STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
PREEMPTION OF STATE REGULATION
OF INTERMODAL ALL-CARGO AIR CARRIERS
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Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to be here to discuss the problems of State economic regulation of motor carriers, and the proposed legislative solution now before the Committee. Section 211 of S. 1491 would prohibit States from regulating the trucking operations of transportation companies that offer intermodal cargo services. The Administration strongly supports this provision because it will eliminate conflicting laws that interfere with efficient intermodal cargo transportation and let us enjoy at the State level those economic benefits that have accrued at the interstate level since the Motor Carrier Act of 1980.

The Benefits of Trucking Deregulation

Regulation of the interstate trucking industry by the Interstate Commerce Commission (ICC) was largely removed by the Motor Carrier Act of 1980, a fine piece of legislation crafted by this Committee. As a result of that Act, almost 40,000 new carriers have entered the industry and made rate levels much more competitive. The new entrants include almost 2,000 women- and minority-owned carriers that would probably have been "frozen out" under the old entry controls. According to the Bureau of Labor Statistics, total employment in the trucking services industry has increased by over 500,000 since 1979, even after taking into account job losses resulting from recessions and other economic adjustments.

Shippers' overall distribution costs have been significantly reduced as a result of new price and service options enabled by the Act. The reforms have played a major role in the way U.S. industry conducts its manufacturing, shipping, merchandising, and inventory functions, resulting in substantial reductions in logistics expenditures. Estimates of savings range from $20 billion per year in direct freight costs, to more than double that figure when inventory savings are included.

Moreover, these benefits have occurred without the loss of service to small, rural shippers and communities that was predicted by the opponents of reform. Nor have their predictions of a serious deterioration in truck safety come to pass. Economic regulation does not ensure truck safety. Direct safety regulation does. A joint study by the California Highway Patrol and the California Public Utilities

Commission showed a direct and inverse relationship between truck inspections and truck accidents: as inspections increased, accidents fell and vice versa. Experience shows that since enactment of motor carrier deregulation at the Federal level and several important motor carrier safety laws also developed in this Committee, the fatal accident rate for medium and heavy duty trucks has fallen by about half.

The Problem of State Trucking Regulation

Most of these interstate reforms are not available to interstate or other carriers when they are conducting intrastate trucking operations. Although nine States do not regulate trucking operations conducted wholly within their respective boundaries, 41 States do. Such regulation usually takes the form of entry controls, tariff filing and rate regulation, restrictions on operations, and grants of antitrust immunity for carriers to collectively set their rates. Not all 41 States regulate each of these aspects nor do they all regulate them strictly, but the very diversity of their regulatory schemes is a problem for national and regional carriers who try to conduct a standard way of doing business.

Entry controls at the State level can be very strict, even stricter than they were at the ICC prior to the Motor Carrier Act of 1980. For example, it took United Parcel

Service almost 20 years to acquire authority to conduct operations within the State of Texas. In many States, such as Michigan, entry into any meaningful trucking operation is difficult because incumbent carriers are in the powerful position to argue before State regulators that new carriers are not needed and should not be permitted. To avoid these regulatory roadblocks, most new applicants seek such narrowly-defined authority -- to carry a particular commodity, such as dentures, for example -- that few existing carriers bother to protest. The resulting new operations are so restricted in scope that nothing is added to competition. With few competitors for any given route and type of trucking business, there is little reason for them to compete on price, so rates are higher than they would be if entry were as easy as it is at the interstate level.

About 26 States strictly regulate trucking rates. Such regulation is usually designed to ensure not that rates are kept low, but that they are kept high enough to cover all costs and are not so low as to be "predatory". Other carriers help to enforce rate regulation by complaining to State regulators that a carrier's rates are too low, and many State agencies can order those rates increased. States that regulate rates also require carriers to file their tariffs, an expensive task, with much paperwork and long intervals between filing rates and receiving approval to charge them. For carriers such as UPS and FedEx, which conduct interstate operations at the national level and have a uniform pricing scheme, this type of regulation and "regulatory lag" is both expensive and disruptive to operations. It also increases costs to consumers who use their services.

Most of the States that regulate rates confer immunity from the antitrust laws on carriers that band together to form "rate bureaus" for the purpose of discussing and agreeing on the rates to charge shippers. It does not take much imagination to guess the effect this has on rates: carriers facing little competition would not normally meet with each other to lower their rates.

Trucking economic regulation at the State level is both important and expensive. As much as two-thirds of all trucking shipments in the U.S. are intrastate. A recent staff study by the Federal Trade Commission estimates that strict <u>entry</u> restrictions in the "less-than-truckload" or LTL sector, which is so important to small businesses, raise rates by about 20 percent. Strict <u>rate</u> regulation in this sector raises them another 5 percent. And antitrust immunity adds another 12 percent increase, for a total of 37 percent in States that regulate entry, rates and collective activity. For the full truckload sector, which is more important to larger businesses, intrastate rates are 32 percent higher than interstate rates.

Taken together, it is estimated that State regulation costs shippers between $3 billion and $8 billion per year. These costs are passed on to consumers. Although much of this cost is borne by consumers and shippers in the regulating States, a significant portion is also paid by the rest of us in other states, as we purchase goods made by regional, national, and multi-national companies located in States that regulate.

Other expenses are not even counted in this cost burden. In order to escape the unnecessarily high costs of using intrastate hauls, shippers often make transportation and plant location decisions that save their companies money, but have undesirable consequences for the economy and the Nation. These costs include unnecessarily long shipping distances. For example, Procter and Gamble supplies its customers in Texas from manufacturing plants located as far away as Tennessee rather than from its Texas plants because relatively low interstate trucking costs make it cheaper to do so. The result is more diesel fuel consumption, more traffic congestion and air pollution, and more wear and tear on the highways.

