

STATEMENT

of

GARY M. BROEMSER
DIRECTOR, OFFICE OF REGULATORY POLICY
OFFICE OF THE SECRETARY

UNITED STATES DEPARTMENT OF TRANSPORTATION

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MOTOR CARRIER RATEMAKING STUDY COMMISSION

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I am pleased to appear before you today on behalf of the U.S. Department of Transportation. As the agency of the executive branch charged with exercising leadership in the identification and solution of transportation problems and the development of national transportation policies and programs, we welcome this opportunity to comment on the issues set out in the Study Commission's invitation of October 20, 1981.

I would like to preface my remarks by reaffirming the Administration's position on collective ratemaking. As we stated in testimony at the 1981 oversight hearings on the Motor Carrier Act of 1980 (MCA), we continue to believe it is vitally important to remove antitrust immunity for single-line ratemaking as soon as possible, in order to maximize the benefits of the pro-competitive reforms initiated under the MCA. Motor carriers, like businesses in virtually every other sector of the economy, should be required to set their rates individually, on the basis of their own costs and service capabilities.

We also believe it is important to remove antitrust immunity for general rate changes and joint-line ratemaking. As the Justice Department, which is responsible for enforcing the antitrust laws, is testifying today, such immunity is not needed.

Moreover, we believe this Commission should address the collective commodity classification system. Most of the general freight classification ratings are derived on the basis

of a number of characteristics contained in the National Motor Freight Classification, a classification system used by all but one of the major regional rate bureaus. This very detailed list of commodities and their associated ratings largely determines the rate structure, that is, the relationships among the rates charged for transporting freight. The availability of this agreed upon list of relative prices greatly facilitates collective ratemaking agreement, and will continue to do so even if collective setting of actual rates is banned. The continued existence of collective classification of commodities will, even absent antitrust immunity for the setting of actual rates, greatly promote such undesirable industry behavior as price leadership or other forms of tacit collusion.

Consequently, we believe it is imperative to address the entire collective ratemaking system, rather than analyzing only its parts. To this end, we believe that requiring carriers to make their own judgments regarding the shipping qualities of various types of freight, and how those qualities affect their costs, is an important step toward achieving the competitive setting of truck rates.

This independent determination should involve more than the final stage of ratemaking: the attaching of dollar values to pre-set classification ratings. Individual ratemaking should begin with a carrier's independent judgment about whether it even needs a classification system. Some LTL carriers, especially small package specialists, do not use any

classification system, relying only on weight and distance factors to set their rates. Other carriers may decide that additional factors (such as stowability -- how well a commodity fits) are important determinants of their costs.

However, each carrier should make this decision for itself, based upon its knowledge of the cost-based shipping characteristics of various types of freight and based upon its own marketing strategy --not in concert with its competitors under a grant of antitrust immunity. All the studies performed by and for the DOT, the ICC, and the Congress prior to enactment of the Motor Carrier Act, regarding the impact of collective ratemaking on motor carrier rate structures, have consistently revealed that when prices are determined collectively, rather than individually by market forces, the resulting prices are too high.

Studies of the impact of deregulation, and its associated absence of collective ratemaking, show that competitively-set prices are lower than collectively set prices. The Interstate Commerce Commission's study of initial responses to the deregulation of intrastate truck traffic in Florida found that virtually all of the rates surveyed fell, in real terms, after deregulation. In addition, when the shipment by truck of various agricultural commodities was exempted from ICC regulation during the 1950's, rates fell sharply and service improved. Finally, another study done for DOT showed that

rates for unregulated intrastate truck shipments in New Jersey were significantly lower than comparable regulated interstate shipments where rates were set through rate bureaus.

Finally, a DOT study of less-than-truckload and truckload rates found that from 1972 to 1979 LTL rates rose almost twice as fast as did TL rates. DOT believes that this difference reflects the prevalence of collective ratemaking in the LTL sector and the greater overall level of competition in the truckload sector.

However, uniformly "too high" rate levels are not the only consequence of collective ratemaking. The evidence shows that allowing motor carriers to collude also fosters price discrimination. In economic terms, discrimination occurs in either of two ways: charging different prices for services that cost the same to produce or charging the same price for services with differing costs of production. More simply, it consists of differences in prices to different customers that are not justified by differences in costs.

The courts' and the ICC's treatment of "unjust and undue discrimination" has produced an extremely inconsistent track-record which is neither logical, equitable, nor least of all, in the public interest. Examples abound in which the collective ratemaking system not only allows, but promotes discrimination, especially rates which discriminate against higher valued goods. Why else would fashion jeans be rated Class 100 in the NMFC, while work jeans are rated at only Class 77½? Why does computer paper with printing on it bear a higher

rating than computer paper that is only ruled? Why do glass pie plates bear ratings that actually increase with the selling price of the pie plates? We firmly believe the answer lies in the fact that the value of the product is used as a significant factor in setting the rating and the actual rates, and that it is done for the simple reason that shippers of higher valued goods are more willing to pay higher rates. And that, purely and simply, is price discrimination.

We would not object to this kind of "value of service" pricing if it resulted from independently set rates. What we do object to is the process whereby carriers collectively agree to such a pricing scheme and require the member carriers to adhere to it. As long as the transportation costs are the same for items that are substantially the same (e.g., fashion jeans versus work jeans), we do not believe carriers should be encouraged by collective ratemaking to pass on higher rates to certain shippers solely because those shippers have the wherewithal to pay and have little or no choice.

Moreover, contrary to industry claims that without antitrust immunity freight tariffs would be far more complex than they are today, we strongly believe that the impact of collective ratemaking has been to make the rate structure much too complex. We have seen numerous examples of far simpler rate structures -- many of them needing only a few pages -- including those in areas where there is little or no regulation: motor carrier pricing in England, Australia, Sweden, and West

Germany; United Parcel Service, bus and air freight tariffs, and tariffs of many U.S. motor carriers providing deregulated intrastate service in Florida. Although a very complex rate structure is not a good device from a marketing point of view, such complexity has a different appeal to motor carriers: the existing rate structure creates a situation in which shippers suffer from imperfect information, and makes it far easier for carriers to exploit their market power through price discrimination.

All the studies previously discussed clearly show that the collective ratemaking process has resulted in higher rates, rate discrimination, and rate structure complexity. Since these studies were performed, of course, various reforms have been instituted under the MCA. However, we do not have sufficient reliable data to determine the extent to which higher rates and rate discrimination continue to exist. Therefore, we urge the Study Commission to obtain more current data from the industry, i.e., from the rate bureaus themselves, regarding actual truck freight movements and prices -- the Continuous Traffic Study -- in order to evaluate the need for additional reforms of the ratemaking process.

However, we also believe the conclusions of these "pre-MCA" studies are still valid and important for the Study Commission's purposes. While we believe the Motor Carrier Act has led to changes in the right direction in a number of areas, we believe that, by and large, trucking is still pretty much

"business as usual" in certain critical areas. First, although the ICC testified before the Senate Commerce Committee's first oversight hearing that "the number of independent rate filings has approximately doubled from 1979 to 1980", the proportion of traffic moving under independent filings is still relatively insignificant. As reported by the Senate Judiciary Committee in its April 1980 report on antitrust immunity in the trucking industry, independently set rates accounted in 1976 for only 3 percent of all general freight shipments, and only 2 percent of all general freight shipments in the LTL sector where collective ratemaking is most prevalent. Doubling the frequency of independent rate filings has resulted in only about 4-6 percent of the traffic moving on such rates. This means, of course, about 95% is still moving on collectively set rates.

Second, while it was hoped by the Congress that the existence of a wide "zone of rate freedom" would encourage carriers to leave the umbrella of collective ratemaking, few carriers have availed themselves of the zone, leading us to believe that carriers continue to huddle together under antitrust immunity. Third, we have conducted a number of follow-up studies of post-MCA small community trucking service, and those studies show that service there has not markedly changed since the MCA was enacted. Shippers and receivers are continuing to use UPS and private carriage for the overwhelming majority of their trucking needs. To the extent that regulated general freight

carriers do serve small communities, such service appears to be profitable. Thus, the impact of collective ratemaking on service to small communities and rural areas continues to be as shown in the numerous studies done by or for the Department, the ICC, the Senate Commerce Committee and others. These studies show that perhaps 85% of the trucking service to these areas is provided by private carriers and small package specialists, the most notable being United Parcel Service. Shippers and receivers in these remote areas clearly prefer and have benefited from the better service and lower rates provided by private carriage and UPS. Since neither UPS nor private carriers indulge in collective ratemaking, and since the little service provided by regulated general freight carriers appears to be profitable, we can conclude that, in the absence of collective ratemaking for the trucking industry, service to these areas will be little affected, if at all.

In summary, we do not believe that ratemaking in the trucking industry should continue to be exempt from the antitrust laws. Not only is such immunity not needed, more importantly it has fostered truck rates that are too high and discriminate against higher valued commodities. Thus, immunity has been a very costly luxury accorded to the trucking industry, with the costs being borne by the shippers and consumers of all commodities carried by trucks.

Mr. Chairman, we believe, as you stated during Senate consideration of the MCA, that it "goes a long step forward in