

STATEMENT OF JOHN W. SNOW, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U. S. DEPARTMENT OF TRANSPORTATION, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON SURFACE TRANSPORTATION, ON MOTOR CARRIER REGULATORY REFORM, TUESDAY, SEPTEMBER 14, 1976.

Mr. Chairman and Members of the Subcommittee:

I thank you for this opportunity to appear before your Subcommittee to discuss the issue of motor carrier regulatory reform, the problems of the owner-operators, and the recent proposal of the Interstate Commerce Commission to introduce certain procedural reforms.

Our present system of motor carrier regulation is seriously deficient and stands in need of fundamental change. Federal regulation of motor carriers was initiated in 1935 when the ICC was given jurisdiction over a significant portion of this diverse and complex industry. It was a relatively young industry then, and needless to say, it was a time of severe economic depression. The times have changed, but the system of regulation has not changed. This essentially competitive industry is being regulated as if it were a public utility. The ICC regulates rates, controls entry and has imposed numerous restrictions limiting the particular markets a carrier can serve, the commodities it can carry, and even the roads over which carriers are permitted to operate. The result is high rates and serious economic wastes. Current regulation, rather than serving the public interest, serves primarily to benefit the regulated carriers by sheltering them from normal, healthy competition. It is a system that must be reformed and that reform must be thorough and comprehensive.

We recognize that the carriers have been operating under the present regulatory system for many years and that time is required for them to adjust their operations to a liberalized regulatory environment. Our bill is

carefully phased so the carriers will be able to make the necessary adjustments. The net result, we believe, will be an improved transportation system in which efficient, well-managed carriers will grow and prosper.

Our bill, the MCRA, provides essential and long overdue reforms. But other proposals that may be made by others could do so also. We have no excessive pride of authorship. The objective is far more important than the particular legislative vehicle for reaching it. Let me emphasize, however, that our proposal is the product of a serious effort to study the motor carrier industry and understand the effects of economic regulation on it.

The Department has conducted a great number of studies on these issues and we are submitting these for the record. In addition, we have participated in a number of proceedings before the ICC in which we have proposed the need for a less restrictive approach to regulation. The staff members of your Subcommittee have been very helpful in shaping the issues and indicating where more study is needed. We recognize that we do not have all the answers, but we firmly believe that we have carried the initial burden of proof in demonstrating the need for reform.

I shall first ask you to consider some facts which I think illustrate the problems with the current system of regulation. Then I shall discuss how our bill would meet these problems and improve regulation of motor carriers. In the months ahead I hope there will be more discussion of facts and of reform proposals.

The present system of regulation produces many wastes, inefficiencies, inequities, and plain absurdities. Let me set out a few examples.

1. A carrier operating between Minneapolis-St. Paul and Dallas is required by its route authority to travel 37 percent extra miles on trips between the two markets. In February 1974, during the height of the energy shortage, the ICC denied a request by the carrier, Consolidated Freightways, to travel directly between the two markets in order to eliminate excessive mileage. The request was denied on the grounds that this would enable the carrier to provide better service to shippers and thus would adversely affect competing carriers.

2. Many non-transportation business firms own their own trucking fleets. These are the so-called "private carriers." Private carriers may carry their own property but they may not carry property of others or even of their own subsidiaries. A firm interviewed in a recent study of private carriage uses its own trucks to make northbound shipments from North Carolina to New England. The trucks then return home empty. A subsidiary of this firm makes southbound shipments using the subsidiary's trucks from New England to Georgia. These trucks also return empty. The total annual mileage is approximately 330,000 miles, almost half of which is needlessly empty because of ICC restrictions on intercorporate hauling. This could be saved without any adverse effect on existing common carriage.

3. A shoe and hosiery chain with outlets in the West indicates that the freight rate on nylon hosiery from North Carolina is twice the rate for cotton hosiery although the transportation costs are identical.

4. A New York businessman tried to obtain authority to transport private automobiles and personal baggage from New York to Florida. It was to be a premium service designed for people who wanted to use their cars on vacation but who didn't want to accompany them on the Auto-Train and who didn't want to wait for their cars to be consolidated and shipped with new car orders destined for Florida. No comparable service existed. The businessman obtained his certificate but it took about two years and \$5,000 in out-of-pocket expenses, and, according to the businessman, would have cost \$70,000 in additional legal expenses had he not been a lawyer and able to handle his own case.

5. A Salt Lake City wholesaler of school and church furniture received the wrong size lampshades. When he attempted to send them back to the producer in Union City, Indiana, the shipment somehow ended up in Indianapolis. It stayed there for many weeks because no carrier had direct operating authority from Indianapolis to Union City. Eventually, the shades were routed back to Chicago, then on to Union City.

6. The carriage of most unprocessed agricultural goods is exempt from economic regulation, but such exempt carriers are not allowed to compete with regulated carriers for shipments of manufactured goods or even processed goods on their return trip. Agricultural carriers complain often about the empty backhauls that result because they cannot carry canned goods from the processor after delivering the basic agricultural ingredients.

These are but a few examples of the problems of a system of regulation that no longer serves the public interest. Unfortunately they are

not isolated cases but rather illustrate the pervasive waste and inefficiency resulting from our current restrictive and antiquated system of motor carrier regulation. In general terms there are two basic areas where reform is desperately needed: entry and pricing.

First, I will discuss entry. To operate as an interstate carrier of most manufactured or processed goods, a motor carrier must obtain authority from the Interstate Commerce Commission. These certificates of operating authority have been obtained in two ways. The great majority of today's operating rights were obtained via the "grandfather" clause of the Motor Carrier Act of 1935. That is, when the interstate motor carrier industry was brought under regulation in 1935, the existing 18,000 or more firms were granted operating authority.

New carriers, however, are required to meet the so-called "public convenience and necessity test." The Commission has interpreted this standard of public convenience and necessity to severely restrict entry into the motor carrier industry. The Commission's primary focus has not been upon the broad public interest in efficient, responsive transportation service, but rather upon the interests of the existing carriers. It is the Commission's policy that "existing carriers should be afforded the opportunity to transport all the traffic which they can handle adequately, economically, and efficiently in the territory they serve before new service is authorized" (110 M.C.C. 180, 184-185). In other words, a new applicant who is financially responsible and who offers a service desired by the public will be denied the opportunity to provide service if the existing carriers have the capacity to handle that service even

if they do not already do so. This interpretation applies even if the existing carriers will handle that service only at rates that are higher than those offered by the applicant. The Commission has ruled that the offering of a lower rate is irrelevant in its determination of whether an application is consistent with the public convenience and necessity.

The basic result of the entry policy of the ICC is the stifling of competition and the creation of monopoly power. In 1935, when the Motor Carrier Act was passed there were more than 18,000 firms. Through merger and attrition, that number has now dwindled to approximately 15,000. This shrinkage has occurred in a forty-year period when this country has seen unparalleled economic growth and when intercity truck traffic has grown almost ten-fold.

Fifteen thousand firms may seem like a great number, but the operating authority of virtually all is highly limited either in terms of commodities or territory. On high density routes where a great number of carriers were operating prior to the 1930's, there may be a dozen or more firms today. But on many routes only one or two firms may be authorized. This is particularly true in areas that have experienced significant growth in population or industrial activity. A study of the Rocky Mountain area found that one-fourth of the towns were served by only one carrier, and fully half by no more than two. Even in large metropolitan areas there are problems. Shippers in the Denver area reported that they were limited to two motor carriers on about 10 percent of their shipments. Shippers interviewed in the New Orleans area estimated that for more than half their shipments, no more than two motor carriers were available.

The restrictions placed on carriers' operating authorities not only limit competition, they create waste and inefficiency and add unnecessarily to the costs of transportation. We have already talked about route restrictions which add unnecessary mileage. In addition, according to ICC figures, 30 percent of all commodity restricted authorities -- the most prevalent kind -- provide only one-way authority. This is true even after allowing for combinations of grants to the same carrier. Carriers subject to such a one-way restriction may not legally carry a load on the return haul, and this means that the rate on the front haul must be higher than it would be otherwise.

These restrictions contribute to the problem of empty mileage. The best available evidence shows that over 25 percent of ICC regulated vehicles are traveling empty. Because of restrictions on whom they can serve and what they can carry, exempt carriers and private carriers have even worse problems with empty mileage. A recent DOT study of 40 firms engaged in private carriage shows that these carriers would save about 24 million vehicle miles annually if the prohibition against intercorporate hauling were removed. While it is true that some empty mileage is inevitable because of basic traffic imbalances, there is far more empty mileage than there should be because of regulatory restrictions which prevent trucks from carrying cargo on their return trips even when it is available.

