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ABSTRACT

THE TRANSPORTATION OF NEW MOTOR VEHICLES: AN ANALYSIS OF COMMISSION AND INDUSTRY PERFORMANCE

by C. Joseph Sequin

This thesis is a study of the performance of a specialized segment of the transportation industry. Much has been written about the plight of the common carrier, the vicissitudes of contract carriers, and the mushrooming of private carriers. Very little has been done to describe the structure and the performance of markets served by specialized carriers. Because specialized carriers may operate under conditions which differ significantly from those which prevail in common carriage, measures which may be essential to the welfare of common carriers generally may be unnecessary or inappropriate for specialized haulers.

The Commission itself provided much of the information necessary for this investigation either through its printed record or through the dockets stored in its files. In conducting the study, the author also relied upon materials provided by shipper and carrier associations, by shippers and by carriers themselves through letters and interviews, and by attorneys admitted to practice before the Commission. Various studies by private groups and by Congressional bodies also proved useful for some aspects of the analysis.

The body of the thesis includes an account of the

development of the industry from the turn of the century when railroads began significant movement of automobiles to the recent introduction of multilevel service. One chapter is reserved for a discussion of the nature of the operating rights required of motor carriers hauling new motor vehicles. Subsequent chapters are devoted to an analysis of the characteristics of the demand for and the supply of transportation for new vehicles; to an evaluation of the performance of the Commission and of the industry itself; and to an examination of the extent to which the protection of the public interest requires regulatory supervision.

The general conclusion of the study is that Commission regulation failed to produce an efficient allocation of the resources used in transporting new motor vehicles and, in addition, that the public interest has been subordinated to the interests of the carriers. From the outset, the Commission seemed obsessed with the idea that competition was unworkable and so it aided and abetted the carriers in the establishment of a host of petty monopolies. Unlike the public utility commissions, however, the Interstate Commerce Commission neglected to require that the monopolies which it created provided the public with efficient service at reasonable rates.

The Commission was not alone responsible for the inordinate profits and resource misallocation which developed in the industry. Railroads were painfully slow to assess

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the impact of motor carriers and, as a consequence, they did not protest the adoption by the Commission of rate policies which deprived them of the cost advantages they enjoyed. In addition, the shippers, although they possessed the ability, did not engage in arm's length bargaining with their motor carriers until late in the 1950's.

The most important conclusions of the research have to do with the degree of regulation required to protect the public interest. Specifically, the study reveals no compelling reason for the continuation of economic control by the Commission over motor carriers of new automobiles. So far as intermode competition is concerned, the efficient allocation of the resources committed to this industry requires a reorientation of Commission rate policies which will substitute cost of service for value of service as a prime criterion of the reasonableness of rates.

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THE TRANSPORTATION OF NEW MOTOR VEHICLES: AN ANALYSIS
OF COMMISSION AND INDUSTRY PERFORMANCE

By

Fac. cl
C. Joseph Sequin

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In the several years over which the research for this paper was conducted, the writer managed to accumulate a substantial stockpile of obligations for the many kindnesses and the helpful advice received from so many quarters. Professor Walter Adams, under whose direction the dissertation was written, was uncommonly sympathetic to certain difficulties which beset the writer in addition to offering valuable suggestions for improvement and some badly needed financial assistance. Professor Thomas P. Bergin, Chairman of the Department of Business Organization and Management in the College of Business Administration at the University of Notre Dame, was instrumental in securing a reduced schedule and in procuring funds to finance several field trips and typing assistance. I am deeply indebted to Professor Bergin and to the Dean of the College, James Culliton, and to the Administration of this University for their generous assistance. I am likewise grateful for the help extended by industry representatives: Mr. E. S. Knudson and Mr. Henry C. Crawford of the Ford Motor Company; Mr. Rudy T. Fick and Mr. Earl Wiseman of the Studebaker-Packard Corporation; Mr. Paul Fritzching of the Chrysler Corporation; Mr. Richard Mollica of the Chevrolet Division of General Motors Corporation; Mr. Charles Pieroni

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CHAPTER I

I. INTRODUCTION

From whatever quarter one surveys the transportation scene, there are distress signals pointing to a rapidly developing crisis. The railroads are in unenviable financial difficulties; the motor common carriers are rapidly losing ground to private carriers; and the inland and the coastal water carriers are in declining economic health. Each of the major transportation agencies has bared the details of its malady before various Congressional committees. Each has also diagnosed the illness plaguing it and has volunteered a prescription. The carriers have not been alone in their concern over the status of the transportation system. Congressional committees, the Interstate Commerce Commission, the Department of Commerce and countless scholars have all contributed to the rising tide of studies analyzing the problems confronting the industry.

The problem facing carriers is undoubtedly complex so that it is not difficult to understand the diversity which characterizes the solutions proffered. The most important controversy swirls around the role to be played by competition (particularly intermode competition) in the allocation of transportation resources. In general, the motor

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and the water carriers urge that competitive forces be kept under a tight rein by the Interstate Commerce Commission. The railroads, on the contrary, protest that the Commission's past efforts to supplant competition are, in large part, responsible for the plight in which carriers presently find themselves. They, along with a substantial number of economists, argue that competitive forces should have more influence in shaping the character of transportation markets.¹

Much of the blame for the present chaotic state of the industry is laid to antiquated laws and to a heavy-handed Commission. Former Commissioner Anthony Arpaia declared:

The fact that the unregulated portion has been gaining and growing so that now it is being used for almost half the transportation service in this country convincingly shows that hamstringing those who are charged with doing the job of transportation with economy and efficiency has not worked.

.....
In short, the government, although it perhaps did not intend to, sponsored the mess in which we find transportation today. The coercive force of government, by stifling the creative forces of free enterprise in transportation, is driving the common carriers to slow but inevitable failure.²

President Kennedy's message to the Congress echoed the same sentiment:

But pressing problems are burdening our national transportation system, jeopardizing the progress and security on which we depend. A chaotic patchwork of inconsistent and often obsolete legislation and regulation has evolved from a history of specific actions addressed to specific problems of specific industries at specific times. This patchwork does not fully reflect either the dramatic changes in tech-

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nology of the past half century or the parallel changes in the structure of competition.

The regulatory commissions are required to make thousands of detailed decisions based on out-of-date standards. The management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative. Some parts of the transportation industry are restrained unnecessarily; others are promoted or taxed unevenly and inconsistently.

Some carriers are required to provide, at a loss, services for which there is little demand. Some carriers are required to charge rates which are high in relation to cost in order to shelter competing carriers. Some carriers are prevented from making full use of their capacity by restrictions on freedom to solicit business or adjust rates. Restraints on cost-reducing rivalry in ratemaking often cause competition to take the form of cost-increasing rivalry--such as excessive promotion and traffic solicitation, or excessive frequency of service. Some carriers are subject to rate regulation on the transportation of particular commodities while other carriers, competing for the same traffic, are exempt. Some carriers benefit from public facilities provided for their use, while others do not; and of those enjoying the use of public facilities, some bear a large part of the cost, while others bear little or none.³

As has already been suggested, there has been a plethora of studies directed at the transportation problem. What justification is there for yet another investigation? Most of the studies so far undertaken have been concerned with the problems of the railroads, with the plight of the common carrier, with interagency competition, with the role of mergers, and with similar broad issues. The purpose of the present study is to take a single, specialized, readily identifiable segment of the transportation industry and to examine its structural and its behavioral characteristics

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for the purpose of determining the amount of regulatory supervision necessary to insure optimal performance. In too many instances in the past, it has been assumed that conditions which suggest the need for government regulation of carriers of general commodities apply pari passu to specialized carriers as well. Curiously, the specialized carrier has not been subjected to careful study. Yet, he operates under circumstances which, in many respects, diverge sharply from those surrounding common carriage generally. It is quite conceivable that certain characteristics of the transportation of general commodities dictate some degree of administrative interference with the operation of market forces. It does not necessarily follow that the same interference is justified or prudent in the case of the specialized carrier. Heretofore, it has been too readily assumed that policies deemed adequate and necessary for one segment of the transportation world have a general validity in all segments. We shall examine this assumption.

The "market" we are concerned with is supplied by rail, motor and water carriers, and it is reasonably easily defined. The "industry" we have singled out for special attention consists of those motor carriers who have Commission authority to transport new motor vehicles. Most of these carriers are specialized carriers specifically designated by the Commission and transporting few or no commodities other than motor vehicles. Common and contract motor carriers of motor vehicles together transport the bulk

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of the new motor vehicles (90 percent in 1960). The rail carriers at one time carried most of the new motor vehicles but, with the advent of the motor carrier, the rail share dropped until, in 1960, it was less than 10 percent. Recently, however, rate reductions and technological change have combined to improve rail participation in this traffic. At one time, water carriers transported new motor vehicles on the Great Lakes, along both the east and west coasts, and on the vast inland waterways. At the present time, two firms carry the bulk of the new automobiles transported by water; and these operate on the Great Lakes only.

One of the distinct advantages of regulation is that it provides the researcher with voluminous information which, under other circumstances, would be jealously guarded. From the hundreds of cases involving the transportation of new motor vehicles which are printed (mainly in the reports of the Interstate Commerce Commission) it was possible to secure data on the operations of individual companies and on specific policies of the Commission. The writer also had the opportunity on two occasions to spend time examining dockets in the files of the Commission in Washington. In addition, extensive use was made of Commission studies and of the various statistical series provided by the Commission.

Of course, not all the data provided by the Commission is in useful form. Indeed, there are some important gaps which, because of the inadequacy in the data or the limitations of time, could not be filled from Commission records.

In order to provide necessary information, industry representatives were contacted. Shipper and carrier representatives were interviewed; motor carrier, rail and industry attorneys supplied copies of briefs and exhibits and provided other desired information; and carrier and shipper associations were asked to provide data not otherwise obtainable. Some of the gaps were never filled. This is especially true of contract carriers and water carriers who were unable to supply information on their operations. These gaps, however, are not such as to complicate the analysis unduly or vitiate the conclusions which are reached. Much additional information, either specifically applicable to carriers of motor vehicles or of a general theoretical nature, was culled from books and articles in learned journals, Congressional and other government sources, and from industry publications.

As a first step in the analysis of the industry we shall undertake, in Chapters II and III, to examine the history of the industry. We shall carry the story of the industry from the first recorded case to come before the Commission to the development of the new multilevel rack cars. We shall next, in Chapter IV, turn our attention to the limitations imposed upon motor carriers by the law as interpreted by the Commission. With some knowledge of the history of the industry and fortified by an understanding of the restraints under which carriers must operate, we shall then, in Chapter V, develop the important features which

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characterize both the supply and the demand side of the market. Chapter VI will be devoted to an analysis of the conditions under which the industry might function most effectively. Finally, in Chapter VII, we shall attempt to determine whether or not and to what extent public regulation is necessary to protect the public interest in a safe, adequate, and efficient performance by this industry.

CHAPTER II

THE TRANSPORTATION OF MOTOR VEHICLES 1900-1958

A. INTRODUCTION

No analysis of the performance of an industry is possible without a knowledge and an understanding of the conditions surrounding the birth of the industry and of the forces which give it substance and character. The purpose of the present chapter is to supply such knowledge and understanding as is essential to an intelligent appraisal of the performance of the carriers, of shippers and of the Commission itself.

Chapter II will carry the story of the industry from the early days of rail monopoly to the end of the decade of the 1950's at which time the railroads had been virtually eliminated from the industry. We shall reserve to a later chapter the discussion of the rail resurgence which began in 1959.

B. THE ERA OF RAIL DOMINANCE

The classification of automobiles. Until the middle 1920's, the railroads, with minor exceptions, enjoyed a monopoly of all but the very short-haul automobile traffic. Transportation by water carriers was competitive with the

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railroads in southern and western coastal areas; and within a narrow radius of the manufacturing plants, private carriage captured most of the traffic. Nevertheless, to most destinations the rails met no effective competition.

