

STATEMENT OF
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BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
REGARDING THE TRUCKING DEREGULATION ACT OF 1985
SEPTEMBER 27, 1985

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Administration's Trucking Deregulation Act of 1985. I might add, Mr. Chairman, those of us who share your interest in trucking deregulation are very pleased that you continue your active involvement in this important issue.

Economic regulation of transportation began some ninety-eight years ago. While such regulation may have served the national interest well for a long time, much of it has now become an expensive paper exercise which restricts competition in the industry with no offsetting benefits to consumers. It is now time to eliminate those remaining elements of economic regulation which no longer provide any benefits to shippers or consumers. To accomplish this purpose we have sent to the Congress the Trucking Deregulation Act of 1985 (TDA).

Mr. Chairman, this bill is a major part of the overall Administration objective to remove inefficient regulatory restraints wherever they are found. We intend to support this legislation very strongly and we respectfully urge the Committee to take quick action.

Major Provisions of the TDA

The TDA would eliminate all remaining ICC regulation of the trucking industry. More specifically, the bill would:

- o Eliminate all remaining ICC regulation of trucking rates and entry:

Under the TDA, interstate motor carriers of property would be able to carry whatever commodities they wish, over whatever routes they wish, at whatever rates are mutually agreeable to them and their customers.

Although existing reforms have already provided carriers with substantial ratemaking freedom, the current process of ratemaking generates a huge "paper chase". Since the ICC almost never rejects a proposed rate, carriers can charge whatever rates they and their customers agree to. However, all rates of motor common carriers must be submitted to the ICC for approval, and such rates still require a brief period of advance notice before they can go into effect. Consider the absurdity of the statutory tariff filing requirements, which still yield a harvest of over a million tariffs annually. Tariffs must be filed for "cucumbers processed into pickles by the ordinary means," while "cucumbers, salt cured" are exempt. Citrus fruit sections that are chilled or semi-frozen are of no interest to the ICC, but if they are

frozen, you violate the law if you fail to record the rates in Washington. This simply does not make any sense.

Motor carriers would no longer have to apply to the ICC for operating authority in order to enter the interstate trucking industry or to expand into new markets.

However, carriers would continue to be required to meet federal safety and financial responsibility standards in order to engage in interstate trucking operations.

Although entry and expansion are relatively easy today, the process of obtaining operating authority still generates a vast quantity of paper work. The ICC recently testified to this Committee that they have granted nearly 80,000 new operating authorities since July 1, 1980. Again, as in the case of rate regulation, few entry applications are even contested, and fewer still are rejected by the ICC. This regulation serves no useful purpose and costs the industry millions of dollars.

Moreover, removal of all entry and rate regulation would encourage the expansion of for-hire trucking service provided by independent owner-operators. Many of these

truckers would like to broaden their operations, but they lack the time, expertise, or inclination to file the necessary paperwork with the ICC. The increased participation of owner-operators in for-hire trucking of general commodities would provide new service options for many shippers, especially those in small rural communities, and would enhance business opportunities for owner-operators. Owner-operators would no longer have to pay regulated carriers 30 percent of the rate for the "privilege" of hauling regulated freight.

o Eliminate antitrust immunity for collective ratemaking;

This is a particularly crucial provision of the Administration's bill. Antitrust immunity for collective setting of single-line rates (that is -- rates for shipments handled entirely by one motor carrier from origin to destination) was removed on July 1, 1984, as provided by the Motor Carrier Act of 1980 (MCA). However, many other motor carrier ratemaking activities can still be done collectively, including the setting of joint-line rates (that is -- rates for shipments carried by two or more carriers), general rate increases, and commodity classification (a process designed to facilitate ratemaking by grouping commodities into categories that reflect their various transportation characteristics).

The report of the Motor Carrier Ratemaking Study Commission found that collective ratemaking keeps rates higher than they otherwise would be, does not prevent unjust discrimination, and does not guarantee either rate uniformity or tariff simplicity. In addition, DOT recently studied interstate and intrastate rates in Florida and Arizona, two states that have removed all economic regulation of intrastate trucking, including antitrust immunity for the collective setting of intrastate rates. Our finding that intrastate rates rose more slowly than interstate rates provides compelling evidence that removing all remaining antitrust immunity would provide additional benefits to consumers.