The amount of shipment transfers between carriers called interlining is also increased by certificate restrictions. In many cases no single carrier has the necessary operating authority to carry a shipment its

entire length. Where this happens, two or more carriers must participate in the movement by transferring the cargo between carriers at selected interchange points along the way. Unneeded interlining increases the need to warehouse and store items, increases transportation times, and raises the costs of transportation.

Many applications for operating authority are made each year and a large fraction are granted. On the surface this would appear to indicate a liberal rather than a restrictive entry policy but the opposite is true. In recent years some 4,000 grants were made from about 5,000 applications, but the great majority of these grants were extensions of authority to existing carriers. In many cases these grants were necessitated by past restrictive policies. For example, a firm may have had authority to carry paint in two-gallon cans. The customer now decides to manufacture paint in five-gallon cans.

The carrier needs additional authority to carry the five-gallon size. Grants of authority to continue to serve the same customer can hardly be construed as entry.

Only a few grants of authority are made each year to new carriers. In 1975 of the approximately 4,000 grants, less than 500 were to new carriers. Of these, 154 provided authority to carry only a single commodity: 163 were for a single origin. There were only 37 general commodity certificates granted. This is typical. In 1974 there were 30; in 1973, 31. And those few certificates which provide wide latitude in the goods that can be transported are severely limited as to the territory that can be served.

Besides the economic costs, there are the human costs of the present entry system. As we have indicated before, most of today's carriers can trace their origin back to rights that were grandfathered into the system in the 1930's. But what of the individuals or groups who did not have the luck or the foresight to be in the trucking business at the time the Motor Carrier Act was passed in 1935. Needless to say newcomers in the business society, including members of minority groups have been most disadvantaged by this system. They did not operate as motor carriers in the 1930's and therefore are barred from the system today. Estimates of minority participation in the motor carrier industry are about one percent, and they will not be allowed to enter the system in any real way unless significant changes are made in the entry rules. Our proposal would expand business opportunities for minorities and other capable newcomers.

The American Trucking Association recently made a filing to the ICC in connection with a proceeding to determine the correct accounting procedures to apply to certificate values. This filing ironically illustrates (unintentionally, I'm sure) many of the problems of today's entry -- or rather -- non-entry system. I would like to excerpt a few quotes from it.

1. "The vast majority of operating rights today arose under what is referred to as the 'grandfather' clause in the (Interstate Commerce) Act."

2. "Smaller carriers with limited operating authorities are finding it increasingly difficult to compete effectively in today's transportation

market place. . . The limited number of operating rights currently in existence, coupled with the rapidly growing public demand for motor carrier service, has created a need for carriers to seek out and acquire operating rights from other carriers."

3. "Virtually the only way for (a relatively small carrier) to obtain additional operating authorities is to buy them from other motor carriers."

4. "Recent acquisitions in the motor carrier industry indicate that amounts paid for operating authorities are approximately 15 percent to 20 percent of the annual revenue produced by these authorities."

The statement goes on to say that these payments are for the right to operate only. They do not even include "goodwill" earned through superior performance and market acceptance.

It would be difficult to find a more articulate and knowledgeable criticism of the existing entry system than this filing. For what this document says is that the vast majority of operating rights were granted over 40 years ago -- without benefit one might add of any special test -- and that the system has been virtually blocked to new entry since that time. Now the principal way to enter or expand is to buy rights that were once given freely by the government. These rights are now, by the industry's own estimates, worth billions of dollars, a benefit to the original "owner" of these rights, but a cost to the new carrier who must purchase them and a

cost to the ultimate consumer and shipper who must pay for them as part of his transportation costs. These rights have value only because they have been artificially restricted by the ICC.

Ratemaking is the other side of the problem. The rates of regulated carriers are set collusively. The Interstate Commerce Act contains an exemption from certain aspects of the antitrust laws and the carriers are allowed through industry associations called rate bureaus to engage in price fixing. Two steel companies cannot come together and set the price of steel, but all the motor carriers transporting steel can come together and set the price of transporting steel.

