial maps, but it was found that in certain areas the competitive development was so intense as to origins and destinations and so diversified as to the commodities involved, that graphic expression of the detail was impracticable.

The Eastern railroads are not waiting for the Interstate Commerce Commission to tell them what to do in meeting the competition created by highway motor vehicles. On the contrary, the

railroads individually and jointly are trying to develop by experiment where changes in rail transportation conditions will enable them to meet the outstanding characteristics of motor vehicle transportation. In this field the motor vehicle has shown itself to be suited to the convenience of shipper as to hour of shipment and speed of delivery within an economic radius, the minimizing of costs of packing for shipment, loading, and the convenience of store-door pick-up and delivery.

Furthermore, the Eastern railroads as a practical matter are finding it necessary, by reason of the diversion of traffic to uncontrolled competitive agencies, to voluntarily reduce their rates on some of their most remunerative traffic in the higher classes, even though the rates on such traffic would have been increased under findings of the Interstate Commerce Commission in the Eastern Class Rate Case. These changes being in a sense voluntarily made by the carriers, but in reality forced on them by competitive conditions, are brought about both by reductions in the Official Classification ratings which these carriers deem necessary because of the new competition, and by the establishment of numerous specific commodity rates made to meet the competition of the highway, and the waterway supplemented by the highway, where such traffic can be retained at lower rates that may yet yield some profit.

As an example the Eastern Executives have directed the reduction of the Official Classification carload rating on passenger automobiles, motor trucks and automobile chassis from 110 per cent of first class to first class, it being their judgment that as to the longer hauls this change will keep the rails in competition with the highways. The

first class carload rating has been observed in the southern and western classifications and the classification will thus become uniform throughout the country. Studies of the motor competition as applied to this traffic have shown that for the shorter hauls the scale of first class rates are not on a competitive basis and that commodity rates are necessary to retain this traffic to the rails. These commodity rates are to be published from the automobile producing points and for the lengths of haul which the railroad representatives in joint negotiations with the automobile producers' representatives find necessary and practical. The importance of this readjustment may be realized by the fact that as shown by the Interstate Commerce Commission report on commodity statistics, the traffic in passenger automobiles and auto trucks alone, as originated on the rails of Eastern railroads, amounted to 389,795 carloads in 1928, 371,391 carloads in 1929, and 204,637 carloads for the first nine months of 1930. The facility with which automobile deliveries may be on own wheels for very short distances from point of production removes that traffic from consideration. In the construction of rate scales the unit of first class includes terminal costs approximating 80 per cent or more of the gross rate at the initial distance and gradually diminishing in relative importance as the distance increases. A large element in this terminal cost is found in the labor and accounting incident to the transportation of less carload freight.

The terminal cost elements named are of less importance in the handling of carload freight under normal conditions of transportation, and in the presence of controlling competitive agencies such as the motor truck, rates on high-class car-

load freight such as the finished automobile may be adapted to that competition without raising question as to managerial efficiency.

The adjustment of rates to meet motor truck competition will, however, find few fields in which the situation may be dealt with as broadly as in respect of the automobile rates and the Eastern railroads in thus adapting their rates to meet motor vehicle competition on the highways in situations where they believe such action to be justified as a matter of self-preservation, must act with due regard not only to the particular rate or situation but also for the possible effect of such changes on other rates not immediately involved.

As rate changes of great moment are thus confronting the railroads, based on this competition, experience leads them to believe that questions will come before the Interstate Commerce Commission which will require the Commission to recognize what is confronting the railroads in respect of this competition, and on reasonable showing of the railroad need of assistance to modify various rules, precedents and even principles which it has evolved to the extent that may be justified in the exercise of that fostering guardianship of the Commission for the railroad systems, which, as interpreted by the Supreme Court of the United States (263 U. S. 478), the law contemplates.

As a convenient means of arranging their suggestions to the Commission as to the rate or tariff assistance or relief that may be necessary in meeting the motor-truck competition, the Eastern railroads present this summary following the order in which such interstate traffic questions may be involved in sections of the Interstate Commerce Act.