This monopoly position was reflected in the classification of automobile traffic. The earliest available records reveal that boxed or crated automobiles were rated at one and one-half times first class at actual weight while unboxed and uncrated vehicles were assessed double first class rates with a minimum of 5000 pounds.¹ In Official Classification, the rating on unboxed automobiles was two and one-half times the first class rate.² As the volume of automobiles increased, however, some modifications were made in the classification. A distinction was made, for example, between passenger automobiles and freight automobiles, the latter being rated second class in both Official and Western classifications.³ Moreover, the rating was generally reduced to first class subject to rule 34, a graduated minimum weight rule. It was not until 1931, when rails were hard-pressed by motor carriers, that the rating was reduced from 110 percent of first class to first class in Official Territory.⁴

The lack of competition was further manifest in the dearth of commodity rates on this traffic. What few such rates existed were generally established to equalize rates over circuitous routes or they were essentially first class rates with more liberal carload minima.⁵

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The rail carriers exacted a high toll from shippers of automobiles but, judging from the complaints lodged by the latter, the service rendered was not always commensurate with the rates that were levied. In the first place, the equipment employed by rail carriers was not particularly well adapted to the automobile shipper's needs so that the latter was obliged, at his own expense, to make modifications in rail cars.⁶ In addition: demurrage and storage charges were assailed as being unreasonable;⁷ there were delays in delivery;⁸ there was controversy over what constituted adequate crating;⁹ and, shippers protested that minimum weights could not be loaded.¹⁰

Shippers also lodged complaints about rates which they considered to be unreasonable, discriminatory, and prejudicial. Sometimes the Commission was simply called upon to decide which of several conceivably applicable rates was appropriate.¹¹ More often, shippers alleged that the rates charged them were unreasonably high. But, by the time automobiles had begun to move along the nation's rail arteries, value-of-service pricing had become so firmly entrenched at the Commission that these protests fell on deaf ears.¹² The Commission seemed most uncertain in its handling of cases involving charges of discriminatory rates. In most instances, so far as rates on motor vehicles are concerned, these cases arose as a result of rail efforts to counter the competition of water carriers.

Water-rail competition. The completion of the trans-

continental rail lines brought the railroads into competition with intercoastal water carriers. Although the railroads coveted west coast traffic, they could not secure it under existing rate structures; and they were unwilling to institute general rate reductions. The way out of the dilemma involved a grouping of points in both east and west with a blanketing of rates over wide areas. In this way, rates to competitive coastal areas were kept low enough to attract traffic without depressing rates to non-competitive inland points.¹³ For a variety of reasons, the water carriers had not been able to compete with railroads in the movement of motor vehicles to the west coast.¹⁴ However, when the water carriers finally established a beachhead in 1929, they expanded it so rapidly that by 1932, steamship companies had captured 46 per cent of the west coast traffic.¹⁵

The rail assessment of the action necessary to counter the water offensive was undeniably realistic. Because of rail service advantages, there was no need for the railroads to match water carrier rates.¹⁶ What the railroads requested from the Commission was approval of a rate schedule which would establish a permanent rail-water differential of \$.30 per hundred pounds.¹⁷ Nevertheless, these proposals involved reductions of such magnitude that the rail carriers felt constrained to justify the new charges on a cost basis.¹⁸

The Commission's refusal to accept the proposed rates

was based on several factors. Most important perhaps was the fact that the line of action taken by the railroads ran counter to the rate theories of the Commission. Automobiles, from the ICC's vantage point, were high-value commodities so that it appeared that, "the proposed reductions on this high-grade traffic are lower than reasonable maximum rates."¹⁹ The cost studies introduced by the railroads to prove that the rates were compensatory were not seriously considered by the Commission which dismissed them as "mere approximations."

Even if the ICC had had a greater respect for rail cost statistics, however, the evidence introduced would have been inadequate anyway. What a railroad had to prove was not that its total revenue would be improved by the new rate, but that the revenue for all railroads would be enhanced. This meant that the gains of the railroads hauling automobiles to the west would have had to exceed the losses incurred by those roads which had transported automobiles to the eastern ports.²⁰ In the absence of such evidence, the Commission adopted its own conclusion that the proposed rates would deplete carrier revenues.

There was another factor which figured prominently in the Commission's refusal to sanction the rate proposals. The existing rate schedules already provided for discrimination between coastal and inland areas. Under the formula urged by railroads, the disparity in rates would be increased. The proposed rate from Detroit to Phoenix, Arizona

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was \$4.555 per hundred pounds whereas the proposed rate from Detroit to Los Angeles (approximately 290 miles more distant) would have been \$3.92.²¹ This was a difference the Commission was not prepared to sanction.

The Commission refused the rate latitude sought by rail carriers for the west coast traffic, but it did allow the railroads considerable freedom to counter the stiffer water competition on traffic to southern coastal areas. The rates from Detroit and Flint were \$.135 lower to south Atlantic ports than they were to Birmingham, Alabama. To the Gulf ports, Detroit rates were \$.21 less than they were to Birmingham.²² The Commission, with obvious chagrin, approved this rate discrimination declaring that:

In previous years we have expressed the view that the rates from the Ohio River to the south Atlantic and Gulf ports were subnormal, being induced by an active, present, and compelling competition over which the rail lines have no control.²³

When complaints of rate discrimination were received from less favorably located shippers, the Commission merely satisfied itself that the assailed rates were no more discriminatory than those which were being charged to similarly situated inland stations.

In this first period, which extended until approximately 1925, the railroads enjoyed a substantial monopoly in the transportation of new motor vehicles. In accordance with the value-of-service theory of pricing espoused by the carriers and promoted by the Commission, the rates

reflected the inelastic nature of the demand curve for transportation of motor vehicles. The only exception to this occurred in those few places where water carriage was practicable, and, even here, the Commission was reluctant to permit departures from monopoly-oriented pricing structures.

C. THE DEVELOPMENT OF MOTOR CARRIER SERVICE

The growth of driveaway and truckaway techniques. The transportation of automobiles by highway had its origin in the difficulties encountered by shippers during World War I.²⁴ After the conflict, many dealers, grieved by the persistent application of first class rates on automobile traffic, began private transportation of automobiles by the driveaway method from the manufacturing and assembly plants to their showrooms.²⁵ By the middle of the 1920's, some enterprising individuals recognized the possibilities of supplying transportation for dealers and customers and they began actively to solicit driveaway business.²⁶ So successful were the efforts of the highway carriers that the portion of motor vehicle traffic transported by highway increased from 23 per cent in 1921 to 42 per cent in 1930.²⁷ By 1929, automobiles were being transported by highway from southern Michigan plants to points as distant as Denver, 1300 miles away.²⁸

The driveaway company, nevertheless, operated under some handicaps the chief of which was the objection of manufacturers and dealers to the wear and tear on the vehicle

incident to its transportation.²⁹ General Motors was especially opposed to driveaway operations, and eventually did not permit this method except for delivery within metropolitan areas. Ford was also reluctant to resort to driveaway, and imposed limitations on its use so that, by 1939, the average driveaway haul was only fifty-three miles. Chrysler was considerably more tolerant, but it recommended that its dealers not use driveaway beyond 500 miles.³⁰ Other manufacturers were more liberal. The average haul for the George F. Burnett Company (which carried for Studebaker exclusively) was about 725 miles; and some automobiles were delivered to Miami, 1,200 miles from South Bend.³¹

Because of the infirmities evident in driveaway operations, some of the very early truckers attempted to develop trailers for truckaway service. They purchased sixty-foot platform trailers on which they mounted three, and sometimes four vehicles, which they hauled by means of an attached tractor.³² When these rigs were declared unlawful by most states, trailer manufacturers were sufficiently intrigued by truckaway possibilities to design trailers which could carry up to four vehicles and still conform to state length and weight requirements.³³ Within a short time, this new truckaway technique became the most important method of highway transportation of new automobiles. Most driveaway companies shifted to the new equipment although some tried to remain competitive by using a tow-bar.

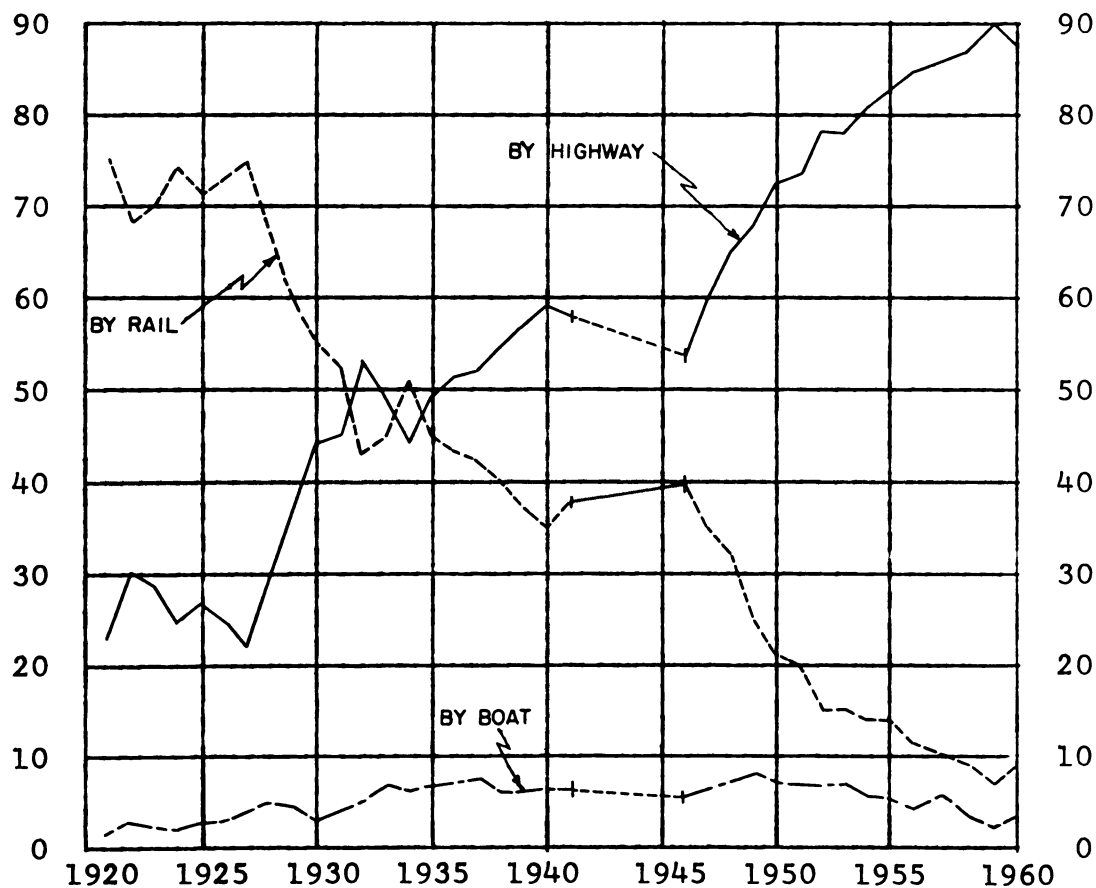
Nevertheless, by 1939, 88.7 per cent of the automobiles transported by highway moved in truckaway operations whereas only 3.8 per cent moved by tow-bar. Driveaway accounted for 7.5 per cent.³⁴

Motor carrier advantages. What factors account for the rapid, dramatic shift of motor vehicle traffic from the rails to the highway? A glance at Figure I shows clearly that, except for two brief interruptions, the precipitous decline in the rail share is matched by the equally rapid rise in the motor carrier portion of new automobile traffic. The change in relative participation is a product of many factors, the most important of which were the service advantages of motor carriers and the rate policies of the railroads and the Commission.