- o Eliminate tariff filing and publication requirements;
Although the Motor Carrier Act of 1980 provided motor carriers with increased ratemaking flexibility, it did not remove the requirement that all motor common carriers publish their rates and file them with the ICC. The Chairman of the ICC recently estimated that more than 1,300,000 tariffs (compilations of rates) will be filed at the ICC this fiscal year. This paperwork burden is especially ironic, since individual shippers seem to rely these days more heavily on price quotes from the carriers themselves than on published tariffs.

In addition to removing this burden, this provision of the TDA would address another issue of concern to shippers and carriers: the situation where a carrier and a shipper agree in good faith upon a discounted rate, but the rate does not get filed at the ICC, and thus is not a "lawful" rate. Many shippers are now being charged the difference between the rate they agreed to and the published tariff. Removing the tariff filing requirement would make it possible for shippers to be sure that the rate they agree upon is the rate they will actually be charged.

o Eliminate the "common carrier obligation";

For many years it was assumed that ICC-regulated common carriers, who had a "duty to serve" all points authorized on their certificates, provided such service on a continuous, adequate, and non-discriminatory basis. It was argued that this was the only guarantee of service to small, rural communities and that, under deregulation, these communities would lose all their service.

However, our research has shown that many carriers rarely, if ever, served a great number of communities in their authorized areas. Furthermore, it was found that

the ICC did not monitor service and, while the Commission could respond to shipper complaints by sometimes cajoling a carrier into serving a particular shipper, the ICC had virtually never revoked a carrier's authority for inadequate service.

Our many studies also showed that -- even before the Motor Carrier Act of 1980 -- most small rural shippers did not rely heavily on ICC-regulated common carriers. Instead, they used (and continue to use today) a combination of private carriage, parcel post, bus package express, and United Parcel Service for the bulk of their transportation needs. The only change since the MCA is that some shippers in these communities now notice more carriers serving them than before. In addition, the overwhelming majority of small community shippers are quite satisfied with the truck service they are receiving today.

The evidence strongly suggests that the "common carrier obligation" never did guarantee service. With open entry and the elimination of commodity and geographic limitations on carriers, there are thousands of new entrants competing to serve shippers everywhere. Under

these circumstances, we firmly believe that removing this obligation will have no negative impact whatsoever on small community service.

o Eliminate all ICC truck leasing rules:

Since 1935, the ICC has spent a substantial amount of time and effort to determine what sorts of agreements for the leasing of drivers and vehicles are legally permissible. In recent years, the ICC has made a wider variety of leasing arrangements available to for-hire and private carriers, but the process has been a long and costly one (in some instances, involving a legal battle all the way to the Supreme Court).

Our bill would preserve and extend the leasing freedoms provided by the ICC to interstate motor carriers. Such leases should be dictated by considerations of economic efficiency and the mutual needs of the parties involved. Artificial restrictions on the operations of private and for-hire carriers are a carryover from the days of heavy-handed regulation designed to protect regulated for-hire carriers from the competition of owner-operators and private carriers. These restrictions hamper the trucking industry's ability to maximize its productivity, and should be removed as soon as possible.

- o Transfer jurisdiction for consumer protection in household goods carriers' operations to the Federal Trade Commission;

Under the Administration's bill, motor carriers would be subject to the general jurisdiction of the FTC, as are firms in almost all other industries. In addition, the FTC would be required to review the existing ICC household goods consumer protection regulations and streamline them wherever possible. It is our intent that this process should remove any such regulations that are outdated or ineffective in protecting individual consumers.

- o Eliminate special antitrust immunity for household goods van line-agent relationships after three years;

Although the relationship between a household goods van line and its own agents is primarily a "vertical" one typical of franchising arrangements, the relationship may also have "horizontal" aspects. This would be the case wherever an agent provides interstate transportation directly to its own customers in markets also served by its parent van line. Hence, an agent may compete with its parent van line as well as serve it as a supplier of trucking services. In addition, some van

lines are owned or controlled by their agents, which creates additional antitrust implications. Our bill would remove all antitrust immunity from the household goods carriers, as well as from other carriers.