## Section 2.

This section makes unjust discrimination unlawful and prohibits the common carrier from charging or receiving by any special rate a less compensation for any service rendered or to be rendered in the transportation of property than it charges another for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

With improved highways and high-speed motor vehicles, motor vehicle competition on the highways may be accepted as here to stay insofar as it proves itself to be genuinely economical. This competitive traffic agency must therefore be reckoned with. The entire absence of public control of interstate rates and tariffs of the motor-truck competitor in this field impels consideration by the Interstate Commerce Commission of the extent to which it should go, in consonance with its obligation to the railroads, in permitting them to engage fully in this competition. The lack of responsibility for the maintenance of a rate fabric and the sporadic character of the competition of the motor truck makes certain that tariffs publishing competitive rates of the rail carriers must partake of the same sporadic character, or as an alternative the railroad must either forego the traffic or make the competitive rate applicable at related points where the competition is not found. Eastern railroads feel that the Commission may reasonably recognize that motor competition made available to one person for the transportation of traffic competitive with the railroad may properly be accepted as ground for the issuance of a com-



petitive special rate, and that if the motor competition does not compel issuance of a like rate for a like and contemporaneous service in the transportation of a like kind of traffic, the Commission should recognize that there is such dissimilarity of circumstances and conditions that no infraction of Section 2 is involved.

### Section 3.

The prohibitions of Section 3 as to unreasonable preference or advantage run not only to persons but also to places.

Excluding classification changes and such broad industrial changes as with respect to automobiles, the rates made by the railroads in competition with motor trucks are likely to be sporadic and unrelated to the general rate fabric. This competitive effort will involve the publication of rates on particular commodities, subject in particular to motor transportation, made without regard to rates elsewhere which are not in the particular field of motor competition. It will also involve the making of competitive rates between particular points where motor competition must be met, but without extending these rates to points where motor competition is not controlling. If, as the railroads believe, they are entitled to meet this competition created by cooperation between the shippers and motor truck carriers, then the Commission in all its parts should give the railroads full protection in complaints alleging undue prejudice under Section 3.

### Section 4.

The long and short haul rule of this section is consistent with the maintenance of the systematic

rate structure which during the past fifty years has been evolving as between like transportation organizations operating under like conditions and like public control. The revolutionary change whereby an entirely different and unorganized transportation agency, operating under entirely different conditions and without effective public control respecting rates, brings with it the necessity for a different view of the exercise of the Commission's powers under Section 4. The traffic executives of Eastern railroads believe that in this situation will be found a class of the special cases as to which the proviso of the 4th section empowers the Commission to authorize the carriers to charge less for longer than for shorter distances for the transportation of passengers or property. The carriers being constrained by the force of unregulated competition may naturally be expected to adjust rates to the competitive situation under substantially similar conditions, but they should not be required to apply such competitive rates solely upon the theory of Section 4. Consequently, they hope for broad relief from the Commission in this respect.

### Section 6.

The provisions of this section with respect to publishing, filing and posting of rate schedules by the carriers, largely place administration in the Commission.

In the development of an orderly railroad rate fabric in recent years, the Commission has consistently demanded an improvement in tariff rates, rules and regulations. With the introduction of the competitive means of transportation not controlled by the Commission and not subject to any

interstate tariff rules and regulations a new situation has developed in which there may be necessity for the Commission to modify its regulations, or to recognize the necessity for exceptions thereto. As the rates necessary to meet motor-truck competition will be sporadic rather than systematic, the carriers' rate fabric will tend back toward the isolated rate which has recently been the subject of unfavorable comment.

The Eastern railroads believe that tariff items published to meet an unstable competition where and as found may be properly provided with expiration dates so as to indicate the non-permanence of the rates as published where the traffic movement is limited to a particular period, and that the objections of the Commission to such expiration dates should not run to motor-competitive rates.

In the case of motor truck and water rates in combination, the railroads should be permitted to publish competitive all-rail rates that may be suspended when the water transportation season closes and be resumed with the opening of the water season.

In connection with tariff situation as applying to the motor competitive rates, the carriers need relief from Rule 9-E of I. C. C. Tariff Circular 20, first, as to volume of supplemental matter, so that the publication of such competitive rates will not entail reissue of voluminous supplements or the reissuance of the original commodity tariffs; second, an unlimited number of supplements should be permitted for tariffs publishing motor-competitive rates; and third, permission should be granted, on petition, to publish motor-competitive rates on less than statutory notice.

Possibly the Commission could see the way to authorize the separate filing of motor-competitive railroad rates in issues devoted to that purpose in areas or circumstances where that competition is peculiarly burdensome to the railroads, so that normal tariffs and tariff rules would not be the subject of the disorganizing influences arising from the necessity for publication of these motor-competitive rates. While such a suggestion might be regarded by the Commission as revolutionary, that characteristic is impelling the carriers to revolutionize their theories of transportation and rate construction to avert disaster.

As to the general rate conditions the following is submitted:

During the past decade there has been a steadily increasing and accelerated movement in rate reconstruction whereby the carriers' methods of rate construction and theories of rate relationship have been set aside by the Interstate Commerce Commission, and the Commission's theories of rate construction and relationship have been and are being substituted for those of the carriers. In Eastern Territory the carriers have maintained a theory of rate relationship which is well described by the Commission in its report in the Eastern Class Rate Case, at page 391, I. C. C. 164, as follows:

“Class rates in official territory differ materially from those in other sections of the country. They are much lower in level, with the exception of certain rates in western trunk-line territory, which approach them in level. They also apply, generally speaking, to a much wider range of traffic. In the other

territories class rates, at least in the past, appear to have been of particular interest to jobbers, and the traffic which they move seems to have been, and perhaps still is, predominantly less than carload. For carload traffic of any important volume commodity rates have generally been provided. This is not the situation in official territory, where a great deal of very important carload traffic moves on class rates. Of the traffic embraced by the revenue test about 68 per cent was carload. Among the commodities which generally move in carloads on class rates in official territory but are given commodity rates in other territories are fruits and vegetables (including apples, cabbage, and potatoes), dairy products, vegetable oils, furniture, wrapping paper, soap, sash, doors, and blinds.

“A corollary of this situation is that, as compared with the class rates, the commodity rates on heavy, low-grade articles in official territory are often relatively high and in the other territories relatively low. While it is difficult to determine the fact with exactness, it is quite clear from general knowledge, and also from evidence here of record, that the spread between the class rates in official territory and those in effect in the South and West is not an accurate index of the differences in general average rate levels, the latter differences being relatively considerably less. Further results of the situation are that the rates on less-than-carload traffic and light-loading high-grade carload traffic in official territory appear disproportionately low, and that at the boundary of that territory with southern territory, and to a lesser extent at the boundary with western territory, abrupt changes in the level of class rates occur which give rise to many complications and complaints.

“The new system of class rates in official territory should clearly not yield less than the present aggregate revenues from this traffic. On the contrary, there is ground for the view that class-rate traffic in this territory, particularly that belonging to the higher classes, may well pay higher rates than those now in effect. This view is held by many authorities on transportation economics, who believe that freight charges are of far less relative importance in the case of high-grade manufactured commodities than they are in the case of low-grade raw materials, and it seems to have been at least in part responsible for the enactment of the Hoch-Smith resolution.”

Briefly summarizing the effect of these recent changes prescribed by the Interstate Commerce Commission, it is correct to say (a) that long-haul rates are being decreased to an important extent, this traffic being the least open to motor competition, and that rates on short-haul traffic are to some extent being increased, this traffic being most open to motor-truck competition; (b) also that rates on freight in the upper classes, where the motor truck finds its greatest advantage, are being increased, while rates in the lower ranges are being reduced where motor-truck competition is less destructive of railroad revenue.

In other words, while the Commission is reconstructing the railroad rate fabric as if there were no competitive rate elements other than between persons, places and railroads, a new and unregulated means of transportation is being evolved by the public and the State whose competition the railroads must contend with. The Commission must come to recognize that this new element will

necessitate a change in the theories by which it has been reconstructing the national railroad rate fabric.

An outstanding characteristic of the Commission rate adjustments is the use of distance scales of maximum reasonable rates and distance scales have also been provided by the railroads as the underlying measure for specific rate adjustments. Whether created by the Commission or the railroad, distance scales are approximate rather than precise instruments of rate measurement, and in respect of the extent of the scale, its rate level or the progression of rates, these all rest upon the judgment and objective of the makers of the scale rather than on definitely determined factors of transportation. And this is as it should be since transportation is not an exact science. While the conditions of production of scales by Commission and railroads are similar, the similarity does not run to the application of the scale in making rates for publication, for the reason that rates based on the railroad scale may be modified and adapted to practical transportation conditions without raising any presumption that rates based thereon are chargeable with preference or prejudice. But the Commission scale being usually prescribed as the basis for maximum reasonable rates is generally regarded as endowed with some peculiar virtue, inasmuch as departures therefrom without the Commission's sanction, lay the foundation for attack upon the entire adjustment of rates which the scale underlies. If, therefore, an intense motor-truck competition develops in an area and upon an important commodity for which a maximum rate scale has been prescribed by the Commission the railroads face the difficult alternative

of adhering to the scale and sacrificing the competitive traffic, or of meeting the motor-truck competition and endangering the rate adjustment where that competition may not be controlling. When rate scales are provided for important car-load commodities for short distances they are likely to come in conflict with motor truck competitive rates and with rates applicable within switching districts. That situation developed in connection with the rates on manufactured iron and steel articles prescribed by the Interstate Commerce Commission in Docket No. 17000, Part 6, and a case recently decided by the Public Service Commission of the Commonwealth of Pennsylvania. In its report in that case the Public Service Commission of Pennsylvania made the following observation which is quite to the point:

“The theory of the mileage scale appears to be to compensate for some reductions made in the rates for the longer hauls by increases for the shorter hauls. In this particular instance, it would seem from the record that the rates made effective for the extremely short hauls are so high that the traffic will be driven to other means of transportation. There is water competition in the Pittsburgh District which the carriers have long since recognized. Motor transportation is also available for certain kinds of this traffic. Therefore the carriers may profit but little by maintaining rates at the level here attempted.”