Motor carrier service advantages were available both to the automobile manufacturer and to the automobile dealer. So far as the manufacturer was concerned, the use of trucks reduced congestion at his plant.³⁵ In addition, the cost of loading an automobile for movement by truck was less than the cost incurred for rail movement.³⁶ At the dealers' end, the advantages of truck service were more pronounced. For one thing, the trucker delivered an automobile completely assembled and ready to drive; and he delivered it to the dealer's door. When shipment was effected by rail, the dealer had to provide for transportation from the rail yard to his showroom. But, a greater inconvenience and expense resulted from the fact that cars shipped by rail

Figure 1.- Method of shipping new motor vehicles from manufacturing and assembly plants

Per cent



Source: Automobile Manufacturers Association, Motor Truck Facts (Detroit: Automobile Manufacturers Association, 1959), p. 31.

were not in operating condition. For safety reasons and to prevent damage, oil and gas were removed, bumpers were detached, and springs were sometimes tied down. Moreover, the dealer frequently had to add water and antifreeze and connect batteries and radiators.³⁷

In addition to the cost advantages incident to unloading, dealers appreciated other conveniences offered by the truckers. Small dealers with insufficient volume to purchase stock in carload lots had to bear high less-than-carload rates on rail shipments. For them, truckers were willing to make split deliveries or deliveries to off-route points at very modest rates.³⁸ Other dealers bought in carload quantities but, because of demands for different makes and models, they had to purchase from different plants in the Detroit area. In these instances, rails subjected dealers to less-than-carload rates. The truckers, on the other hand, were amenable to making up a load composed of vehicles from different plants in the same area and to transport the load at truck-load rates.

One of the really important assets of highway transportation was its speed. This was the result of a combination of factors. A dealer shipping by rail could not enter or modify an order after five p.m. since factory shipping offices were closed. He could, however, call a trucker at any time and expect that a load could be made up for him from the vehicles stored on the carrier's lot and dispatched promptly. For distances under two hundred miles,

it was even possible for him to get delivery in the morning. Despite the fact that rails were faster for the line-haul portion, the advantage gained by the trucker in loading and dispatching shipments made him, by shipper consensus, the faster carrier for distances up to five hundred miles.³⁹

The truckers were not content to rely upon their service advantages in the struggle for traffic; they deliberately set out to undercut rail rates.⁴⁰ Although it must have become quickly apparent that service advantages would have secured traffic for motor carriers even with rate parity, the truck rates remained below the corresponding rail charges.⁴¹

One further advantage (which seemed important to the railroads at least) was the fact that dealers and distributors sold motor units to trucking firms. Presumably it was good business for dealers to patronize potential customers.⁴²

There were also some serious disadvantages, particularly from the manufacturers' point of view, growing out of new motor truck service. Shipment of new automobiles was purchased and arranged by individual dealers. Some of the truckers selected by dealers were reliable and dependable while others were irresponsible fly-by-night operators whose inferior or even defective equipment and careless operation resulted in damage and delay. Moreover, the situation in the shipper's receiving yards was ordinarily one of unrelieved chaos with rails, truckers and dealers themselves

claiming and loading vehicles.⁴³

As a result of the mounting dissatisfaction with the lack of order characteristic of highway transport, the automobile manufacturers decided to assume control over the distribution of their motor vehicles. The Chevrolet Division of General Motors pioneered the change when, in 1934, it selected and helped develop seven contract carriers to whom it entrusted all the traffic from its assembly plants. The contracts assigned generally non-competitive territories to each of the favored carriers. The Buick, Oldsmobile and Pontiac (BOP) assembly plants were included in this scheme.⁴⁴ Ford followed closely on the heels of General Motors but, although it made use of contract carriers, it continued to rely primarily on common carriers. Other shippers fell in line somewhat more slowly.⁴⁵

D. WATER CARRIERS AND NEW AUTOMOBILE TRAFFIC

The water carriers have never been an important factor in the industry from the point of view of volume handled. Nevertheless, they exerted a strong competitive influence on certain portions of the traffic. During the season of open navigation, for example, most of the traffic from Michigan points destined for Trunkline, New England, and Northwest territories moved by lake via Cleveland, Buffalo, and Duluth, and Milwaukee.⁴⁶ In addition, some automobiles moved down rivers on barges. Although several manufacturers made use of barge service, most of this traffic originated at Chrysler's Evansville plant which was ideally located on

the Ohio River.⁴⁷

There is very little available evidence detailing the origin and the development of water transportation of motor vehicles. We do know that while some vehicles were transported by water in the early part of the 1920's, no serious rivalry with the railroads was manifest until 1928. In 1927, for instance, lake carriers handled only 9,765 automobiles. In 1928, this mushroomed to 156,573, and by 1937, shipping companies were handling 315,345 motor vehicles.⁴⁸

Automobiles were carried both by bulk freighters and by specialized motor vehicle transporters. The former stored as many as 140 automobiles on spar decks. Generally, these carriers did not serve automobile manufacturers directly, but they concluded contracts with specialized carriers for the transportation of such vehicles as their schedules and available space permitted.⁴⁹ At least two companies, Western Transit Company and Nicholson Universal Steamship Company were engaged primarily in the transportation of motor vehicles. They loaded and unloaded automobiles, furnished dunnage, assumed liability for loss and damage, and had joint tariffs with rail and highway carriers.⁵⁰

The principal inducement to ship by water was that the rates were lower than those of competing modes. There were, of course, other attractions. For example, the water carriers generally had spacious yards near dockside and they were willing to store vehicles for considerable periods

of time at nominal rates.⁵¹ From the dealer's point of view, this meant that he had a nearby supply of assorted makes, models and colors from which he could draw. This in turn made a smaller investment in inventory possible for him.

Water transportation suffered some disabilities. Probably the most important of these was the relatively slow transit time. To some extent, this was ameliorated by the building up of a backlog in storage yards. Very little could be done, however, to ameliorate a second serious disadvantage; namely, the increase in damages which resulted from the necessary transfers of lading.

E. THE RAIL COUNTER OFFENSIVE

By 1930 it had become evident to the railroads that the loss of automobile traffic was serious; furthermore, it seemed increasingly probable that the trucking industry, lusty though it may have been in its infancy, would mature rapidly into an even more formidable rival. The inaction which had been characteristic of rail policy in the 1920's ended in 1930 when the railroads formed the Traffic Executive Association which later came to be known as the CFA Special Automobile Committee. In November of 1930, this group met with a committee representing the automobile industry to discuss the future role of rail carriers in the transportation of new motor vehicles. The automobile companies evidenced a desire for continued rail participation, but they bluntly indicated that they could not foresee much of a future for rail carriers under existing conditions.

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As a result of these meetings, the CFA Committee proposed several changes. In the first place, it suggested that the rating for automobiles be reduced from 110 per cent of first class to first class in CFA Territory. Secondly, it urged the establishment of commodity rates based on mileage scales up to five hundred miles. Both of these recommendations were adopted, and a scale arbitrarily arrived at and known as scale G was accepted.⁵² The new rates were made effective on April 20, 1931 from CFA producing points to destinations in CFA Territory. In order to allow more effective competition with trucks, departures from scale G were allowed to certain cities (referred to as "storm centers") where truck rivalry was particularly pressing.⁵³

At about the same time, railroads in the southwest sought to recapture traffic lost to truckers through the establishment of a mileage scale. In the southwest, as in CFA Territory, reductions were made on short haul traffic only, since across-the-board decreases seemed wasteful of revenues in view of the fact that truck competition was most severe on short hauls.⁵⁴

Conferences with shippers by the CFA Committee were held again in 1932 and in 1933, but industry suggestions for further rate reductions were brushed aside. The attitude of the rails was primarily the product of two considerations: In the first place, the reductions which had been made in 1931 failed to produce diversion to the rails

because truckers had matched rail cuts. Secondly, many railroad executives felt that selective rate cutting would "jeopardize the whole of an interrelated rate structure."⁵⁵

In lieu of rate reductions, the rail carriers, in 1933, sought to enhance their competitive position by improving their service through the use of special loading devices. The Evans Loaders,⁵⁶ as they were called, permitted the loading of four standard size automobiles per boxcar. That the railroads placed their faith in the new devices rather than in rate cuts is evident from the statement made by Mr. O.R. Bromley:

I repeat that in 1933 it was felt that the efforts of the carriers to retain this traffic could best be centered on providing device cargo under rates which were established in 1931.⁵⁷

This view was supported by Mr. A.W. Richardson who testified:

So far as boxcar rates are concerned, we learned early in the game that no reasonable rate would be sufficiently low to recapture this business from the trucks....In fact, our investigations with the major automobile producers convinced me that these advantages offered by trucks would not be overcome through rail rate adjustment.⁵⁸

Disillusioned by the results of their efforts to regain their former preeminent position in the transportation of new vehicles, the railroads increasingly became convinced that the root of the problem rested in the fact that their rivals were not regulated. Railroad executives who had been weaned on the economics of monopoly simply did not understand how to survive in competitive markets. The

average American businessman, accustomed to bidding for business, finds nothing unusual in not being informed about the bids submitted by his rivals. He knows that unless his own bid reflects his costs he is not likely to meet with much success. But the railroad executive habitually complained that he could not compete with truckers since he did not know what rates they charged.⁵⁹ In the upside down world of economics where volume of movement was a desideratum in itself, and where the reasonableness and the justice of particular rates depended on demand factors only, this was a legitimate difficulty. It seemed quite apparent, therefore, that the way out of the bothersome quandary was simply to extend regulation to truckers.⁶⁰

The railroads finally prevailed in their efforts to subject motor carriers to federal supervision, but since the diagnosis of the nature of their affliction was incorrect, the remedy was bound to be ineffective. They soon discovered that traffic melted as quickly under regulation as it had under competition. Thus, the rail carriers' efforts to regain automobile traffic had been frustrated at every turn: price cuts had failed; device cars fell short of expectations; and federal regulation could not stem the tide which was running as strongly as ever in the motor carriers' favor. What was there left to try?

By this time, there appears some evidence that the realities of competitive life had begun to sift through to railroad leadership. There was, at least, a consensus that

traffic could not be regained without some downward revisions of the rate structures. This does not mean that the railroads were ready to abandon value-of-service; but they did adopt mileage rate scales which paralleled those in use by motor carriers. A feature common to all of the rail rate schedules was that as distance increased (and presumably truck competition decreased) the rate also increased until for distances in excess of about four hundred and fifty miles, first class rates were levied.⁶¹ On some very short hauls where competition was especially stiff, the railroads proposed rates which barely covered out-of-pocket costs.⁶²

Some railroads were skeptical about their chances of getting increased traffic at rates equal to those of the truckers because of the service disabilities associated with rail transportation. In an effort to counter rival service superiority, rate schedules began to reflect "disability allowances." In effect, the rails deducted from the going truck rates an amount which they estimated was sufficient to neutralize the advantages of shipping by truck. The result was, of course, a further scaling down of rail charges; but it is important to note that these rates were oriented to the rates of their competitors rather than to the costs to the rail carriers of moving this particular traffic.⁶³

F. THE NEW AUTOMOBILES CASE

In 1938 the rails received permission to increase

rates.⁶⁴ Since the railroads had been given reason to believe that truckers were amenable to rate increases, rates on motor vehicles were raised.⁶⁵ Highway carriers of automobiles, however, did not increase their rates. The consequent precipitous decline in the rail share prompted the railroads, after conferences with shippers, to announce a series of reductions from various assembly plants.⁶⁶ In addition, the New York Central proposed reduced rates from main factory points in the Detroit area. This was unusual since, up to this time, almost all rate reductions had been made from assembly plants. The action of New York Central precipitated a request by the National Automobile Transporters Association for investigation and suspension of the proposed rates and for a general investigation on the Commission's own motion of the "rates, rules, and regulations governing the transportation of new automobiles in carloads in interstate commerce...."⁶⁷

On January 27, 1939, the Commission instituted a general investigation into the rates and practices of rail, highway and water carriers of motor vehicles. The views and the objectives of the participants were widely divergent: motor common carriers sought the cessation of unduly destructive competition; railroads desired more freedom to compete; contract carriers wanted to be left alone; while manufacturers adopted strikingly different positions concerning ideal regulatory policy.

The common carrier argument. The history of

Docket 28190 (which swelled to 5000 pages of oral testimony and 495 exhibits) must begin with a recital of conditions at the assembly plants of General Motors. It will be recalled that in 1934, Chevrolet selected a group of non-competing contract carriers to handle highway traffic from its assembly plants. The rates charged by these contract carriers were lower than those levied by common carriers for equivalent hauls. The NATA charge, in substance, was not only that these charges were unreasonably low, but that, as a result of duplicity on the part of General Motors, they threatened to destroy the common carrier. General Motors was charged with taking contract carrier rates based on short-haul costs, extending them without allowing for the fact that highway costs increase sharply with distance, and then presenting these to the railroads (after a deduction of \$.085 per hundred pounds to compensate for service disabilities) as the rates required for rail participation in automobile traffic.⁶⁸

The consequence of this action, the NATA declared, was the initiation of a chain of destructive competition in violation of the provisions of the Interstate Commerce Act.⁶⁹ The rates were destructive according to the NATA because:

1. The existence of these rates constituted an open invitation to the railroads to reduce their rates.

2. Such reductions brought rates below a first-class level which has been universally accepted as reasonable for this traffic.
3. The reductions had not resulted in an increase in rail traffic but had merely dissipated rail revenue.
4. Such reductions had spread to other points.⁷⁰

The idea of destructive competition appears so regularly in cases involving interagency rate disputes that it is essential to recognize what the motor carriers understand it to embrace. In the course of the hearings, the NATA attorneys were asked to answer three questions concerning the nature of destructive competition. Let us examine each in turn.

1. Can a rate structure be considered destructive regardless of the rate of return being earned by carriers who are supposedly destroyed?

The failure of common carrier attorneys to introduce evidence concerning the financial status of their clients disturbed the hearing examiners who were impressed by Commission studies which revealed that common carriers of automobiles had earned an average return of 28.1 per cent on depreciated investment in 1939.⁷¹ Mr. Harry Ames, the chief counsel for the NATA, protested that he did not see the relevance of the rate of return for the purpose of deciding whether or not competition was destructive as is evident from the following exchange:

Examiner Disque: As to these reductions, your lines may be in such financial condition that they could make these reductions. That is the reason I asked Mr. Ames if he was going to show the financial condition of your lines? The public is entitled-

Mr. Ames: You take me rather by surprise. I am surprised, in a rate case, to have to come over here and prove fitness, willingness and ability. I do not know what you want it for.

Examiner Disque: You are claiming that these reductions are detrimental to your motor carriers. The public is entitled to reasonable rates. Maybe the public ought to have these reductions. Perhaps the Commission should permit the reducing of these rates.

Examiner Laughton: What he has in mind is what financial effect the rate reductions had upon your members....Have they seriously affected them from a financial standpoint?

Mr. Ames: Every time they reduce the rates eight and a half cents per hundred pounds it is eight and a half cents per hundred pounds times the weight of the automobile. That seems elementary.

Examiner Disque: If you are unduly prosperous the rates ought to be cut. The Commission ought to let these reductions go on.

Mr. Ames: You say they should?

Examiner Disque: Perhaps. The public is entitled to the benefits of truck transportation. If you are making too much money we should let the rates go down.

Mr. Ames: I do not agree with all the hypothesis.⁷²

So far as the common carrier was concerned, competition was a fair fight; and a fair fight was one conducted on a service rather than a rate basis. "Do you not think,"

queried Mr. Ames, "it is always profitable for two com-
peting agencies to fight it out by not cutting each other's
rates."⁷³

2. Could fully compensatory rates be destructive?

The NATA's position on this issue was unequivocal.

In its initial brief the association declared:

But again we say, if this Commission, having
the POWER to suspend, was to look no further
than the question: Is it safe to assume that
these proposed rates, considered solely as com-
petitive rates, are or will be compensatory?
And then stop, then we say to you these
proposed rates, ridiculous as they are, are
justified to as great an extent as those you
have allowed to become effective.⁷⁴

These rates were ridiculous according to the NATA because,
as the Commission had itself on so many occasions declared,
automobiles are a high-value commodity for which first
class rates have been "universally accepted as reasonable."⁷⁵
If the appropriateness of rates depended upon the value of
the commodity, and if a carrier, by charging rates which
failed to reflect that value, injured his competitors, then
competition was destructive. It should, moreover, be under-
stood that in the NATA's view, "destructive competition"
was rate competition which made it impossible for an agency
to get a fair share of available traffic. In its request
for suspension, the Association stated:

There are here proposed... many rates which
go so far below existing TRUCK RATES that
any notion of a real COMPETITION is completely
dissipated.⁷⁶

The question is not, obviously, whether these low rates
cover out-of-pocket or even fully distributed cost; they

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are destructive because they prevent participation by motor carriers.

3. Could a charge of destructive competition be sustained in the absence of evidence of actual destruction of competitors?

The NATA had not introduced any evidence which demonstrated that any of its members had perished as a result of the rates which it was protesting. Nevertheless, the Association argued that competition was indeed destructive:

Basically, destructive competition would be that which destroys one of the competitors. But need it actually destroy--must there be a fait accompli before it falls within the statutory condemnation? We think not.⁷⁷

and again:

We contend that competition which has no object other than to recapture the traffic without regard either to cost or value of service is essentially destructive.⁷⁸

The common carriers came to the Commission with a scheme designed to prevent destructive competition. The crux of the NATA proposal was that rate competition be eliminated through the imposition of a minimum rate order "bottomed as nearly as possible on first class rail rates."⁷⁹ This would have required that both rail carriers and contract carriers raise their rates. The common carriers, in fact, offered several proposals.⁸⁰ The plan favored by the NATA would require rail-truck rate equality but the Association expressed its willingness "to go on record as agreeable to the fixation of rates on a parity

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with rail rates," because trucking was no longer an "infant industry."⁸¹

The position of the rail carriers. The concessions offered by the NATA did not seem very substantial to the railroads who argued that the magnanimous gesture of the common carriers in accepting rate parity would put the railroads out of the automobile carrying business.⁸² Moreover, the confidence of railroad executives in the efficacy of first-class rates on motor vehicles had been rudely jarred. In their Brief, southern rail carriers replied to NATA contentions with respect to the high-value of automobile traffic in the following language:

In passing we cannot refrain from observing that the contention that automobiles are high-priced traffic and should therefore necessarily pay class rates is fallacious. Reading petitioners' naive argument one would suppose that the automobile shippers were dependent solely upon the railroads and the common carriers by truck and that there are no such things as contract carrier trucks, tow-bar service or driveaway practices. The rail carriers for a long time undertook to adhere to the first class rates for the movement of this traffic, and this accounts in large measure for the great volume of business that the members of petitioners' organization and others have been able to divert from the rail lines.⁸³

The railroads gave further evidence in this proceeding that they had begun to understand the economics of the transportation industry. They began to realize that, despite regulation, they were competitors and not monopolists and, while they were not yet prepared to accept all the implications of their status as competitors, they did

seek an increase in their ability to compete. They realized the necessity to abandon first-class rates on automobiles; but they were not yet willing fully to exploit their cost advantages.⁸⁴

The contract carrier view. The contract carriers seemed unhappy throughout the proceeding. They were well satisfied with existing conditions. The NATA proposal would require them to raise their rates, and they objected to this on two grounds: In the first place, they considered their rate of return to be adequate. As a matter of fact, it was almost embarrassing. When Mr. Hugh O'Neil, who testified for the Automobile Contractors Association, was asked by examiner Laughton to state carrier earnings as related to investment he replied that he hesitated to do so because it was so large. He did volunteer that a net return of 50 per cent would not be uncommon.⁸⁵ Secondly, despite the generosity of shippers, contract carriers were apprehensive lest they become so healthy as to be gobbled up in a proprietary operation by shippers. This fear of private carriage appeared as the most important objection of contract carriers to the imposition of a minimum rate order.⁸⁶

The common carriers protested to the Commission that the views of contract carriers were irrelevant. In the first place, NATA felt that the embarrassment of riches that had befallen the contract carriers should not be used to dictate appropriate rate levels. Secondly, if the im-

position of a minimum rate order should make contract carriers vulnerable to the depredations of private carriage, this was a risk that had to be faced. The paramount issue was the protection of the common carrier; if this meant that contract carriage had to be compromised, the price was small enough.⁸⁷

The shipper in the New Automobiles Case. The automobile manufacturers were unable to present a united front. General Motors supported the status quo while the Ford Motor Company urged the adoption of a minimum rate order based on fully distributed cost.⁸⁸ Ford also agreed with the common carriers that the rail disability allowance constituted an illegal rebate.⁸⁹ Chrysler precipitated a major controversy by claiming that higher rail rates from Detroit and Evansville were prejudicial to it.⁹⁰ The position of Studebaker was expressed by the assistant director of traffic who stated that:

As to rates the various forms of transportation should charge, it is our thought there should be free competition in making rates. There should be no effort to force rates upon one form of transportation based on the percentages of rates of some other form of transportation. Each form of transportation should be permitted to make rates upon its actual costs plus a reasonable profit.⁹¹

The decision of the Commission. The New Automobiles case is generally considered to be a landmark decision. There is a clearly discernible difference in the Commission's concept of intermode competition which separates this case from those which preceded it. The

Commission's staff, under the competent direction of Dr. Ford K. Edwards, made extensive studies aimed at discovering the relative efficiency of carriers and the rates of return earned under existing rate structures in addition to compiling voluminous information on costs, existing rates, and the present as well as the past structure of the industry.⁹² This data provided the foundation for a decision which held out the hope that, henceforth, economic efficiency and the welfare of the public would be accorded a high priority among the norms to be used in deciding cases involving intermode competition. It was this decision, in fact, which supplied the model for the 1958 amendment of Section 15 (a) (3) of the Interstate Commerce Act.⁹³

On January 15, 1944 the report recommended by examiners Laughton and Disque was made public. So far as the key questions raised by the NATA were concerned, the report brushed them aside in the following language:

Despite the harmful effects which the successive rate reductions have had on the carriers, the process cannot be halted by the prescription of minimum rates unless it appears that the existing rates have fallen below a reasonable minimum level. According to cost studies the rates of the several forms of transportation are generally compensatory, the only exceptions being sporadic instances. Within reasonable limits, the public is entitled to the reduced rates that competition brings. There is no showing that the rate structure here involved threatens the financial stability of the carriers.... For movements exceeding 200 miles the rate parity... would spread an umbrella over the carriers least fit from a cost standpoint, namely the motor carriers, and bring

them much more of the long-haul traffic.⁹⁴

The decision of the Commission which was handed down February 6, 1945, followed closely along the lines of the examiners' Report. In ruling upon the NATA request, the ICC catalogued the determinants of minimum reasonableness. It declared:

What constitutes a minimum reasonable rate is a matter to be determined in the light of the facts of record in each individual case, avoiding arbitrary action and keeping within statutory and constitutional limitations, just as in the case of maximum reasonable rates. Whether a rate is below a reasonable minimum depends on whether it yields a proper return; whether the carrier would be better off from a net revenue standpoint with it than without it; whether it represents competition that is unduly destructive to a reasonable rate structure and the carriers; and whether it otherwise conforms to the national transportation policy and the rules of rate-making declared in the act of 1940.⁹⁵

So far as intermode rate competition was concerned, the Commission made an important policy pronouncement. It said:

A reasonably compensatory rate is one which is remunerative, i.e., covers the out-of-pocket costs... of handling the particular traffic under consideration, including a proper return on investment.... As Congress enacted separately stated rate-making rules for each transport agency, it obviously intended that the rates of each such agency should be determined by us in each case according to the facts and circumstances attending the movement of the traffic by that agency. In other words, there appears no warrant for believing that rail rates, for example, should be held up to a particular level to preserve a motor-rate structure, or vice versa.⁹⁶

With respect to the rates charged by contract carriers the Commission concluded that:

The minimum rates of the contract carriers are

well above a compensatory level, and in most cases are highly profitable. We are not convinced that they are unlawful, and, therefore, we cannot require them to be increased merely to benefit the common carriers.⁹⁷

Thus, the motor common carriers were unable to win a single issue. But as Figure I plainly indicates, despite reduced rail rates, motor common carriers continued to increase their share of the traffic.

G. UNREASONABLE AND DISCRIMINATORY RATES: THE CHRYSLER CASE

The NATA was not the only party chagrined at the rate pattern evolving as a result of the assembly plant situation. Chrysler, in the New Automobiles case, made vigorous protests of unreasonableness and undue prejudice resulting from the fact that while rail rates available to Ford and Chevrolet from their assembly plants were steadily drifting downward, the Detroit rates remained unchanged. The Commission agreed with Chrysler at least to the extent of stipulating that rates on automobiles would be considered unreasonable if they exceed 75 per cent of first-class rates.⁹⁸ But, with respect to Chrysler's principal complaint, the Commission, after taking notice of the more intense competition from assembly plants, decided:

The differences in competitive conditions justify rail-rates from the assembling points on lower bases than from manufacturing points and are so pronounced as effectively to refute Chrysler's allegations of undue preference and prejudice.⁹⁹

Chrysler's setback was only temporary. Shortly after the record in docket 28190 was closed, Chrysler again confronted the Commission; this time with the support of all important automobile manufacturers except Ford and General Motors. Among other things, the complainants urged that:

1. Rates on automobiles should reflect the depreciated value of railroad service resulting from the competition of other forms of transportation.
2. Automobiles are no longer luxury traffic.
3. The rates imposed on complainants plants are unreasonable by comparison with the rates maintained from assembly points.
4. The rates charged by the railroads tend to impede rail shipment of automobiles.¹⁰⁰

The New York Central, which carried the largest volume of automobile traffic, denied the allegations but refrained from active participation in the case. It was not represented on any of the defense committees and it offered no evidence.¹⁰¹ As a matter of fact, the Central had for some time been urging that rates be reduced; and some of its own lower rates had been suspended by the Commission.¹⁰²

In support of their contention that the more severe competition from the assembly plants warranted existing rate differences, the defendant railroads leaned heavily on extensive shipping records supplied to them by Ford and General Motors.¹⁰³ Chrysler questioned the motive

of rival shippers in supplying this data and accused those railroads which were actively defending the case of being leaders "in establishing and preserving an adjustment of freight rates for the transportation of new automobiles preferential of the assembly plants of General Motors and Ford."¹⁰⁴ Since the railroads which were active in the case carried relatively little new automobile traffic, Chrysler rationalized their actions as follows:

The only conceivable explanation is that they find it in their interest to maintain so long as possible, a rate adjustment which they believe responsive to the desires and policies of General Motors under which the rail movement of automobiles from the plants of complainants, who are competitors of General Motors is available only at high rates, while General Motors and Ford can ship from their assembly plants at rates on a much lower level.¹⁰⁵

The interest of the defending railroads, according to Chrysler, resulted from the fact that although they did not carry many new automobiles, they did carry parts and materials to and from General Motors and Ford plants.¹⁰⁶

How could Chrysler expect that the Commission would reverse the verdict so recently announced in the New Automobile case? In addition to the fact that Chrysler was joined in the complaint by other manufacturers, conditions in the industry had changed. In the first place, Chrysler and the other firms had assumed control of shipments from their plants. This eliminated the objection of the Commission which stemmed from the complaints of railroads to the effect that since shippers had not con-

trolled traffic, they could not guarantee that any increase in traffic would follow rate reductions. Moreover, the percentage rate increases which had become effective since the New Automobiles case had widened the gap between the rates at assembly points and those at Detroit. These differences to important destinations amounted to as much as fifty to sixty dollars on a single automobile.¹⁰⁷ The magnitude of the differences in rates is illustrated in the following table in which rates are expressed as percentages of the first class rate.

The defendant railroads protested that the complainants were not handicapped by these rate differences since, under the uniform system of pricing automobile transportation, customers were charged the rail rate from the manufacturing plant regardless of the mode of transportation or the source of the vehicle. Moreover, since many of the defendants did not originate traffic at the complainants' plants, they urged that they could not individually or collectively be responsible for rates which they did not control or in which they did not participate.¹⁰⁸ It was further suggested by the railroads that Chrysler's position and that of the other manufacturers was an outgrowth of their decision not to decentralize their operations.

Mr. J.E. Goggin, an attorney for the defendants argued:

My final point is that the complainant has its own remedy in its own hands. Very bluntly they can build assembly plants, and avail themselves of the very same rates of which they complain, and it might reasonably

Table 1.- Comparison of rates from assembly plants with those from plants of complainants

	From Assembly Plants		From Complainants Plants	
	Chev- rolet	BOP ¹ Ford	Ply- mouth	Stude- baker Nash
Augusta, Ga.	34	34	92	95
Baltimore, Md.	(2)	41	79	79
Birmingham, Ala.	37	37	73	94
Des Moines, Iowa	33	33	58	77
Joplin, Mo.	26	26	59	79
New York, N. Y.	62	45	79	79
Philadelphia, Pa.	34	35	79	79
Schenectady, N. Y.	40	56	79	79
Topeka, Kans.	31	31	63	75
Tulsa, Oklahoma	34	34	92	95
Washington, D. C.	45	52	79	79

¹Buick, Oldsmobile, Pontiac.

²Chevrolet assembly plant is in Baltimore.

Source: Chrysler Corporation et al., v. Akron, Canton & Youngstown Railroad Company et al., 279 ICC 377, 402, (1950).

be assumed that if they build assembly plants in new places the rail lines would put in low rates to meet whatever competition they find.¹⁰⁹

So far as the motivation for the cooperation between certain defendants and General Motors and Ford was concerned, Mr. Lawrence Chaffee, testifying for C.F.A. carriers, asserted that cooperation was prompted solely by the desire of "the railroads... to provide this Commission with a complete record of the facts."¹¹⁰ Whereas Chrysler implied that Ford and General Motors quickly and willingly came to the aid of the railroads, Mr. Chaffee testified that, "it took us some time to persuade them to let us have all of the detailed information that we needed...."¹¹¹ Finally, the defendants argued, the lower rates from assembly plants reflected more intense competition and any reduction in the rates from Detroit would be needless squandering of necessary rail revenue.¹¹²

The railroads were not successful in convincing the Commission that they should not be held responsible for rates in which they did not participate directly. The Commission emphasized the fact that, from the inception of highway competition, the rates on automobiles were set by the action of rate committees representing railroads in the various territories. In addition, the Commission seemed convinced that the railroads, by joint action through their rate committees, "sought to establish lower rates from assembly points."¹¹³

Chrysler, on the other hand, was unable to persuade

the Commission that competition on the long hauls from manufacturing plants was as severe as from the assembly plants. As a result, instead of prescribing uniform rates, the Commission found that rates would, in the future, be unduly prejudicial to the extent that:

...the rates from complainants' plants exceeds or may exceed the level of rates from assembly plants... to the same destinations by more than the difference between 75 per cent of the exceptions first class rate from complainants' plants and 50 per cent of the exceptions first-class rates from assembly plants of the competitors named concurrently and in effect.¹¹⁴

The result of the Chrysler decision was that the railroads had to find some means of reducing the existing differential between assembly plants and manufacturing plants. In order to comply with the Commission's decision, the rail carriers raised rates from the assembly plants and they lowered them from manufacturing plants. Protests from the railroads postponed the effective date of these changes until 1953. But despite threats from General Motors that it would discontinue rail service from its southern assembly plants, the ICC reaffirmed its belief that the spread which had been dictated was just and reasonable and would have to be maintained.¹¹⁵

H. THE MOTOR CARRIER MONOPOLY

When the new cars began to move off assembly lines after World War II, the rail carriers transported 40 per cent of this valuable traffic. By the time the decision in the Chrysler case was handed down, the rail share had

fallen to 20 per cent. After 1950, the rails appeared to have abandoned the hope of recovering new automobile traffic.¹¹⁶ Their share continued to decline until, by 1959, it was reduced to 8 per cent.

The water carriers were no more successful than the railroads in blunting the motor carrier drive for traffic. In 1949, the water carriers reached their apogee, transporting 7.9 per cent of the available new automobile traffic. Subsequently, however, they lost ground steadily so that by 1959, they hauled only 2 per cent of the traffic.

Thus, the industry turned into the decade of the 1960's with the motor carriers enjoying an overwhelming monopoly in the transportation of automobiles. In fact, even in their heyday, the rails never accounted for as large a percentage of the total automobile traffic.

I. CONCLUSION

The story of the automobile transporting industry began with the description of the monopoly position of the railroads. The first part ends in 1958, with a firmly entrenched, even more powerful motor carrier monopoly. The startling reversal in the position of rail and motor carriers was in part a function of the disparate services provided by each mode, but it was also a product of the attitudes and the economic convictions of the carriers, of the shippers and of the Interstate Commerce Commission.

CHAPTER III

THE NEW COMPETITION

A. INTRODUCTION

When the dust of World War II settled, it quickly became apparent that the rails were not going to improve their position in the struggle with motor carriers for automobile traffic. In 1946 the rails accounted for 40.7 per cent of the motor vehicle traffic. By 1958, the rail share had plummeted to 9.9 per cent. Whatever the nature of the illness plaguing the railroads, the prognosis was not good; the patient appeared in extremis. Nevertheless, a few years later, Mr. Delos Rentzel, Chairman of the Board of the NATA, in testimony before a Senate Committee represented the condition of his membership as critical. "It is now apparent," he confessed, "that the automobile transporters are faced with a fundamental problem of survival and not a mere problem of business competition."¹

The purpose of this chapter is to detail the developments since 1958 in order to explain the causes of the rail resurgence; the effect which this recovery has had on other modes of transportation; and the nature of the arguments for and against new rail techniques and modified rail policy.

Recent Commission decisions, recommended orders and reports of examiners, hearing dockets currently before the Commission, briefs and petitions submitted by parties to the various controversies, and interviews with representatives of the various parties in the struggle were primarily relied on for the material in this chapter.

B. THE TRAILER-ON-FLATCAR EXPERIMENT

In 1956, the St. Louis-San Francisco Railroad (The Frisco), decided to make a serious study of the conditions responsible for its chronic inability to secure automobile traffic. In assessing the position of the railroads the study group found that the railroads could provide faster service between terminals; that they offered an all-weather twenty-four hour service; and, that they had lower line-haul costs than the motor carriers. On the debit side, rail service increased the damage hazard in addition to providing a less flexible and less convenient service from the viewpoint of both the automobile manufacturers and dealers. It was quite obvious, of course, that, since the middle of the 1930's, the debits had outweighed the credits.

In its attempt to devise a technique which would put the railroads back in the automobile business, the study group reached back into rail history and pulled out the idea of placing loaded trailers on flatcars.² The trailer-on-flatcar (TOFC) technique seemed especially promising for automobile traffic since it made possible a combination of

rail and motor carrier service advantages. The risk of damage was greatly reduced since no use was made of boxcars and the Evans Loader. More important, the railroads were now in a position to offer door-to-door service. At the same time, TOFC permitted railroads to exploit their greater line-haul speed without sacrificing lower rail costs on long hauls.³

In the typical TOFC operation proposed by the Frisco, motor carriers transported a loaded trailer to a convenient railhead where two trailers were secured on each flatcar. Railroads then hauled these trailers to some central point in the distribution area from which motor carriers distributed the vehicles to the various dealers. The railroads stayed out of the short-haul area in the belief that for hauls up to 300 miles the motor carrier enjoyed advantages which could not be overcome.⁴ Typically, rail interchange points were few in number so that the motor carrier ordinarily had a substantial haul at both ends of the trip.⁵

The physical characteristics of the TOFC service offered by different rail and motor carriers were essentially the same but there was considerable variation in the arrangements between carriers and shippers. As TOFC developed, various Plans, adapted to fit particular preferences and requirements of shippers and carriers, were devised.⁶ These Plans already enjoyed wide acceptance by the time carriers and shippers of automobiles sat down to discuss the new service. The first TOFC tariff

published in May, 1959 provided for transportation between St. Louis as a point of origin and Tulsa, Oklahoma and Irving, Texas under a Plan V arrangement. Subsequently, however, a considerable amount of traffic also moved under Plans I and III.

TOFC promoted dissension among participants almost from its inception. The motor carriers, few of whom were overjoyed by the introduction of the new service, disagreed about the most profitable course of action. Some carriers thought that the best policy was for truckers to refuse to participate in TOFC service.⁷ Other carriers tried to preserve some part of their traffic by agreeing to work with rail carriers. A majority of the motor carriers agreed that Plan I was the least offensive of the possible arrangements. But there was sharp disagreement over the nature of the rights a carrier must possess in order to participate in TOFC operations. Carriers were also split over the legality of contract carrier participation under any of the accepted Plans.⁸

The controversy over TOFC was of more than academic interest to motor carriers although some carriers had more cause for worry than others. Since TOFC was practical on long hauls only, this meant that carriers who depended primarily on short-haul business would be left relatively untouched. Carriers serving firms with extensive assembly plants, therefore, appeared to have less to lose than those carriers unfortunate enough to serve firms whose operations

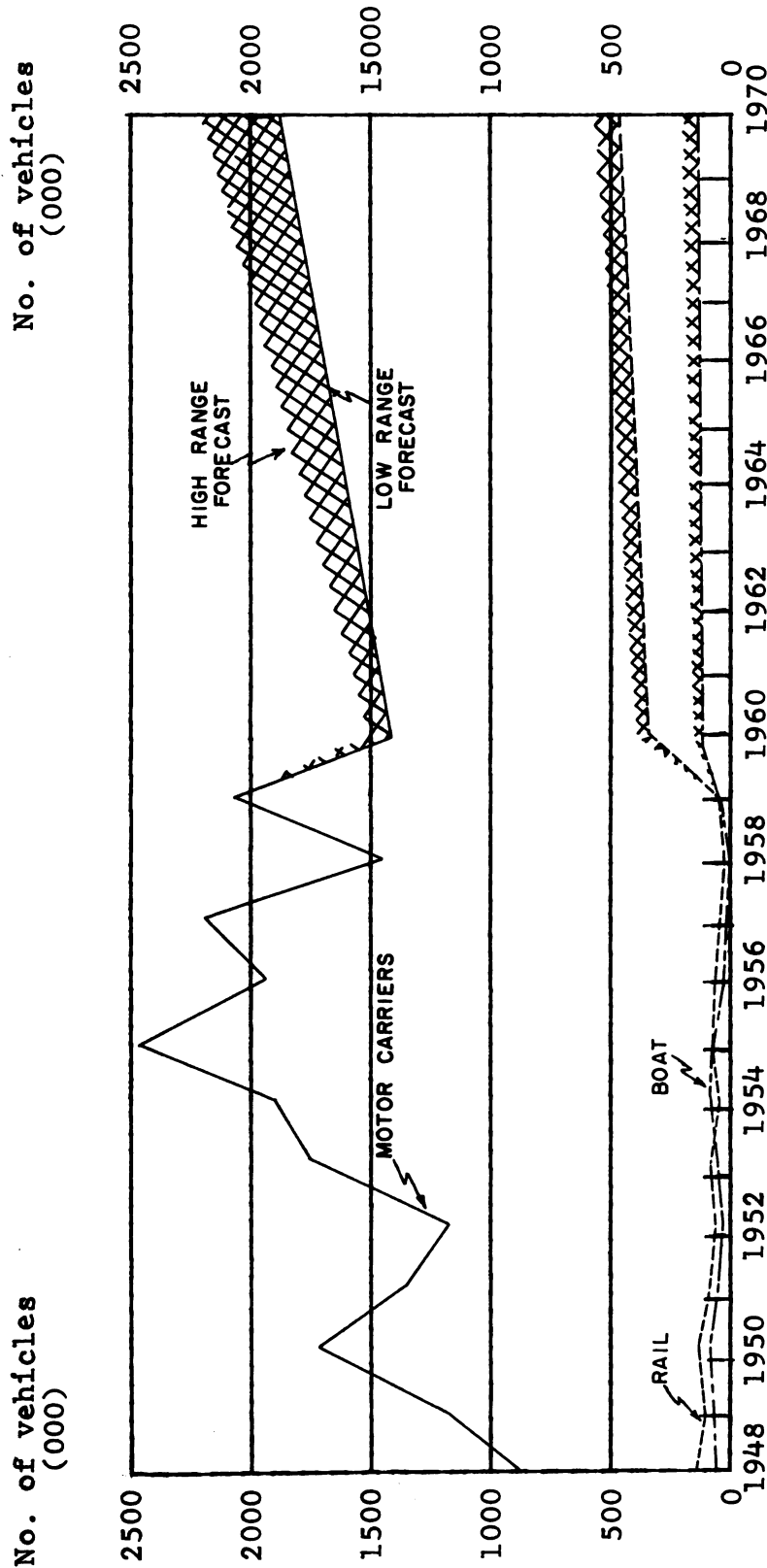
were limited to one or two plants. Compare, for example, the anticipated effect on Ford traffic given in Figure 2 with the predictions of Studebaker officials that the rail share of Studebaker transportation would rise from 7 per cent in 1958 to 60 per cent when TOFC operations were in full swing.⁹

It is difficult to assess the overall impact of TOFC on motor carriers. Some claims are surely exaggerated.¹⁰ On the other hand, a study by the Department of Research and Transport Economics of the American Trucking Associations confirmed a suspicion that automobile carriers were harder hit by TOFC than any of their fellow truckers. This study revealed that eight automobile haulers with revenues of \$72 million, lost more revenues to TOFC than did seventy-three general freight carriers with revenues exceeding \$500 million.¹¹ Undoubtedly, some carriers were seriously affected. Mr. Delos Rentzel described the plight of his company in recent testimony:

To illustrate, when the rail carriers published their piggyback rates from St. Louis to Texas and Oklahoma in 1959 the bottom dropped completely out of the business for our company, United Transports. In the last quarter of 1958 we realized revenue of \$879,135.46 on Chrysler traffic moving into Texas and Oklahoma. Though 1959 was a better year in the automobile business, our gross revenue on this same traffic for the fourth quarter of 1959 nose-dived to \$251,433.94. A reduction of more than 70 per cent.¹²

Commercial Carriers estimated its loss of revenue for the first six months of 1960 to be about \$445,000 as a result of

Figure 2.- Comparison of method of delivering Ford vehicles: 1948-1959, actual experience; 1960-1970, forecast



Source: Motor Vehicles-- Kansas City, Ark., La., & Tex., I & S 7269, 1961, Exhibit 53

the diversion on Chrysler traffic from its St. Louis Plant.¹³ A witness for the Dallas and Mavis Forwarding Company testified in July, 1960 that his company had, in the past year, lost \$4 to \$5 million worth of traffic representing 35 to 40 per cent of its total business to rail piggyback.¹⁴

Most shippers were enthusiastic about TOFC service at the beginning. As they gained experience with the new techniques, however, their interest seemed to wane. For one thing, there was controversy and confusion over the adequacy of the rights possessed by a majority of their regular carriers. The legitimacy of contract carrier participation was challenged by freight forwarders and by some common carriers. The fact that Commission examiners recommended contrary decisions in some of these cases served further to muddy already cloudy waters.¹⁵ Moreover, it was felt in some quarters that some motor carriers made attempts to sabotage the operation. Regardless of the truth of this allegation, there remained some frictions in the distribution of new car traffic. The trailers leased to shippers were often the oldest available and frequently lacked brakes and lights. Because of this, and because four car trailers were used, automobiles had to be reloaded at the rail destination on properly equipped trailers or on trailers of greater capacity. The result was that, in practice, TOFC shipments were highly susceptible to damage and, frequently, they were slower than

all-truck movements.¹⁶

C. THE DEVELOPMENT OF MULTILEVEL SERVICE

Although some shippers were disillusioned by TOFC service, they were not insensitive to the possibilities of fostering intermode competition. Ford, in particular, prodded railroads to experiment with new techniques. The Frisco was again in the vanguard. At the very time its TOFC experiment was in progress, Frisco engineers were working on a multilevel car.¹⁷ In January, 1960, the Frisco in cooperation with Pullman Standard, produced a prototype trilevel equipped to handle twelve standard or fifteen compact automobiles. The trial runs were so successful that in June, 1960, the Frisco placed a purchase order for one hundred trilevel cars.

Railroads other than the Frisco were quickly impressed with the advantages of the rack cars, and rail car manufacturers other than Pullman Standard worked on developing improved equipment. Major rail carriers purchased cars for their own fleet or secured them from leasing companies such as North American Car. In some cases, clearance problems dictated expensive modifications in railroad plant or the use of bilevel cars with smaller capacities than the trilevels.¹⁸ In an effort to obviate these difficulties rail car manufacturers modified equipment. Paragon Bridge and Steel Company developed and introduced in June, 1961, a bilevel which, through slanted stacking,

carried twelve standard size automobiles.¹⁹ American Car and Foundry (ACF) pioneered the development of a low-level piggyback flatcar (The Low-Level Hitch Hiker) which carried auto racks and which eliminated many of the existing clearance problems.²⁰ The same basic idea was employed by Pullman-Standard which offered an eighty-nine foot flatcar, eleven inches lower than conventional flatcars.²¹

The advantages of the new rack cars were quickly appreciated by shippers. After experiments which were termed outstanding, a Studebaker-Packard representative testified, "I think it is the greatest thing for transporting automobiles that I have seen".²² Among the advantages of the multilevel car, this witness singled out the reduction in damage hazards in addition to a tie-down procedure which adapts the rack car to automobiles of varying length--a highly desirable feature in view of the multiplicity of models and the constantly varying length of motor vehicles.²³

Undoubtedly, the most important advantage of multilevel service from a shipper's point of view is that his cost of distribution is substantially reduced.²⁴ Mr. Rudy T. Fick testified that Studebaker-Packard estimated that TOFC service would save his company \$1,732,545 or \$12.47 per vehicle in 1961. As a result of the greater economy of multilevel service, this estimate was raised to \$28.68 per vehicle.²⁵ An official of another firm revealed that it expected its savings from multilevel service to be

in the neighborhood of \$15 to \$20 million per year.²⁶

The development of efficient long haul rail service was of even greater importance than shippers themselves may have realized at the outset. At one time, it was considered that long haul problems were of importance only to firms which did not have extensive assembly plants. While these firms probably still have a higher interest in long haul transportation, recent changes in the automobile market have substantially increased the importance of the long haul to Ford and General Motors. One of the striking developments in the automobile industry is the proliferation of makes and models with standard and compact automobiles and vehicles tailored to satisfy a seemingly endless variety of psychological yearnings for prestige, power and status symbols. It has not been possible to manufacture or assemble each of the various models in every plant. As a result, both Ford and General Motors have discovered an increasing need for long haul service. They have, in fact, had to make appreciable changes in their system of distribution. A dealer is increasingly likely to order automobiles which are produced in several different plants. As a result, manufacturers have established a series of consolidation points to which shipments are made from various manufacturing and assembly plants and from which distribution is made to the various dealers. They have, therefore, been placed in a position in which the character of long haul service is an important consideration.

The technological developments which we have been discussing have produced substantial dislocations. As might be expected, the position taken by the various carriers and by shippers reflected their own self-interests. The Commission, which must eventually make important decisions, appears beset by doubts and is clearly lacking any solution acceptable to all the parties to the controversy.

The development of TOFC precipitated a struggle for position among the motor carriers. Apart from the internecine strife over rights, the motor carriers are united in opposition to the nascent rail-motor rate competition which they regard as destructive. They envision an all-out war by the railroads aimed at the elimination of motor truck competition. In this war, the automobile transporter is singled out as the first victim. Mr. Delos Rentzel recently explained the NATA charge before a Senate committee as follows:

It has always been perfectly obvious that the railroads, tremendous corporations serving extensive territories, authorized to haul any and all commodities including many with respect to which they have no competition, and with great financial resources, could and would use unrestrained selective rate-cutting to ruin their smaller and limited competitors. It has been just as obvious that the most vulnerable and the first to go in such a campaign would be the specialized carrier who must stand or fall with a single commodity.²⁷

In the New Automobiles case, it will be recalled, the NATA charged that the rails were engaging in destructive competition but the Association was either unable or

unwilling to introduce evidence relating to the loss suffered by its members. TOFC, and especially multilevel service has resulted in severe losses for some firms; and there has been no hesitation about calling these to the attention of the Commission and the public. In some cases, these losses are dramatic. Table 2, for example, clearly shows the changing fortunes of motor carriers serving one plant of one of the automobile manufacturers. TOFC operations had cut motor carrier revenues in 1960 but, with the introduction of multilevel service in November of that year, the motor carrier revenue plummeted to all time lows.

The amount of diversion differed from shipper to shipper but specific information cannot be obtained.²⁸ The rail share of automobile traffic as a whole, however, increased from 9.74 per cent in 1960 to 20.5 per cent in 1961.²⁹ The Chrysler Corporation, which provided data for 1961, shipped 26.9 per cent of its new automobiles by rail and 69.2 per cent by truck.³⁰

Essentially, motor carriers protest that their rail rivals are seizing upon technological advances not as a means of "fair competition," but as an excuse for destructive rate wars. In this, they charge the rails have been aided and abetted by the Commission.

In order to appreciate the charge levelled against the Commission, it is necessary to understand the controversy over the 1958 amendment to the rule of rate-making. The railroads had campaigned for an amendment to the Inter-

Table 2.- Truckaway revenue earned by motor carriers
serving one automobile manufacturing plant

Month	Total Revenue	No. Units Shipped	Per Vehicle Charges
<u>1959</u>			
March	\$ 1,731,134	15,062	\$114.93
April	1,361,998	12,644	107.72
May	1,154,056	10,961	105.29
June	1,026,803	9,774	105.05
July	960,495	9,165	104.80
August	231,410	1,286	179.95
September	958,882	9,526	100.70
October	1,331,586	12,617	105.54
November	1,062,535	10,172	104.46
December	1,233,926	11,168	110.47
Total	\$11,052,825	102,375	\$107.96
<u>1960</u>			
January	\$ 1,237,657	11,932	\$103.73
February	1,195,832	10,854	110.17
March	870,061	8,259	105.36
April	885,019	9,240	95.78
May	819,008	7,889	91.14
June	786,830	8,768	89.74
July	597,178	5,544	107.72
August	206,543	1,855	111.34
September	962,507	8,014	120.10
October	945,005	10,128	93.30
November	582,482	6,186	94.16
December	310,828	3,385	91.83
Total	\$ 9,298,950	92,053	\$101.02
<u>1961</u>			
January	\$ 216,160	2,339	92.41
February	201,639	2,201	91.61
March	248,343	2,805	88.53
April	257,136	2,672	96.23
May	254,978	3,329	76.59
Total	\$ 1,178,256	13,346	\$ 88.28

Source: This information was provided by the
Traffic Department of a company which desires its name not
be used.

state Commerce Act which would embody principles widely known as the "Three Shall Nots." These asserted that in considering the reasonableness of rates as between different modes of transportation, the Commission could not consider:

1. The effect which such rates had on the traffic of any other mode.
2. The relation of such rates to the rates of any other mode of transportation.
3. Whether such rates were necessary to meet the competition of any other mode of transportation.

Although Congress rejected the "Three Shall Nots," it did amend the rule of rate making by providing that:

Rates of a carrier shall not be held up to a particular level to protect traffic of any other mode of transportation giving due consideration to the objectives of the national transportation policy declared in this chapter....³¹

The current controversy concerns the relative emphasis which should be placed on the two parts of the amended section, with the railroads anxious to stress the first part and motor carriers pressing for a greater role for the second.³²

As has already been noted, the language of Sec. 15a(3) leaned heavily on the decision in the New Automobiles case. Various parties, therefore, urged that the Congress did not mean to change the rule of rate making followed by the Commission, but intended to give legislative sanction to the standard employed by the Commission since the New Automobiles

case.³³ Others argued that the Commission had been inconsistent in its application of standards in rate controversies, and that it frequently held up rates of one mode in order to protect traffic of another mode despite the will of Congress as expressed in the Transportation Act of 1940.³⁴ In any event, motor carrier interests contend that the Commission has, subsequent to the 1958 Amendment, altered its criteria of reasonableness by placing greater emphasis on cost while neglecting long established norms of classification to the detriment of the national transportation policy.

In the several cases which have come to the Commission involving TOFC or multilevel rail rates on automobiles, the motor carriers have argued:

1. The rates set by the railroads ignore value-of-service considerations.
2. The rates set by rails are, in almost all instances, below all-truck rates. Since new rail service has eliminated the rail disability, no rate differential should be countenanced.
3. The rates set by the railroads are destructive of motor carrier competition and are designed to promote a rail monopoly of automobile traffic.
4. The rates set on automobiles are so low as to reduce car-mile earnings on automobiles below the level of earnings on less valuable commodities.
5. The rail reductions on automobiles spread to

other commodities and thus reduce rail earnings.

6. The railroads have ignored the rate relationships dictated in the Chrysler case.
7. Rates which provide for the same aggregate charge on each automobile regardless of the weight or the value of the vehicle are unjust, unreasonable and discriminatory.³⁵
8. The Commission has misconstrued the intent of Congress in interpreting Sec. 15 a (3) by stressing costs while ignoring the traditional tests of reasonableness.

It should be pointed out that the truckers are not challenging these rates essentially on a cost basis.³⁶ Even by their own cost revisions, most rates cover fully distributed costs. For example, in one case, Mr. Gilbert Parr, a consultant for the NATA, found no rate which failed to meet rail out-of-pocket costs and only four of twenty-five which failed to cover fully distributed cost. On an average, the protested rates exceeded out-of-pocket costs by 26 per cent and they were 13 per cent above fully distributed costs.³⁷

The railroads were unable to persuade the Congress that the "Three Shall Nots" should become an integral part of the Interstate Commerce Act. Nevertheless, they now argue that the compromise version that resulted from Congressional deliberation condemns umbrella rate making. In countering motor carrier arguments in the several cases

involving rate competition, the railroads urge that:

1. Rates set on automobile traffic should reflect the cost advantage inherent in rail transportation.
2. Rail rates should not be held up to an arbitrary level to provide an umbrella for other modes of transport.
3. Value-of-service pricing is inappropriate in view of motor truck competition.
4. Rail rates on automobiles are compensatory.
5. Average earnings per carload on automobile traffic are considerably in excess of earnings on low-level commodities and substantially above earnings on all manufactured products.
6. The rates are neither unjust, unreasonable and discriminatory nor destructive.³⁸
7. The Chrysler case rate differential applied to boxcar traffic and not to TOFC and multilevel service.

The shippers, with varying degrees of enthusiasm, have supported the position of the railroads. So far as some of the important issues are concerned, however, there are observable differences in the position taken by the automobile manufacturers. By what cost standard, for example, should the Commission measure compensativeness? Some shippers confessed to confusion and uncertainty on this score. The Ford Motor Company, which had supported a minimum rate order at the fully distributed cost level in the

New Automobiles case, no longer holds this view. At least one director of transportation still favored the use of fully distributed cost in order to avoid burdening other traffic. Most shippers seemed content in their conviction that the railroads have not and will not put in rates which are not profitable to them.

What position the Commission will take is not clear. Available evidence is inconclusive. In I & S Docket 7269, Examiner George A. Dahan has recommended that rail rates on automobiles be found "unjust, unreasonable and otherwise unlawful, and in contravention of the national transportation policy."³⁹ In condemning the Plan III rates at issue the examiner concluded:

Plan III rates provide an incentive for unbridled competition of unregulated transportation and they obstruct the coordination of transportation by regulated rail and motor common carriers. The development and preservation of a national transportation system adequate to meet the needs of the United States, of the Postal Service, and of the National Defense should not be hampered by a form of rates which obstruct the coordination of different transportation modes and provides an incentive to carriage vested with private as distinguished from public interests.⁴⁰

The examiner agreed with the motor carriers that consideration of "Congressional policy" declared in the Act limited the right of the railroads to exploit their cost advantage.⁴¹ After observing that the demand for transportation of automobiles is relatively inelastic, Mr. Dahan suggested that:

High-rated traffic must be called upon to bear

its full burden so that the public may not be denied the railroad facilities for deficit traffic, such as passenger and less-than-car-load traffic.⁴²

With respect to an acceptable level of rates, the examiner recommended that:

Since rail and rail motor service with TOFC equipment are fully competitive with all-motor service, the finding is inescapable that the Plan III and Plan IV rates to the extent that they are lower than the all-motor rates or all-rail "regular" rates are unreasonably low.⁴³

The examiner agreed also with motor carriers that the rates were unduly destructive; that they violated the order in Docket 29820; and that rates set without regard to the weight of automobiles were unlawful.⁴⁴

Just ten days prior to the service of the Dahan report, Examiner T. Russell Roper recommended approval of Plan III rates on automobiles.⁴⁵ Examiner Roper offered two tests of the lawfulness of rates:

1. "The applicable cost test in these proceedings is whether the rate is equal to the minimum cost level, i.e. out-of-pocket costs."⁴⁶
2. "The next test under the Act is whether a rate passing the test of being equal to out-of-pocket costs is just and reasonable. This depends on whether the measure above out-of-pocket costs is just and reasonable in relation to getting all of the contribution out of it you can toward the overall constant costs or overhead burden."⁴⁷

Since the cost studies of the protestants and of the respondents resulted in different estimates, the Commission's Cost Finding Section restated the costs of performing the service. The respondents argued that all rates

d out-of-pocket costs. The protestants found two of six rates in question failed to cover out-of-pocket while the Cost Finding Section found but one rate below out-of-pocket costs. On an average, rates ed out-of-pocket costs by 23 per cent. So far as distributed costs are concerned, eleven of the forty-tes were below the restated standard while, on average, exceeded fully distributed costs by 8 per cent.⁴⁸

With the exception of one rate (the one from Lorain, to Baltimore, Maryland) all rates were found to meet rst test. But what about the second? Examiner Roper ed:

As to whether the rates on this high-grade traffic are sufficiently high for the rail respondents to get all of the contribution out of this transportation that they can toward the constant cost or overhead burden, it must be borne in mind that even this high-grade traffic when handled over the highways or waterways, in lieu of via rail at rates providing some return, makes no contribution whatever to rail income and the other rail traffic has an even greater burden.⁴⁹

The report disposed of motor pleas of destructive ition in the following language:

Protestants, however, have made no showing of the level of their rates as compared to their corresponding out-of-pocket costs nor have protestants shown that holding up the considered Plan III rates to a particular level is a final resort to preserve a needed means or mode of transportation.⁵⁰

With respect to the relationship of the weight of es and the rate charged, Roper pointed to motor car-ariffs which apply identical rates over a wide range

icle weights.

One concession was made to the value-of-service prin-

The report urged the Commission to find that rates
ary vehicles were not just and reasonable in relation
ting "all of the contribution out of it you can toward
erall constant cost or overhead burden."⁵¹

The NATA has requested that the Commission review
conflicting orders on a consolidated record. It is
ous to predict what position the Commission will take.

one hand, railroads are encouraged by the Commis-
recent reversal of a recommended order by Examiner

The Commission in commenting on motor carrier

s of destructive competition noted:

The cost evidence indicates that the rates
and charges exceed the cost of the services
and provide a substantial contribution to the
overhead burden.... The testimony of three
motor common carriers regarding traffic lost
to Plan III service, partially refuted by the
testimony of certain shippers, does not in-
dicate that any of them, much less the motor
common carrier industry as a whole, is in
peril of destruction if the assailed plans
are approved.⁵²

It should be stressed, however, that the rates in
on were designed to capture traffic which had been
in private or exempt carriage. Commissioner Murphy
s joined by Commissioner Herring, stressed this point
oncurring opinion:

I am satisfied that the rates are compensatory
and that the extremely low level of most of
these rates is necessary to meet private-
carrier competition over which the Commission
has no control.⁵³

sioner Murphy added:

However, a word of caution to the respondents seems to be in order. Some of these TOFC rates are on an extremely low level, so low in fact that because of the effect which they may have upon other rates in the general rate structure of the country, they approach the point where they may be unnecessarily destructive of competition over which the Commission has control. The respondents should keep a constant check on these rates so as to make certain that none of them will at any time drop below the level required to meet the existing competition.⁵⁴

Since there is no substantial private transportation of new automobiles, it is uncertain whether the Commission will support the Roper view or that of Examiner Dahan.

