STATEMENT OF MARK G. ARON, DEPUTY GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION BEFORE THE TASK FORCE ON MINORITY ENTERPRISE OF THE HOUSE COMMITTEE ON SMALL BUSINESS, SUBCOMMITTEE ON GENERAL OVERSIGHT AND MINORITY ENTERPRISE

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Chairman Mitchell, it is a pleasure to appear here today before you and the other members of the Task Force on Minority Enterprise to talk about minorities participation in the trucking industry. I would like to commend you for your efforts in highlighting the plight of minorities in the trucking industry. Today, I would like to talk, in general, about minorities in the trucking industry, and specifically about (1) the efforts that the Department of Transportation has undertaken in the past and those that are currently underway to help minorities in this industry, and (2) how regulatory reform measures currently before the Congress will help minorities in the trucking industry. Within this framework, I will address your concerns about the participation of minorities in the transportation of freight of the Federal government.

As you are no doubt aware, minorities have fared poorly in the regulated trucking industry. The basic historical cause for their underrepresentation was the "grandfathering" of existing trucking firms into the regulated industry by the Interstate Commerce Commission when the industry came under federal regulation in 1935. Unfortunately, in 1935, opportunities for minorities to fully participate

in the United States economy were far less than they are today. Thus, very few of the trucking firms who were grandfathered into the industry were minority firms. This unfortunate state of affairs has continued to the present because of restrictive entry procedures of the ICC that force applying carriers to to go through a cumbersome application process. In fact, of 16,000 or so carriers who are certificated by the ICC, it is estimated by the ICC that only about 130 are minority firms.

This is a very small number and it is possible that even this estimate overstates the true number of certificated minority firms. The Minority Trucking-Transportation Development Corporation (MTTDC), a major trade association for minority carriers, in its latest compilation of minority trucking firms was able to find only about 90 certificated minority truckers. Whichever figure is correct, we are still talking about a certificated trucking industry in which minority firms represent less than one percent of industry participants. Furthermore, in a recent study done for DOT, the certificated minority truckers surveyed were found to have annual revenues only about one-half as great as the non-minority certificated truckers. Thus, by percentage of revenues, minority participation is even smaller.

In those areas of the trucking industry outside of the regulatory framework of the Interstate Commerce Commission in which they do not face the usually successful protests of established trucking firms, minority firms are better represented. For instance, there are proportionally more local truckers and independent owner-operators

who are minorities than there are certificated minority truckers.

Minority truckers are and have been "paying their dues." For example, owner operators who do not have ICC certificates frequently trip-lease their equipment to ICC certificated carriers to haul commodities that may only be carried by certificated carriers. For this privilege of using a certificated carrier's authority, the owner-operator generally pays about 20-40 percent of the revenues on the load. (The DOT study found that permanently leased minority truckers pay on average 36 percent of revenues to certificated carriers.)

Typically, when the minority trucker believes that he has the financial wherewithal and expertise to acquire his own operating authority, his application for authority is generally met by a storm of protests filed by certificated carriers who already hold authority for the traffic that the minority trucker wants to carry. In many cases, the minority trucker is denied operating authority for goods which he is not only fully capable of carrying, but, in many cases has been carrying, albeit under another carrier's authority.

Within the present restrictive system, the Department of Transportation has been active in attempting to advance the interests of minority truckers. First, we commissioned the previously mentioned study to identify the particular problems that beset minority truckers in all areas of the trucking industry. Second, we supported the efforts of Mr. Timothy Persons, a minority carrier in the Allstates case, his recently successful attempt to get nationwide household goods authority. In this case, DOT gave expert testimony on behalf

of Mr. Persons, in addition to filing briefs in the case. Third, DOT filed comments in support of the petition of the MTTDC for increased opportunities to carry government traffic. We are pleased that a favorable decision was rendered in this case on January 11 of this year. We note that the trucking bill that has been reported out of committee in the Senate allows some government traffic except for household-goods, to be carried by truckers upon a simple showing of safety and financial fitness.

Fourth, DOT entered into an interagency agreement with the Minority Business Development Agency (MBDA) of the Department of Commerce. Our contribution of $100,000 has allowed it to expand its efforts on behalf of minority truckers. This money, together with MTTDC's primary funding from MBDA and a generous allotment of office space from the Kaiser Corporation, has allowed MTTDC to set up a western office in California to help minorities in trucking.