The rates prescribed by the Pennsylvania Commission are 50 per cent below the interstate scale at five miles, and graduate up so as to reach the Interstate scale at 100 miles.

Applying this Pennsylvania intrastate scale, for



the distances involved, to the 1925 tonnage used for purposes of the revenue test in the investigation into rates on manufactured iron and steel, I. C. C. Docket No. 17000, Part 6, would indicate a revenue loss of \$1,816,463 per annum if the rates were generally applicable in Trunk Line and Central Freight territories. Nevertheless, contact with conditions of shipment and belief in shippers' conviction that continuance of present short-haul rates would induce an enormous diversion to motor trucks and boats, have convinced the Traffic Executives of the Trunk Line and Central Freight Association carriers that the rates prescribed by the Pennsylvania Commission should be made effective in Pennsylvania. The lines will also docket for discussion with the public a readjustment of these short-haul rates elsewhere, believing that an actual or potential competition shows necessity for a readjustment to avoid the loss of such traffic.

In the I. C. C. investigation a loss of revenue approximating two and one-half million dollars per annum was shown by the carriers' revenue test, due almost entirely to reductions in rates for longer hauls, and that revenue study contemplated potential revenue increases from traffic moving at higher short-haul rates.

The carriers' experiences and evidence before the Pennsylvania State Commission confirm the carriers' earlier belief that the short-haul traffic must largely be sacrificed if the higher short-haul rates were continued. While the acceptance of this conclusion outside the scope of the Pennsylvania State Commission's authority is within the sound discretion of the railroad managements, this conclusion points to the necessity for considering what the shipper can do in self-protection if rate

increases are proposed in the areas of water competition or for distances in which motor-truck competition is practical.

Rate scales for broad application on specific carload commodities should not be started automatically for the shorter distances unless there is a showing of clear necessity for such short-haul application. Within such short-haul distances the railroads should be free to adapt their rates to manufacturing necessity, switching operations and motor-truck competition without endangering an entire rate structure. The mileage scale prescribed in Wool Rates Investigation, 91 I. C. C. 235, recognized the principle of designing a scale fitted to the lengths of haul which were actually in issue and covered hauls approximately 1,500 miles and upward, to Boston but also applicable to other North Atlantic ports.

The following observations are offered from the viewpoint of traffic executives of eastern railroads:

The adaptation of facilities on the rails to meet competition on the highways may necessitate radical departures in the character of transportation units and the methods of handling thereof, and it is hoped that the Commission will freely recognize the right of the railroads to meet the new competition by experiment and regardless of long established usage.

The effect of this motor-truck competition may also extend to require arrangements for pick-up and delivery in which transportation units fitted to truck movement but smaller than the railroad car may come into use for which rates differing from the present carload and less carload rates may be necessary. Phases of this question are already before the Commission and will continue to

develop. Shippers will favor the adoption of such arrangements, having in view convenience and economy for store-door pick and delivery. During the experimental stages of these arrangements it is hoped that the Commission will have regard for the railroads problem and not require the continuance of such arrangements where subsequently shown by the carriers' experience to be not in the railroad interest.

Insofar as the individual interest of the railroad may make desirable the use of the highway for furnishing a service to the public not covered by its service on the rails and not provided for in its tariffs as a joint rail-highway service, the railroad should be accorded the same freedom of action as may be enjoyed by any other person, persons, firms or corporations.

Where the railroad finds, as it may find as the result of traffic diversion, that freight can be moved between its stations more economically by highway than by rail, it should be in position to use the more economical method of transportation, being required to observe its published tariff of rail charges only for transportation when the rails are used, or when practicable under competitive conditions, between the rail stations when the highway is used.

Where the decrease of traffic on the rails results in conditions which will not as a matter of economical and efficient management justify the continuance of train operation, or stations, or the maintenance of the railroad right of way, the right of discontinuance of service or abandonment of property should not be withheld.

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NOTE: Mr. Collyer also said that the traffic executives of the Western roads concurred in the principles of this statement.