Of all the regulatory reform legislation enacted since 1977, affecting airlines, trucking, railroads, and intercity buses, trucking is the only sector in which the legislation did not recognize the problem of State economic regulation and include language to preempt it. States may not regulate the rates, routes or services of air carriers, whether the carrier owns and/or operates its own aircraft (direct air carriers) or purchases space on the aircraft of other carriers (indirect air carriers). States that regulate intrastate rail operations must have their regulatory policies certified by the ICC for consistency with Federal standards. Intercity bus carriers can appeal harsh or unfair State regulatory decisions concerning entry, fares, and service abandonments to the ICC, which can overrule them.

State Regulation of Package Express Carriers

The package express industry is one in which we lead the world because of its integrated multimodal operations. This industry has its roots in transportation deregulation, and would not exist today without the work of this Committee in removing the chains of interstate regulation. Our integrated multimodal operators are the envy of the world, with impressive international, national, and local services. Today, there is even impressive small package service in predominantly rural States such as West Virginia, Arkansas and Montana. In fact, rural States have more service today than at any other time in our history.

However, under current law, the playing field for package express carriers in intrastate commerce is extremely uneven. Recently, in the nine western states bound by the Ninth Circuit, the Court in Federal Express v. California Public Utilities Commission, 936 F.2d. 1075 (9th Cir., 1991), *cert. denied,* 112 S.Ct. 2956 (1992), applied the broad State preemption provision in the Airline Deregulation Act of 1978 to the trucking operations of FedEx, an air carrier. This exempted FedEx from California's motor carrier controls. Because of its status as an air carrier, FedEx then held a tremendous competitive advantage over its competitors who were still regulated. Although some of its competitors conduct similar operations, they are not organized as air carriers. For example, UPS has an air carrier operation, but the company itself is not an air carrier. FedEx was freed from expensive paperwork requirements such as tariff filing and financial reporting, and could freely exercise its guaranteed on-time delivery feature.

Last year, in response to this inequitable situation, California enacted legislation extending this exemption enjoyed by FedEx as a result of its court victory, to its competitors which are motor carriers affiliated with direct air carriers. The California legislation denied this exemption, however, to those using a large proportion of owner-operators instead of company employees, thereby denying it to Roadway Package System, even though the Roadway holding company includes an air carrier operation.

Also recently, the State of Texas decided to follow (and broaden somewhat) the decision of the Ninth Circuit Court. It has removed the surface operations of integrated air-motor package carriers from Texas Railroad Commission regulatory jurisdiction. However, competitors whose operations are not integrated will continue to be regulated. Likewise, Kentucky enacted legislation in May 1994 exempting from its regulation the carriage of packages weighing less than 150 pounds, by motor carriers affiliated with either direct or indirect air carriers.

In another 40 or so States, package express carriers are subject to various regulatory schemes, and many others are not even allowed to compete because they have been denied intrastate operating authority by public utility commissions in those States.

Legislative Solution of Section 211

The Administration supports the legislation before the Committee, section 211 of S. 1491, that would help alleviate the burden of State regulation on motor carrier operations. Depending on how many carriers would qualify for the regulatory relief, section 211 could provide substantial costs savings for this important transportation industry. Such a legislative solution would codify in law the Ninth Circuit FedEx decision, with one major difference. It would make that regulatory reform available to a much broader class of carriers.

Airline operations are already free from State regulation under a strong federal preemption provision in current law. The controversy arises for airlines offering trucking services as part of their freight operations. Section 211 would supplement the federal preemption provision under current law and preempt States or compacts of States from regulating the economic, non-safety-related activities of "intermodal all-cargo air carriers." The latter term is defined in the legislation. Such carriers include certificated air carriers, such as FedEx, that own and operate aircraft. It also includes what are known as "indirect" air carriers that do not own or operate aircraft, but simply purchase space on the aircraft of others and sell it to shippers. Section 211 would exempt from State regulation the operations of motor carriers that (1) are either affiliated with air carriers through common ownership, or (2) use air carriers a substantial number of times.

That means that any air carrier, including an indirect air carrier (also called "air freight forwarder"), offering motor carrier operations would fall under the exemption; in addition, any regulated for-hire motor carrier could qualify by purchasing such an air carrier, conducting operations as such an air carrier, or by using such an air carrier at least

15,000 times per year. It is unclear what constitutes 15,000 uses, i.e. whether this refers to shipments or packages or pieces. We urge that this be clarified.

Although section 211 has been characterized by some as a narrow provision that would benefit only a few relatively large companies such as UPS and FedEx, it appears that any regulated carrier ("which has authority to provide transportation" from the ICC or a State agency) could qualify if it wished to do so. Nor is its impact limited to intermodal package carriers, since it applies to "property," which we interpret to mean freight or cargo of all kinds and sizes, as well as "pieces, parcels, or packages." We do note that there may be a technical drafting problem relating to State routing controls for safety purposes. We would be happy to work with the Committee to clarify that issue.

Thus, this legislation would help to even the playing field for those carriers willing to avail themselves of the opportunity. If given broad interpretation, it could eventually yield $3 billion to $8 billion per year in savings.

We therefore strongly support this legislation because of the importance of the air cargo sector of our transportation industry. The Administration is interested in lowering barriers to entry and enhancing competition. At the same time, we are concerned that the regulatory relief provided could disadvantage some smaller motor carriers, including bus companies. We acknowledge that, if this legislation is enacted, there may be a transition period during which smaller, less sophisticated carriers, might find it hard to adjust. Much will depend on the way in which State legislatures and regulatory agencies respond the change and take actions to assure the fairness and equity of their regulatory regimes.

We want to find ways to ease that transition and minimize any disadvantages for small operators. We would be happy to work with the Committee in that effort.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions.