

STATEMENT OF
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 BEFORE THE
 SUBCOMMITTEE ON SURFACE TRANSPORTATION
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Good morning, Mr. Chairman and Members of the Committee.

I welcome this opportunity to appear before your Subcommittee this morning to discuss the regulatory jurisdiction and activities of the Interstate Commerce Commission (ICC), and proposals that would affect that agency's future course. The ICC has a long and distinguished history as the economic regulator of our nation's for-hire surface transportation carriers engaged in interstate commerce or the domestic portions of foreign commerce. Over time, its regulatory scope has expanded and contracted depending on changes in its statutory mandates and the commercial conditions of our rail, truck, bus, and water carrier industries. The ICC itself has changed along with its mandates, downsizing its resources by two-thirds.

While the Department believes that some of the Commission's activities no longer serve a useful economic or public policy purpose, the Department also believes that as long as the ICC's statutory mandates remain, its functions should be continued as an independent agency rather than be absorbed within DOT. Mr. Chairman, your bill, S. 2275, provides an good opportunity to advance our joint efforts to streamline government. We commend you, Mr. Chairman, for the creative approach you have put forward. S. 2275 takes immediate action to eliminate unnecessary regulation and also provides a process for the orderly consideration of what more should be done in the future. We strongly endorse your bill.

First, I would like to briefly outline how DOT and the ICC work together, and offer some brief observations on how well the ICC has performed in implementing the Interstate Commerce Act and the regulatory reform statutes of the last eighteen years. Then I will discuss both the recent action by the House of Representatives to sunset the ICC and your bill, Mr. Chairman, S. 2275, that you offer as an alternative to the House action. As you know, the goal of the National Performance Review is to get a government that works better and costs less. A more efficient government benefits all taxpayers. We have an opportunity to further that goal by evaluating an agency that was established over 100 years ago in light of today's marketplace. While the NPR focused on efficiencies to be gained from streamlining and reforming Executive Branch functions, it is consistent with that effort to extend such a review to independent government agencies such as the ICC.

Functions of the ICC

The two main areas in which DOT works most closely with the ICC are, first, through formal ICC regulatory proceedings, and, second, in determinations of the safety fitness of motor carriers. With regard to the latter, under current practice, if a motor carrier applicant is seeking interstate operating authority from the ICC, the ICC checks electronically to make sure DOT has not given the carrier an unsatisfactory safety rating, in which case the ICC would not award the authority. The ICC then informs DOT that the authority has been granted, so we can be certain the carrier is on our list for an on-site review to ensure the carrier is complying with Federal safety requirements.

In addition, both agencies are careful to maintain identical levels of financial responsibility (insurance) requirements. While the ICC polices its insurance requirements somewhat differently than we do, we believe the working relationship has been good, and that the system of shared responsibilities, while somewhat duplicative, is working well. To put this into context, I should note here that of the 280,000 interstate motor carriers in the U.S., all of which are subject to DOT federal safety standards, the ICC regulates approximately 62,000 carriers. I will have more to say about these

responsibilities later in my testimony when I discuss possible areas for reform.

With regard to the railroad industry, we believe that current economic regulation of market dominant rail carriers works very well. The Staggers Rail Act of 1980 was an exceptionally fine piece of legislation. It carefully balanced the interests of rail carriers and shippers and, as implemented by the ICC, seems to have satisfied most of them. While the railroad industry is largely deregulated in terms of ton-miles carried, the ICC provides essential oversight in the area of captive shipper protection.

The Department participated in numerous ICC rulemakings in the years during which the Staggers Act was first implemented and has stayed active as important issues have arisen before the Commission. For example, we were heavily involved in CSX Corporation - Control - American Commercial Line, Inc., the first post-reform case of a Class I railroad's acquisition of a major water carrier. More recently, there have been relatively few occasions that have required our participation, with the most notable exceptions being the Commission's reduction of regulation of car hire compensation and some relatively minor exemptions from ICC regulation. Overall, there have been few disagreements between our two agencies on issues of importance in rail regulatory policy.

In addition, there remain very few areas where there are strong disagreements among carriers or shippers over ICC rail regulatory policy. There were concerted attempts in the mid 1980's to roll back or "fine tune" some of the Staggers Act provisions as they applied to coal shipments, and to make a few adjustments concerning agricultural contract confidentiality provisions and an ICC export coal decision, but these matters appear to be settled now.

Not only are most railroads more financially sound today, but rail rates are lower than they were before the Staggers Act for all major commodity groups. In addition, intermodal operations have increased dramatically since the ICC exempted "piggyback" traffic from regulation in the early 1980's. This development has allowed freight to move efficiently from one mode to

another (e.g. highway to rail), helped to reduce the burden on congested highways and, in the bargain, reduced energy consumption and air pollution. Shippers seem very pleased with the improved service. Moreover, since the Staggers Act rail accidents have fallen by about two-thirds. The improved financial condition of the industry contributed to this improvement.

With regard to the intercity bus industry, the Bus Regulatory Reform Act of 1982 has helped change the economic conditions of the industry. The principal reforms of the Act concerned eased entry control, fare-setting by individual carriers rather than industry-wide, and ICC preemption of state regulatory decisions on entry, fares and service abandonments when those decisions adversely affect interstate carriers. We believe the ICC has continued to implement the Act as Congress intended. Large numbers of new carriers have entered the industry, although most of them are charter and tour carriers, as opposed to regular route carriers.

The main areas of concern are: the financial health of the industry, including that of Greyhound, which is by far the largest carrier; the large number of service abandonments, especially in rural areas not served by Amtrak or air carriers; and the continuing competitive issues between Greyhound and the independent carriers with which it both cooperates and competes. We believe, however, that these concerns are primarily the result of economic and demographic factors affecting the industry, rather than any regulatory policies or decisions by the ICC. We have not had any substantial areas of disagreement with the ICC over its conduct of bus regulatory policy in recent years. In fact, we generally agree with the Commission's views on handling carrier disputes, recognizing that it has to use its regulatory powers very carefully in cases where one carrier's aggressive business practices can appear to another carrier as anti-competitive. Unfortunately, the demand for the intercity bus service has been in decline for several decades and, in spite of the best intentions of the proponents of the 1982 Act, it has not been the invigorating force that had been hoped. Competing for riders against the airlines and Amtrak for a traveling public that has more registered vehicles than licensed drivers, is a difficult task.

The ICC performed a study of the intercity bus industry in 1993, and its bottom-line concerning the complaints by independent carriers against Greyhound was to recommend no action be taken, but to monitor developments with the possibility of regulatory action in future, should there be an adverse change in circumstances. DOT agrees with that conclusion. Moreover, the antitrust laws provide an additional measure of assurance that any competitive problems in the industry can be remedied.

Finally, with regard to the trucking industry, the reforms of the Motor Carrier Act of 1980, coupled with their aggressive implementation by the ICC in the early 1980's, have been remarkably successful in creating a much more competitive trucking industry. Over 30,000 new carriers entered the industry, making rate levels more competitive. Of these new entrants, about 2,000 are women- and minority-owned carriers that had been effectively "frozen out" of the industry under the old entry controls. It also has been estimated that shippers and consumers have saved at least \$15 to \$20 billion per year from lower shipping costs. Even larger savings continue to accrue to businesses and their customers from the "just-in-time" inventory and manufacturing systems that were made possible by regulatory reform of the air cargo, trucking, and railroad industries. Employment in the trucking services industry has increased by about 675,000 jobs, including about 591,000 new truck driver jobs, even after netting out the thousands of jobs that have been lost due to bankruptcies. Finally, evidence shows that the implemented reforms have produced these benefits without jeopardizing either small community trucking service or highway safety. The fatal accident rate for medium and heavy trucks fell to 2.5 per 100 million miles of travel in 1992 (the latest available data) from 4.6 in 1980.

The ICC's implementation of these trucking reforms has been very successful. However, adjustment to these new rules has been difficult at times. A notable example is the so-called shipper undercharge problem. We were pleased that an equitable legislative solution was worked out among all parties through legislation produced by this Subcommittee. One of the major trucking functions that the Commission must perform for the next several years is the implementation of the Negotiated Rates Act of 1993. Hopefully that new law will put an end to much of the protracted litigation over these claims.

Legislative Changes for the ICC

The future of the ICC was cast into doubt recently when the House voted on the FY95 DOT and related agencies appropriations bill to delete funding for the ICC for fiscal year 1995. While the House did not include language to transfer ICC functions to DOT, we understand that such transfer is the intent of the proponents of the amendment and would have to be done by subsequent authorizing legislation. The proponents refer to legislation before this Committee, S. 1248 and a companion bill in the House, H.R. 3127, that would sunset the ICC, transfer all of the ICC's functions to DOT and then require us to perform a six-month study in order to recommend to Congress what former ICC functions should remain and which should be eliminated.

We oppose the approach taken by the House in eliminating the ICC by deleting its funding at this time. We believe that the ICC continues to perform a valuable public service, particularly in the railroad area. We believe it is essential to maintain an independent forum such as the ICC, to address these issues and adjudicate disputes. Some shippers are served by only one railroad, and cannot rely on competition from other modes to carry raw materials or products. The ICC helps ensure that railroad rates and services for so-called captive shippers are reasonable. Significantly, as an independent agency the ICC has the ability to decide cases where the United States has a pecuniary or conflicting interest.

