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STATEMENT OF JOHN W. BARNUM, DEPUTY SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION, BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE, ON S.J. RES. 253, TUESDAY, NOVEMBER 19, 1974.

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to present the views of the Department of Transportation on legislation which would establish a National Commission on Regulatory Reform. Such a Commission was proposed by President Ford in his October 8 address to a Joint Session of Congress on the economy. The President proposed that the Commission "undertake a long-overdue total reexamination of the independent regulatory agencies." He suggested a joint effort by Congress, the Executive Branch, and the private sector to "identify and eliminate existing Federal rules and regulations that increase costs to the consumer without any good reason in today's economic climate."

There are two major bills before the Senate which would establish such a Commission, S.J. Res. 253 and the Administration bill, S. 4145. The Department strongly supports creation of a National Commission on Regulatory Reform and we urge adoption of the Administration measure to accomplish that aim.

As you know, Mr. Chairman, DOT appears regularly before three independent regulatory agencies: the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. Our experience in dealing with these agencies, both

in our filings before them and in our analysis of the impact of their rulings and regulations, has persuaded us of the need for regulatory reform. It has become increasingly apparent to the Department that revision of the regulatory framework is a prerequisite to a viable transportation system, just as a viable transportation system is a prerequisite to a strong American economy.

The Department has long been concerned that Government regulatory policies sometimes contribute to financial and other difficulties encountered by our carriers, even as they also contribute to the smooth running of an efficient transportation system. We consider it highly appropriate, therefore, that a Commission on Regulatory Reform study the economic impact of the independent agencies' rules, actions and policies upon market structure, competition, inflation, employment, and prices and recommend to Congress and the President methods of modernizing the regulatory structure.

At present, carriers, shippers, and passengers frequently face a web of restrictive government regulations which stifle competition, discourage innovation, and foster inefficiency. Our experience and research have shown us that the present regulatory structure is, in many respects, outdated, inequitable, inefficient, uneconomical and frequently irrational. It often misplaces incentive and disincentive, distorts competitive advantage, protects inefficient carriers from effective competition, over-restricts market entry, artificially inflates rates

and misallocates our Nation's resources. Under the current system, for example, many products purchased by business and consumers bear a higher price tag because price fixing and other forms of shelter from competition sanctioned by our regulatory agencies protect the least efficient carriers and permit rates far over cost. It should be noted, of course, that not all transportation is subject to federal regulation.

It is unfortunately a truism that regulation begets further regulation and that regulations outlive their rationale. The regulation of transportation, for example, which began with the Interstate Commerce Act of 1887, has evolved into a pattern of regulations that no longer serves the public interest as originally intended and frequently serves ends opposite those sought. But even as one admits the inflexibility of outmoded regulations which impede development of a lower-cost, more efficient national transportation system, one must give credit to the transportation regulatory agencies without whose work that vast system would not be as efficient and productive as it is and one must recognize the necessary and desirable aspects of regulation in guarding against both disruptive competition and the abuse of economic power.

In addition to the substantive problems created by our present regulatory structure, there are procedural problems as well. Proceedings before the agencies are frequently unconscionably delayed. Only eleven days ago, for example, the ICC gave conditional approval to a merger of the Chicago, Rock Island & Pacific Railroad into the Union Pacific Railroad. Approval of the merger had been first sought twelve years earlier and it has been estimated that from two to ten additional years will be required to accomplish the merger with

the conditions attached by the ICC. And the CAB, which has a far better record, recently conceded that its data were stale because of a 2-1/2 year time lag in concluding its Puerto Rican fare investigation.

Other criticism has been directed at the independence of the regulatory agencies. Frequently the agencies have been accused of becoming captive to the industries they regulate. Mr. Justice Douglas has gone so far as to suggest that various regulatory agencies be abolished after a fixed period of operation for this very reason. One need not agree with his solution to recognize the problem.

In short, our federal independent regulatory agencies are ripe for study and reform.

As part of our mission to help revitalize the Nation's transportation system, the Department has examined alternate methods of reform which we might recommend to the President and Congress, including elimination of those aspects of regulatory structure which hamper transportation improvement. In 1972, our efforts culminated in the Transportation Regulatory Modernization Act (S. 2842, 92nd Congress) and, in January of this year, we proposed the Transportation Improvement Act (introduced as S. 3237).

Among the many legislative reforms DOT has actively promoted are the following: (1) allowing management greater flexibility in establishing rates in the competitive market place within

certain limitations; (2) limiting the right of carriers to set rates by collective agreement through rate bureaus which operate immunized from antitrust laws; (3) permitting carriers greater freedom to abandon unprofitable operations and requiring prompt regulatory consideration of their requests; and (4) liberalizing restrictions on certain carriers entering new service markets.