DOT is also participating in a fifth action to help independent owner operators, including many minority truckers. DOT is participating in an interagency training program for independent owner operators along with the Interstate Commerce Commission and the Small Business Administration. This training program will provide independent owner operators with information on generally accepted business management practices and specific information on trucking, including information that will improve their understanding of regulatory requirements.

Finally, the Department is publishing in today's Federal Register

new rules to increase minority business participation in DOT financial assistance programs. The rules require recipients of DOT assistance to establish minority business affirmative action programs, including goals for the use of minority businesses and certification procedures to screen out "fronts." Minority trucking firms seeking to do business with DOT recipients, such as airports, state highway departments, and new transit authority, should benefit from this initiative.

DOT believes that past practices of the ICC have limited the opportunities for minorities and others, especially small businessmen, to participate in the trucking industry. Many recent actions of the ICC, on the other hand, give minorities increased opportunities. DOT supports regulatory reform measures that will increase opportunities for minorities in the trucking industry. The Administration's legislative proposals will accomplish many reforms that will increase minority participation. Further, this legislation will codify many of the recent ICC actions that give minorities access to the trucking industry. We believe that minorities and others should be given the chance to compete for available traffic and that their success or failure should be determined in general by market forces, not solely by the administrative judgement of the Interstate Commerce Commission.

In terms of the specific legislative proposals before Congress, this Administration has introduced comprehensive trucking legislation to reform the current trucking system. The Trucking Competition and Safety Act (H.R. 4586) is now being considered by the House Public Works and Transportation Committee. Under the leadership

of Senators Cannon and Packwood a very positive bill, S. 2245, has been reported out of the Senate Commerce Committee. This bill will make it easier to enter the regulated portion of the industry through measures such as reversing the evidentiary burden thus forcing existing carriers to show it is not in the public interest for an applicant to be granted operating authority. Today, it is much too easy for existing trucking firms to protest new applicants, and it takes months if not years to process a new carrier's application through the ICC. The shift in the burden of proof proposed both in the Cannon-Packwood bill and in the Administration bill, and the imposition of definite time limits on ICC proceedings should make it much easier for minorities and others to enter the industry. These entry reforms are directed toward all carriers, but they are vital to minorities because they will allow minorities to finally compete on an equal basis with other trucking firms.

Regulatory reform legislation currently before the Congress will benefit minorities and other carriers in two other ways. First, the Cannon-Packwood bill provides special, more flexible entry standards where there is a particular need for new entry. Such situations include transportation to points not regularly served by a certificated carrier, transportation service that substitutes for abandoned rail service, and, to a limited extent, transportation of shipments weighing 100 pounds or less. Second, the Cannon-Packwood bill proposes to increase the scope of agricultural commodities that are exempt from ICC regulation. This provision should increase the opportunities

for exempt minority carriers who currently haul agricultural commodities to secure backhauls. Under present law, only unprocessed agricultural items are exempt, and this means that the trucker who hauls vegetables to the canning factory can't haul the finished goods away from the factory without "leasing himself" to a regulated carrier. Needless to say, with increased backhaul opportunities, these truckers will less frequently be forced to lease themselves to certificated carriers.

DOT also favors an exemption for all non-household government traffic from public convenience and necessity criteria. We feel that minority carriers are likely to benefit greatly from the aggressive equal opportunity programs that have been implemented by the Federal government in recent years and believe that as much government traffic as possible should be available to carriers who are safe and financially fit. We also favor increased opportunities for minorities to carry household goods government traffic, either through the easier entry standard contained in the household goods legislation before the Congress or by exemption of this traffic from public convenience and necessity criterion.

Finally, DOT lauds the explicit recognition of the effects of past ICC regulation on minority participation in the trucking industry that is found in the Cannon-Packwood bill. In the Congressional findings section of S. 2245, it is stated: "The Congress hereby finds that... historically the existing regulatory structure has tended to inhibit... opportunities for minorities and others to enter the trucking industry." We believe this to be the case

and hope that the regulatory reform legislation that is finally enacted will include such a statement.

This concludes my prepared statement. I will be happy to answer any questions you may have.