We do provide a three year deferral of the effective date for the removal of the special antitrust immunity covering the above situations. The three year period is intended to give van lines and their local agents time to develop corporate structures and business relationships that are not based on such antitrust immunity. We recognize this will entail some restructuring of the industry, but we believe the industry can make the necessary adjustments without serious disruption. During the three year period before this immunity is removed, the ICC is given the explicit power to regulate the use of this special immunity, in order that it not be abused.

- o Prevent states from "encroaching" -- imposing new regulations on trucking operations that previously were regulated by the ICC;

The Administration bill's "anti-encroachment" provision is designed to prevent states and other levels of

government from stepping in and reregulating any aspect of interstate trucking, once the ICC has ceased regulating it.

Although several states have totally deregulated their intrastate motor carriers since 1980, and a number of others never did regulate theirs, over 40 states currently regulate intrastate motor carrier operations to some degree. We do not wish to see the potential benefits of deregulation at the federal level significantly eroded by ambitious but misguided state regulation.

This provision also requires the Department to study the extent to which state economic regulation of trucking creates a burden on interstate commerce, and make any recommendations for change, within two years of enactment of the bill.

o Become effective July 1, 1986.

We believe the bill should be implemented as soon as possible after enactment. Other than the household goods antitrust exemption, there is nothing in the bill that requires lengthy preparation or phasing in.

In addition, I wish to discuss how the Administration's bill would affect insurance and safety fitness for motor carriers, with the removal of ICC's ability to revoke a carrier's authority if found unfit.

Insurance

The Interstate Commerce Commission is now authorized to establish minimum levels of financial responsibility for motor carriers subject to the jurisdiction of the Commission. These motor carriers, however, are also subject to the financial responsibility requirements of the Department of Transportation set under Section 30 of the MCA, and the Commission may not establish limits lower than those established by the Department. In fact, the Commission has adopted the same limits prescribed by the Department.

Currently, the ICC enforces the financial responsibility requirements for those motor carriers subject to its jurisdiction. Before a certificate or permit is issued, the motor carrier must file evidence of the required amount of financial responsibility with the ICC. The insurance company is held responsible for the required coverage until 30 days after the ICC receives a cancellation notice from the company. If, at the end of this period, the motor carrier has not obtained replacement insurance,

revocation proceedings are begun. During recent years, the ICC has processed approximately 12,000 yearly notices of insurance cancellation. For FY 85 that figure will be about 16,000. Over 3,000 of these have resulted in revocation proceedings between October 1, 1983 and August 31, 1985. (All of these figures include buses as well as trucks).

If the Administration's bill is enacted, motor carriers now subject to regulation by the Commission will still be required to comply with the requirements of the Department. The Bureau of Motor Carrier Safety (BMCS) within DOT currently enforces the insurance requirements through safety management audits conducted at motor carriers' places of business. The law provides for civil penalties not to exceed \$10,000 for violations of these requirements.

We do not believe that economic deregulation of the interstate motor carrier industry will have an adverse impact on motor carrier compliance with the insurance regulations. Motor carriers would still be required to carry the same levels of insurance. Obviously, we would have to rely more on our safety audits to detect violations and the civil penalties to punish violators. However, this would merely place carriers now regulated by the ICC on the same footing with those other carriers now subject only to the Department's regulation in this area.

The key difficulties which we see in the insurance area, unfortunately, are wholly unrelated to the issue of deregulation. We have received numerous motor carrier complaints about both the lack of liability insurance available to them and significant increases in premium rates when the insurance can be obtained. The motor carrier industry's difficulty stems from the broader problems encountered by the insurance and reinsurance industries.

The insurance industry also has expressed a problem with the term "environmental restoration" whereby, under section 30 of the Motor Carrier Act of 1980, motor carriers are required to obtain insurance which would be available to pay costs incurred in cleaning up spills of hazardous materials. The industry has concerns about possible liability for long term residual damages. Insurers have told BMCS personnel that the insurance industry does not know with certainty what "environmental restoration" includes because there is no statutory definition. Because of this concern, based on the uncertainty, the industry is very reluctant to insure motor carriers for \$5 million or more for such damages.

The origins of the problem are not simple, and the solutions are not simple either. The Department is aware of the problem and is studying it to see what, if anything, should be done.

Safety Fitness Ratings.

BMCS conducts roadside inspections of commercial motor vehicles and their drivers, and also conducts investigations and safety audits of the records and equipment of motor carriers, usually at the carriers' offices and terminals. The results of these inspections, investigations, and audits are used, in part, to determine the motor carriers' fitness ratings.

Under current law, the Department furnishes a report to the Interstate Commerce Commission on the safety rating assigned to a motor carrier seeking operating authority from the Commission. The ICC considers this report in granting or denying the requested authority. In the instance of new entrants, the Bureau of Motor Carrier Safety has had to report "insufficient information" safety ratings because the carrier has little or no record to serve as the basis for a definitive rating. Pursuant to section 215 of the Motor Carrier Safety Act of 1984, the Department is now working with the ICC to establish a new safety fitness procedure.

If the Administration's bill is enacted, obviously there will no longer be any need for the Department to report its safety ratings to the ICC. However, BMCS will continue to conduct its inspection, investigation, and audit activities, and will continue to assign safety ratings to motor carriers, just as the BMCS now assigns safety ratings to motor carriers not subject to ICC regulation. These ratings will serve to identify those carriers which are experiencing safety problems, and will enable the BMCS to direct its resources where they will reap the greatest benefit.

If the Interstate Commerce Commission no longer grants operating authority to certain for-hire motor carriers, as a result of enactment of this deregulation bill, then the Department will no longer be able to appear before the ICC to request that the ICC deny an application for authority or to revoke or suspend existing authority. As a practical matter, however, the existing revocation authority is very rarely used by ICC.

In the future, the Department will have to rely upon other enforcement tools available to it, just as it now must do for non-ICC regulated carriers, which make up the majority of motor carriers subject to DOT safety regulation. The most important of these tools is the civil penalty authority granted to the Department by the Motor Carrier Safety Act of 1984. We believe this authority is adequate and will enable us to successfully secure compliance by motor carriers with the safety regulations.

The Motor Carrier Safety Assistance Program will also greatly assist us in enhancing commercial motor vehicle safety. This program enables us to use Federal money to assist states in placing more state inspectors on the road to check more drivers and vehicles for compliance with the federal and state safety rules. The increased likelihood of detection, coupled with the possibility of significant penalties, are sufficient to assure a high degree of compliance by motor carriers with the safety regulations of the Department.

The Motor Carrier Safety Assistance Program (MCSAP) is now providing funding to the states for this purpose. MCSAP, authorized by the Surface Transportation Assistance Act of 1982, is a cooperative endeavor between the Federal Government and States to enforce uniform federal and state safety and hazardous materials regulations applicable to commercial motor vehicles and their drivers. One of the criteria a state must meet in order to qualify for an implementation grant is that the state adopt and enforce the Federal Motor Carrier Safety Regulations (FMCSR's) or similar state rules that are compatible with the FMCSR's. The objective of the program is to reduce truck and bus involvement in highway accidents.

Fiscal year 1985 is the first full year of the MCSAP. Forty-nine states are participating in the program, 28 in implementation. The principal initial implementation activity

focuses on the area of recruitment, hiring, and training of state enforcement personnel. At the completion of this fiscal year an additional 1,500 state enforcement officers are projected to be trained in uniform roadside inspection procedures and enforcement activities. In addition, state grantees will initiate the development of a Management Information System to compile improved roadside inspection and enforcement data.

Questions have been raised about the effect of relaxed motor carrier entry on highway safety. We have carefully monitored the trucking industry's safety record since implementation of the MCA and have found no statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations. Truck accident rates through 1983 were about the same level as 1980. Preliminary figures for 1984 show a slight increase, but we have no reason to believe this is the beginning of a deteriorating trend.

Highway safety remains one of the Department's highest priorities. I have established a special Safety Task Force to review the Department's programs to ensure that we are acting in strict compliance with our safety responsibilities. In addition, we will continue to assess the safety record of the motor carrier industry to assure that safety problems are quickly identified and solutions speedily implemented. We are convinced, however, that

truck safety can be best maintained by providing appropriate safety regulations, enforcement, and sanctions, rather than by maintaining an outdated economic regulatory framework that has no link with safety performance.

Results under the MCA.

The Administration's bill is designed to build on the regulatory reforms achieved in recent years through administrative changes made by the ICC and through the legislative reforms provided both by the MCA and the Household Goods Transportation Act of 1980.

These reforms have worked extremely well. They have removed a considerable regulatory burden on the trucking industry, permitting carriers to increase the efficiency of their operations and to respond more rapidly and effectively to changing market conditions. Motor carriers now compete relatively freely with each other because of both liberal entry policy and removal of inefficient operating restrictions. There is a much more competitive environment, with more service and rate options for shippers, including many small shippers. The great majority of shippers believe the reforms have been advantageous to them. Numerous studies show that the overwhelming majority of rural and small town shippers are also getting service at least as good as before the reforms.

The MCA has now been in effect for more than five years. For much of that time, the trucking industry was burdened by weak demand for its services. However, even during difficult times, the industry as a whole continued to provide good service to shippers and receivers throughout the nation.

With the freer entry permitted under deregulation, there are now substantially more trucking firms in business. The number of firms with ICC operating authority has grown -- from roughly 17,000 in 1980 to almost 31,000 in 1984.

Overall, there is an enormous body of evidence that the MCA has had significant, positive effects on the trucking industry. While the recession of 1981-1982 caused substantial traffic declines and financial losses for much of the industry, the industry as a whole has been making the necessary adjustments to today's more competitive environment.

Service Benefits

New price and service options have been introduced. Established carriers have become more efficient and innovative, for example, by restructuring routes, reducing empty backhauls, providing simplified rate structures, and offering shippers incentives to move freight more efficiently.

As impressive as the immediate benefits of deregulation have been, the long-term results may be even more significant. Overall distribution productivity is benefiting from improved information and inventory management systems, as well as from the greater transportation efficiency made possible by regulatory reform. Together, these trends are resulting in a virtual distribution revolution. One executive of a major transportation company believes that the net result has been a 30 billion dollar reduction in annual logistics expenditures in the United States.

Financial Results

The improvement in motor carrier financial results that began in 1983 continued strongly into the first half of 1984. However, by the fourth quarter of 1984, large carriers' profitability began to weaken. Net carrier operating income decreased during the fourth quarter by 5 percent, and net income was down a little less than one percent. At the same time, tonnage and revenues continued to increase, rising by 8.3 percent and 2.3 percent, respectively.* For the first quarter of 1985, operating revenues rose 2.3 percent, but net carrier operating income decreased

* It should be noted that, as regulatory reform has made it easier for all types of carriers to compete for traffic, it has become progressively more difficult to interpret the existing data bases (which represent only a limited number of large carriers). For example, a decrease in tonnage hauled by the 100 largest carriers would not necessarily mean that overall motor carrier tonnage was down. There could be a corresponding (or even greater) increase in the tonnage hauled by smaller common, contract, and private carriers.

almost 40 percent, while net income declined by about 49 percent. We believe this has much more to do with increasing costs than changes in traffic. For the twelve months ending March 31, 1985, the larger motor carriers showed gains of 10.3 percent in operating revenues and 5.2 percent in revenue tons hauled. Net carrier operating revenue decreased 8.7 percent to \$717.1 million, and net income fell 11.2 percent to \$413.2 million, due primarily to the large declines reported by a few carriers. Return on equity decreased to 12.14 percent from 14.77 percent. These figures suggest that vigorous price competition has continued to exert an influence on carriers' profitability as overall economic conditions improved.

We also recognize that the improved financial picture for large carriers reporting to ICC may not carry over to smaller operators. The American Trucking Associations contends that a high percentage of its member firms continue to operate at a loss or with very low profitability. We do not find that to be a persuasive argument, however, for maintaining an outmoded and inefficient system of regulation and price fixing for the industry.

Employment

I am pleased to report that the unemployment rate in the trucking services industry has come down sharply from the recession-induced high of 13 percent in 1983 to 8 percent in 1984, which was only slightly above the rate for the civilian labor

force as a whole. Furthermore, it should be noted that total employment in the trucking services industry, including warehousing and storage -- based on Bureau of Labor Statistics household survey data -- is at its highest level in a decade; and the trucking unemployment rate is at its lowest level since 1979.

Bankruptcies

Some have expressed concern about motor carrier bankruptcies, particularly as failures of large, well-established companies have been reported. It was anticipated at the time of the passage of the MCA that some weaker companies might not be able to withstand the added competition the Act encouraged. In fact, many of the companies that were unable to survive were unprofitable before the MCA and the recession made their traffic base more tenuous. Prior to the MCA, these companies might have been acquired by other carriers for their then valuable operating rights and, thus, avoided bankruptcy.

Many failed carriers were unionized and had difficulty competing with lower cost firms. The Teamsters report that 60 union general freight carriers had failed as of August 1985. Many companies participated in discount wars, not fully aware of the costs they had to cover. Weak management and overly ambitious expansions and mergers also led to some carrier downfalls. Recently, rising insurance costs have reportedly been a contributing cause of some carrier failures.

Moreover, the high degree of correlation between failures of intercity trucking companies, local carriers (who were largely unaffected by the MCA), and total U.S. business failures, strongly suggests that deregulation has not been the principal cause of motor carrier failures.

The number of ICC-regulated firms that have failed is small, compared to the number operating. According to Dun and Bradstreet and American Trucking Associations statistics, carriers that have failed since 1980 represented less than one percent of all ICC-regulated carriers and about 3 percent of Class I and II carriers (that is, carriers with annual operating revenues of more than \$1 million) operating in 1984.

I want to point out, moreover, that well-managed companies -- both union and non-union -- are thriving. In fact the three largest general freight LTL carriers, United Parcel Service Companies, Roadway Express, and Yellow Freight System -- all Teamster companies -- have improved their profitability since 1979, and the fourth largest, Consolidated Freightways, has maintained its profitability and increased its market share. And, because of the substantial increase in the total number of firms offering service, customers have not suffered as a result of the bankruptcies.

DOT Research

In addition, I would like to call your attention to the results of our most recent studies of the impact of regulatory

reform on various segments of the trucking industry. Research concerning service to small communities and the impact of intrastate trucking deregulation demonstrates that reform continues to work well. The details of our recent research covering small community service and intrastate trucking deregulation in Florida and Arizona were covered in testimony presented by this Department at motor carrier oversight hearings on September 9, 1985. In short, the majority of shippers located in small communities found that service quality and quantity have not diminished. In a study of rate levels, intrastate deregulation has resulted in surprisingly moderate changes in rates, and intrastate rates rose at a slower pace than interstate rates over the same routes.

Summary

According to the majority of shippers and receivers we have interviewed, service since deregulation has been at least as good as before passage of the MCA. Many opponents of truck deregulation argued that passage of the MCA would result in poor service to shippers, with many residents of rural areas unable to obtain service at any price. These fears have been proven groundless, as truck service has remained good -- even in remote areas -- in spite of the effects of the recent recession.

As the economy improved, truck service has also improved. Let me emphasize that, according to our most recent research, the decline in the quality and availability of truck service predicted

by opponents of deregulation has not occurred. Small carriers and minority carriers appear to have weathered difficult economic conditions as well as their larger rivals. Service to small and rural communities remains highly satisfactory, even in Florida and Arizona, after they removed all economic regulation from their intrastate trucking industries.

The reforms provided by the MCA brought major progress toward complete deregulation of the trucking industry. We believe that now is the time to consider taking the final steps necessary to complete that process. The Administration's bill builds on the evidence and recommendations of the Motor Carrier Ratemaking Study Commission, and the successes we have seen achieved as a result of partial deregulation. The evidence compiled shows clearly that the remaining antitrust immunity for collective ratemaking has raised rates unnecessarily and has not prevented undue discrimination in the rates charged individual shippers.

Furthermore, the entry and rate regulations of the trucking industry that currently remain are unneeded and undesirable. There is ample competition within the trucking industry as well as competition from other modes. Moreover, such regulation suppresses managerial initiative and innovation, and wastes valuable resources that the trucking industry could employ more usefully in improving its productivity.

That concludes my prepared statement, Mr. Chairman. I will now be glad to answer any questions that you or other Members of this Committee may have. I look forward to working with you and the other Members of this Committee toward the very important administration goal of additional economic deregulation of the trucking industry.