However, we also believe that improvements are needed, especially where outmoded and unnecessary regulations are a costly burden to the motor carrier industry. For example, the GAO says "with respect to motor carriers, ICC continues to issue operating certificates and receive tariffs. However, since few rate proposals or entry petitions are challenged today, these activities are largely a formality." Congress should consider those reforms first, with an opportunity for all interested parties to debate the issues, before getting rid of the ICC by simply zeroing out its funding.

S. 2275, which you, Mr. Chairman, and Senator Packwood, recently introduced, provides us with that opportunity. The Administration supports

S. 2275 as a means to accomplish needed reform in a systematic way. It provides a two-pronged approach: first, it would eliminate those ICC motor carrier functions which most parties agree are unnecessary and expensive; and, second, it would provide an orderly process for identifying, evaluating, and eliminating any additional requirements that may be unnecessary.

More specifically, S. 2275 would eliminate ICC regulation of motor carrier tariffs (including those for collectively set rates) and entry, other than those for household goods carriers. There is a fairly broad consensus that these entry and tariff requirements no longer serve the public interest but instead impose a costly and unnecessary burden on both shippers and motor carriers. The shipper undercharge crisis is a prime example of a system gone wrong. Last year's legislative response to that crisis, the Negotiated Rates Act of 1993, provided only a two year temporary solution. Eliminating tariff filing and enforcement, as S. 2275 would do, would provide a permanent solution to the undercharge problem. Shippers and carriers would be able conduct their business dealings on the basis of accepted commercial practices, not archaic government regulation. It also will reduce costs for carriers and shippers who now must employ people just to monitor the millions of tariffs filed each year. Those people could be used in a more productive way.

Motor carrier entry requirements are also expensive and outdated. The ICC receives thousands of applications a year for authority to operate an interstate trucking business. These applications are rarely opposed and rarely denied, except on grounds of safety fitness. S. 2275 wisely eliminates the entry requirements except for a showing of insurance and safety fitness. The remaining entry requirements for insurance and safety appear to overlap in part DOT's motor carrier reviews for safety and insurance. As we described earlier in our testimony, the ICC relies on our safety fitness determinations and both our staffs monitor insurance compliance. DOT monitors all interstate motor carriers, while the ICC covers only a segment of the industry. One of the issues we might consider in the future, perhaps in the context of the study, is to consolidate these functions, thereby eliminating extra paperwork, reducing opportunities for mistakes, and providing "one-stop shopping" for carriers.

There may well be other unnecessary motor carrier regulatory requirements that the ICC currently performs that could also be eliminated. However, more analysis and review of the ICC's authority is required. Currently, the ICC has the authority in the rail area to exempt portions of its jurisdiction from regulatory oversight where competitive conditions permit and such oversight is unnecessary. This has been very successful. The ICC has used this authority to exempt rail piggyback traffic, movements of agricultural produce, and boxcar traffic. S. 2275 would extend the ICC's exemption authority to its motor carrier jurisdiction, where, if implemented aggressively by the Commission, it could lead to similar efficiencies.

The bill also directs DOT to study the feasibility of merging the ICC and the Federal Maritime Commission (FMC). We are pleased that this study will enable us to examine not only the ICC's functions but also those of the FMC to identify areas of overlapping jurisdiction and consider organizational approaches that would streamline regulation and reduce costs to both the government and the regulated industries. The bill would require a second study to examine the ICC's functions more specifically to make recommendations to Congress concerning what changes could be made to enhance competition, safety and efficiency in the motor carrier industry and to enhance efficiency in government. We believe this is an important component of S. 2275 and we expect to actively participate in that study.

The debate over the future course of trucking regulation will continue for some time, spurred on by conditions in a very competitive intermodal transportation marketplace. The most recent example of this, as you know, is legislation produced by this Committee and recently passed by the Senate, section 211 of S. 1491, which would preempt States from regulating the trucking services provided by an intermodal all-cargo air carrier. The Administration supports section 211 as a step toward greater efficiency in intermodal transportation which should result in significant savings for U.S. businesses.

In sum, S. 2275 would take action now to reduce unnecessary government spending and employment and goes further by laying out an orderly process to review ICC functions and consolidation of agency

functions. This is fully consistent with the purpose of the President's and Vice President's National Performance Review. We look forward to working with the Committee to develop a charter for the future economic regulation of our surface transportation industries.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions you and Members of the Committee may have.