In 1973, Congress enacted the Mixing Rule legislation (P.L. 93-201) partly on the basis of a Departmental study which recommended removal of artificial regulatory restrictions on the operation of barge lines. The Department is now completing a research program which will lead to ICC action or legislation to eliminate restrictive trucking regulation and allow wider scope to the forces of competition.

In addition to our legislative proposals, the Department regularly participates in proceedings before the ICC, the CAB, and the FMC. In our filings, for example, before the CAB we have urged the Board to investigate capacity agreements and restructure domestic passenger fares. Before these agencies, DOT has been an advocate of pricing flexibility, of limiting operating restrictions, of curtailing certain rate bureau procedures and, in general, of encouraging less regulation and more reliance on competitive forces.

In these ways, Mr. Chairman, we have been in the forefront of those seeking reform and greater flexibility by our regulatory

agencies. But even as we recognize the need for an integrated study of regulatory agency policies and operations, we believe that there should not be a moratorium on our efforts, legislatively or in positions taken before the regulatory agencies, during the time such a study is made.

Some among those in the regulated industries and the regulatory agencies have already interpreted establishment of a commission as a means of delaying for years the reforms proposed not only by DOT but also those of other departments and the regulatory agencies themselves. It must be made clear that the Commission will complement these efforts, not substitute itself for them and thereby set back the important progress already made. We feel very strongly about this with respect to several of the provisions contained in our proposed Transportation Improvement Act, some of which have been adopted in the Surface Transportation Act recently reported by the House Commerce Committee. We believe these provisions are consistent with the goals of the proposed Commission and, in view of the immediate need for reform in selected areas of transportation operations, that it would be unfortunate to sidetrack them at this time.

The Department will be delighted to work with the Commission, to cooperate in every way it can, and to provide Commission members and staff with the benefits of our experience over the past eight years in the transportation regulatory area. We would be particularly pleased to have the Commission evaluate our efforts to achieve regulatory reform.

Earlier in my testimony, I made reference to the fact that there are two major measures before the Senate which would establish a National Commission on Regulatory Reform, and stated our preference for the Administration bill (S. 4155). Among the differences between the two proposals are the length of the study, composition of the Commission itself, and the scope of investigation. Because S. 4145 proposes a more accelerated study, it reflects the progress already made in identifying areas of needed reform and the urgency of correcting those policies of the regulatory agencies which contribute to inflation at the earliest moment. Its composition reflects a balanced partnership between Congress, the Executive Branch and the private sector. We support S. 4145.

We do have the following suggestions:

First, that the Commission be more than a study commission alone. We have a tendency in government to study problems and then ignore the recommendations of our study commissions. A follow-up report on progress made in implementing the legislation and recommendations of the Commission is valuable. Concrete recommendations are essential. We hope, therefore, that it will be possible for Congress and the Commission to define clearly the areas to be studied and that priorities be assigned to areas such as intermodal transportation and the problems of coordinating activities of different regulatory agencies, the comparative performance of regulated and non-regulated areas of transportation, general rate increases, regulatory lag, the desirability of competitive impact statements, the use of anti-competitive agreements,

and other items, in need of immediate attention. Keeping the focus of the study narrow and emphasizing the implementation of conclusions reached is vital in any such commission.

Secondly, as I have discussed earlier, we suggest that the Commission not so design its efforts as to interfere with the new direction in regulatory change presently being pursued by DOT and other reform advocates. The Commission should complement, not delay or displace present reform efforts which serve an identical goal. It would be unfortunate if work like the Surface Transportation Act, carefully prepared over considerable time, moved to the back burner because of a shift in focus back to the study stage of the legislative process. Rather, we hope STA can be viewed as a model of the type of legislation the Commission might recommend. Congress should make clear the importance of the Commission as a tool, not an enemy, of reform.

Thirdly, we hope the Commission will evaluate the performance of agencies such as the ICC, CAB and FMC not only on the traditional standards of regulatory need, cost, benefit and effectiveness, but also by the evolving standard contained in recent federal court cases which underlines the importance of competition in regulated industry and is in effect requiring regulatory agencies to choose the least anti-competitive solution to the problems before them. Like the reform legislation proposed by DOT and others, this new direction is one which we hope the Commission will accept and encourage.

In conclusion, Mr. Chairman, we strongly support the creation of a National Commission which can be of great assistance in reducing the unnecessary burdens of over-regulation and in helping to reinvigorate and add competitive spark to those regulated in the transportation area. Regulatory reform can be a key element in the "new mobilization" against inflation proposed by the President. It offers, as well, the opportunity to give attention to problems which have become chronic in the operation of our independent regulatory agencies and to create a new design, drawing upon our past experience, of a regulatory system which fosters competition, which protects consumers' and the public interest, and which encourages the growth of a healthy transportation system.