It is quite clear that there is little competition in ratemaking. The usual spur to competition, the threat of new entry is missing. Price competition among the existing carriers is virtually nonexistent because of rate making within the rate bureaus. There is the possibility of a carrier taking an "independent" action outside the rate bureau, but here the carrier must face the delay and cost of a complicated ICC proceeding. The threat of a shipper using private carriage provides some incentive for competition but the Commission has deliberately created inefficiencies in private carriage operations so as to raise their costs and diminish their competitive impact.

The result of this system of cartelized pricing and restricted entry is that rates are too high. Studies of what occurred when fresh and frozen poultry and frozen fruits and vegetables were exempted from regulation show how regulation has raised rates to the detriment of consumers.

These commodities were deregulated as a result of a Supreme Court decision which found that they fell within the agricultural exemption of the Act. The United States Department of Agriculture conducted intensive studies and found that after deregulation the rates fell 33 percent on poultry and 19 percent on fruits and vegetables and service improved dramatically.

Significantly, for both these commodities, the use of private carriage dropped substantially after deregulation. Under regulation many shippers had been forced to turn to private carriage to obtain service in small, out-of-the-way places which were not served adequately by regulated carriers. When the commodities were exempted, shippers found they could obtain the required service on a for-hire basis so the use of private carriage decreased. We expect that regulatory reform will similarly arrest the growth of private carriage of manufactured goods and increase the market share of the regulated, for-hire trucking industry.

In addition to raising rates above competitive levels, the regulated rate system does not provide a diversity of rates which would allow or encourage a diversity of service qualities. As a result carriers cannot tailor service to the particular needs of their customers. To cite an example: A California clothing manufacturer would like to use a service that provides faster than normal truck delivery but cannot get it even though he would be willing to pay a premium for it. He is forced to use air shipments which cost him 40-50% more than the normal truck rates. This is not an untypical example. Thousands of shippers are turning to private carriage because they cannot find the type of service they wish from the existing common carriers.

Rates under the present system do not reflect the cost of the service provided. For the most part, rates on the front haul and the back haul are the same even though it would make sense to lower the rates on the back haul, which is often empty, to attract more traffic. This deters economic development in rural areas because they are unable to take advantage of the lower real economic transportation costs which result from existing traffic imbalances. Under the current system rates for shorter distances are sometimes higher than the rates for longer distances even though both routes may be in the same direction - and even over the same highway.

Rates and entry are the two major problems but there are others. We have already mentioned the problem of intercorporate hauling by private carriers. There are also artificial restraints placed upon contract carriers which limit the growth of efficient, well-managed firms. The system of exemption for agricultural commodities is also archaic, irrational and frequently incomprehensible. For example, butter is regulated, buttermilk is not. An exempt trucker carrying tomatoes to a cannery cannot arrange with the shipper to carry canned tomatoes back to the growing area. These problems must be dealt with, and the Motor Carrier Reform Act does it in an equitable and sensible way. It is not a bill that simply turns the existing system on its head. The bill is carefully phased to avoid precipitous change and many safeguards are put in place to protect against any threat of cut throat competition or discriminatory pricing. We are confident that change of the sort

we propose would result in a healthier, stronger and more efficient industry -- an industry capable of earning an appropriate rate of return and capable of attracting needed capital.

Before discussing some of the provisions of our bill, I want to deal with two arguments that have been and probably will continue to be made against the specific reform provisions incorporated in it.

It has been argued that rural service will deteriorate because common carriers that now are required to provide service will abandon their rural customers. I think the opposite will happen and my extended testimony states why we think rural service will improve. Basically two facts must be kept in mind. First there is no evidence that the so-called common carrier obligation to serve is a burden to the carriers. Carriers have found it relatively easy to reduce or discontinue service to unprofitable places. Second, under our regulatory reform proposal agricultural carriers will be allowed to carry regulated goods to rural areas. This will increase the amount of service to rural areas.

If in the course of debate about regulatory reform the Congress becomes convinced that some form of special protection for rural shippers and receivers is required, then it would be appropriate to enact such protection. We believe that none is required and there is no evidence to the contrary. Nevertheless, if evidence is presented that shows with facts, figures and analysis - not merely often repeated allegations - that rural service requires special rate or service protection, then we

would certainly want to consider this evidence and make appropriate changes in our proposals. The evidence now available to us all points in the other direction and it is incumbent upon those of a different persuasion to come forth with facts and analysis.

Second, it is argued that the trucking industry would be unable to attract capital if regulatory reform is enacted and that the resulting chaotic conditions would lead to monopoly by large firms. We have carefully considered this argument and again invite those who make it to present facts and analyses instead of allegations. Our view of the situation is that well-managed and efficient firms will be able to attract capital in the same way as do firms in other industries. Moreover, we have been careful to phase the reform proposed by us over a period of years in order to give existing firms adequate time to make adjustments in their operations. This is discussed in the extended testimony.

We feel there can be little doubt that the direction of change in the Administration's bill, toward greater reliance on the market, is correct. Greater room for disagreement exists on the precise way to reach this objective, the path to follow or the proper timing for the phase-in. We are anxious to cooperate with the Committee, the industry and shippers to reach satisfactory resolution of these complex issues.

Let me turn now to discussion of the major provisions of our bill.

For entry, the bill would redirect the focus of the decision-making process of the Commission regarding entry and require the ICC to weigh in favor of an applicant if the new service would result in lower costs, greater efficiency, better service, or would satisfy a shipper's

preference for different combinations of rates and services. The Commission would also be required to grant entry if the applicant were "fit, willing, and able" and the revenue of the proposed service would cover the costs of the carrier for the particular service. I would point out that neither of these provisions provides "free entry". The first simply requires the Commission to look to the total public interest in determining whether to grant a certificate. The second provision requires the Commission to grant a certificate but only if the applicant is financially responsible and only if the rate he proposes is compensatory. Neither one of these provisions will allow "fly-by-night" operators who will charge unrealistically low rates into the market. These provisions, however, will allow knowledgeable, efficient, innovative and responsible competitors into the market.

In the pricing area, the bill proposes changes similar to what we proposed and which were recently enacted in the Railroad Revitalization and Regulatory Reform Act of 1976. Rates above variable cost could not be ruled unlawful because they are too low. Rate ^{changes} ~~changes~~ within a gradually expanding zone could not be suspended. The Commission, under our bill, could continue to declare any rate unlawful because it is too high, discriminatory, or preferential. The changes to the rate authority of the Commission are quite modest, but they would significantly increase competition.

Coupled to these changes, the bill would also reform the rate bureaus. Collective rate making on single-line rates would be forbidden.

Only participants in joint or interline rates could agree on those rates. These proposed changes are again similar to those adopted in the Railroad Revitalization Act.

The information we have submitted gives greater details about the bill. I would like to make a few general comments, however. As I indicated we have been very careful to phase this bill to avoid disruptions to the industry. We have been also very careful to design the bill so that service to small communities is not disrupted. We are confident that service to these communities will be increased. We have worked very hard in these two areas -- phasing and small communities. On the basis of the facts we have analyzed, we believe the bill correctly addresses these issues.

As I have indicated, we will submit extended comments on the problems of the regulation of motor carriers in a short time. At that time we will also submit detailed comments on the other motor carrier bills before this Subcommittee, but I think a few general comments might be helpful at this time. We believe that procedural reform is important, and we are pleased that the ICC submitted H.R. 15442 to introduce for motor carriers some of the procedural changes enacted for railroads in the Railroad Revitalization and Regulatory Reform Act. We have difficulties with some of the other proposals submitted by the Commission. But the important point is that procedural reform is not enough. Regulatory reform cannot be accomplished with procedural change alone. It attacks only the symptoms. We must get to the heart of the problem and decide just how much of the motor carrier industry we want regulated.

In closing let me restate our basic position. The Department has done a great deal of research in the motor carrier area. We have submitted these reports to this Committee. We firmly believe that this material demonstrates that the existing system of motor carrier regulation is not working well and is in need of comprehensive reform. We think we have met the burden of proving the case for reform, and the time has now come for the opponents of reform to come forward with facts and analyses rather than rhetoric. And if there is reason to change our recommendations, based on facts and analyses rather than slogans or allegations, we shall come forth with new proposals.

I will be happy to answer any of your questions. We at the Department look forward to working with this Committee as you continue your deliberations on the vitally important issue of motor carrier regulatory reform.

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