Obviously, the Commission is impaled on the horns of a dilemma. On the one hand it would like to adhere to time-honored principles in deciding competitive rate cases. It has for so long substituted its own judgement concerning maximizing rates for the railroads that it is loathe to let the railroads decide for themselves what rate will contribute most to the overhead burden. The value-of-service principle despite a certain lack of clarity is as comfortable as an old pair of slippers. On the other hand, these principles have been time-tested and have not scored impressively. There is no disguising the current plight of the common carrier. So far as automobile traffic is concerned, there is no gainsaying the steady decline of rail participation in what once was a profitable traffic. But what of the new theories being urged from all sides and in the flood of recent studies of the regulatory agencies? Commissioner Walrath expressed the doubts of many when, in the Eastern Motor Carriers Case, he said:

Only time will tell whether the railroads and this decision are on the right track but, with so many legal and economic factors favoring traffic diversion to unregulated carriage, innovation on a trial and error basis is the only approach which seems feasible; the crystal ball is clouded, and I confess to no greater clairvoyance than those whose very survival as common carriers is at stake....

.....

We are insufficiently informed of (i.e. more experience is needed with) the complexities of TOFC rate making and the effect thereof on other railroad traffic and on other carriers, and I do not believe we can afford to forego that experience by striking down the considered rates on the basis of anything on the present record.⁵⁵

D. CONCLUSION

The dramatic revival of the rail carrier as a transporter of automobiles is a result of technological change and the effort by the railroads to take advantage of their lower costs by sharply reducing rates. Motor carriers have suffered substantial decreases in revenue have testified to the Commission that the railroads are engaged in destructive competition. The Commission has at this writing, indicated the extent to which it will allow the railroads to compete for traffic on a cost

CHAPTER IV

THE OPERATING RIGHTS OF MOTOR CARRIERS OF NEW AUTOMOBILES

A. INTRODUCTION

The operations of motor carriers are limited by the operating rights issued by the Interstate Commerce Commission. These operating rights affect the fortunes of the carriers and they also have a bearing on the quantity and the quality of the services available to shippers. The purpose of the present chapter is to describe those characteristics of operating rights which have had an important impact on both motor carriers and shippers of automobiles.

B. THE DEFINITION OF MOTOR CARRIER RIGHTS

The classification of carriers-Ex Parte MC-10.

Section 204 (b) of the Interstate Commerce Act provided that:

The Commission may from time to time establish just and reasonable classifications of brokers or of groups of carriers included in the term 'common carriers by motor vehicle', or 'contract carrier by motor vehicle', as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed, by the carriers or brokers so classified or grouped, as the

Commission deems necessary or desirable in the public interest.

In accordance with the provision of this section the Commission classified carriers according to a variety of factors.¹ Distinctions were made, for example, between common and contract carriers and between carriers of various commodities. Presumably, the motor carriers of motor vehicles operated under circumstances sufficiently different from those of other motor carriers to warrant separate classification.²

In order to relieve the burgeoning confusion with respect to the boundaries delineating the assorted specialized carriers, the Commission undertook a definition of the respective jurisdictions of each. Thus, the carriers of motor vehicles were described as follows:

This group consists of motor carriers engaged in the transportation of new and used motor vehicles, including automobiles, trucks, trailers, chassis, bodies, and automotive display vehicles, wholly or partially assembled, in interstate or foreign commerce. In this group are included:

- (a) Carriers engaged in the transportation of motor vehicles by truck-away method, involving the use of special equipment such as trucks, tractors, trailers, semi-trailers, 4-wheel trailers, tow cars, wrecking-service cars, and various combinations of the above in or upon which such motor vehicles are loaded.
- (b) Carriers engaged in the transportation of motor vehicles by drive-away method, involving the utilization of the motive power, in whole or in part, of the vehicles being transported, either in single drive-away or in combinations of two or more vehicles by use of tow-bar mechanism, full-mount mechanism or any combination of the above.

- (c) Carriers engaged in the transportation of motor vehicles within the boundaries of a city or single commercial zone, by either truck-away method, where such transportation is a part of and is incidental to an interstate shipment or a movement in interstate or foreign commerce.³

The role of competition within specialized carrier groups. One of the consequences of the classification of carriers was that carriers were compartmentalized and thus insulated against competition. Although identification of specialized carriers significantly reduced potential competition, there were some residual issues of significant import: Should the Commission allow free competition within each specialized carrier group? To what extent should the boundaries between carriers be considered inviolate?

So far as competition within the specialized groups was concerned, the Commission unquestionably favored a careful circumscribing of the ability of carriers to compete for traffic. It would be fair to state that, in general, the motor carriers were in sympathy with the Commission's philosophy; although there was a marked ambivalence in the truckers' position. On the one hand, individual truckers were anxious to maximize their opportunities and so they were inclined to apply for broad authority.⁴ On the other hand, each carrier, intent upon guaranteeing the integrity of his own little domain, sought to impose a variety of restrictions upon grants to rival carriers.⁵ The Commission

sought a middle-of-the-road position so that it seldom granted as much as applicants desired while, at the same time, it often fell short of pleasing protestants.⁶

Competition between carrier groups. The conflict between specialized automobile carriers and other truckers can be understood in terms of the considerations which prompted the internecine struggle discussed above. The automobile carriers, as a group were anxious to preserve the integrity of their own preserve while they were eager at the same time to establish poaching privileges for themselves in other areas. Since other carriers were similarly motivated, conflict inevitably resulted. The automobile haulers struggled to repel what they considered to be an invasion of their domain by heavy goods carriers and by movers of household goods; and they challenged carriers of general commodities for authority to carry a wide variety of products.

Consistent with its general philosophy of limiting intercarrier competition, the Commission generally decided against granting overlapping authority to various specialized carriers. Carriers who could not produce evidence that they had transported automobiles prior to the passage of the Motor Carrier Act were not successful in securing authority to engage in such transportation. The Commission did, however, encounter difficult problems in deciding certain borderline cases. Heavy goods haulers argued, for instance, that the transportation of heavy

motor vehicles was within the purview of their authority to the extent that special equipment was required in loading, unloading or in the movement of such vehicles. Motor vehicle transporters contended that they alone possessed authority to transport motor vehicles and, at the same time, they sought to narrow the definition of "special equipment."⁷ The Commission, subject to painfully detailed limitations, sided with the heavy goods haulers.⁸ Despite Commission rulings to the effect that heavy goods haulers could transport motor vehicles when special equipment was required, disputes persisted. Finally, the Commission decided upon a weight test which was to be determinative when other accepted criteria proved inadequate. Any vehicle weighing in excess of 15,000 pounds was to be considered as falling within the authority of heavy goods haulers.⁹

The automobile transporters came into conflict at another point with the movers of household goods. Involved in this dispute was the transportation of show automobiles and paraphernalia connected with their display. Because the household goods carriers transported this material prior to the Act, they are allowed to continue to do so in competition with automobile carriers.¹⁰

We might fairly conclude that the Commission took a jaundiced view of efforts by non-motor vehicle transporters to encroach upon the territory reserved for auto haulers. However, the record of the Commission in cases involving attempts by motor vehicle carriers to secure authority for

the transportation of other commodities is not nearly so consistent. At times, the Commission, relying upon tortured rationalizations of dubious validity denied requests for authority to transport commodities other than motor vehicles.¹¹ In some instances the Commission exhibited a stubborn determination to limit the competition between specialized carriers and carriers of general commodities even in cases where refusal meant serious inconvenience for shippers and inefficient operations for the motor carrier.¹²

On the other hand, motor vehicle carriers have succeeded in securing authority to haul a wide variety of other commodities. They carry fresh fruits and vegetables,¹³ boats¹⁴ and communication shelters¹⁵ among other products. The carriers of general commodities have opposed these grants on the grounds that, "the public interest can best be served by confining carriers specializing in one particular sphere of operations...to their specialty...."¹⁶ This is especially appropriate, these carriers argue, in view of the fact that specialized carriers are protected by the Commission from competition by general commodities transporters. It is not easy to decide why such arguments impress the Commission as crucial in some cases and as irrelevant in others. Sometimes the Commission says that the desire to secure backhaul has no bearing upon its decision in cases involving operating rights,¹⁷ other times it appears to be an important consideration in an award of rights.¹⁸ In one case the Commission decides that the

specialized trailers of the motor vehicle transporters should be used to haul automobiles,¹⁹ while in another case it may decide that it is perfectly all right to use specialized trailers to haul any commodity for which they are suitable.²⁰ The Commission has had a difficult time in making up its mind in such cases; and this indecision is manifest in a lack of consistency in the decisions in such cases.

Grandfather rights. The general intent of the framers of the Motor Carrier Act was that existing carriers should be permitted to continue operations in which they had been engaged prior to the passage of the Act, but that operating rights would have to be secured from the Commission before extensions of routes or additions of commodities could be effected.²¹ Some of the problems which resulted from the determination of the so-called "grandfather rights" the motor carriers of automobiles shared with motor carriers generally while some applied largely or exclusively to these specialized carriers alone.

One of the difficulties encountered by motor carriers (especially the small operator who may not have maintained comprehensive files) was in establishing adequate proof for all of his previous operations. Many carriers were unsuccessful in so doing and, hence, they were left with operating rights which were so restricted as to preclude successful operation.²² Some carriers who had transported automobiles prior to the Act were denied authority on the

grounds that their operation had not been sufficiently independent.²³

Carriers who for a variety of reasons failed to fill timely applications for grandfather authority were required to prove that public convenience and necessity required the service they proposed.²⁴ Such proof was also required of some carriers who sought authority for traffic which they once transported but which had been lost prior to the statutory date.²⁵ Whether or not the loss of traffic resulted in a denial of grandfather authority hinged upon a determination of the reason for the loss. If the cessation of traffic was due to poor service,²⁶ inability to compete with competitors' rates²⁷ or the bankruptcy of the parent firm,²⁸ rights were denied. If the applicant lost the traffic for reasons beyond his control and if he exhibited a willingness to continue such service, the Commission granted the desired authority.²⁹

Motor carriers of automobiles were no more successful in securing a liberal interpretation of grandfather rights than were other carriers. One carrier, for example, unsuccessfully argued that its grandfather rights should allow it to serve from all origin points, any state which it had served from any single origin point.³⁰ Another carrier protested that since it met the requirements for a permit, it should be permitted to transport any commodities within the territory covered by its operation.³¹ The Commission, however, insisted that since the purpose of the Congress

was to protect the right of carriers to continue the business in which they were engaged prior to the statutory dates, it must of necessity, impose limitations not only with respect to territory but also with respect to commodities.³²

Common and contract carriage. The Motor Carrier Act provided for both common and contract service. Section 203

(a) (14) of the Act defined a common carrier as follows:

The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has theretofore been subject to Chapter 1 of this title to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Chapter 1 of this title.

A contract carrier was described originally as follows by Section 203 (a) (15):

The term 'contract carrier by motor vehicle' means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) of this section and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation.

Although the Motor Carrier Act did not establish a preference for common carriage over contract carriage there is no doubt that the Commission considered the interest of the common carriers to be paramount.³³ To insure that contract carriers would not invade the field reserved for

common carriers, the Commission issued rules aimed at preventing contract carriers from contracting for individual shipments.³⁴ In addition, in its interpretation of the statute in cases involving the status of carriers, the Commission managed to define contract carriage in such a way as to limit the number of permits issued while, at the same time, it consistently narrowed the freedom contract carriers might enjoy.

An example should suffice to illustrate what has been said. Many automobile carriers were uncertain about their status under the law. After all, they rendered a specialized service for few shippers (this was true at least in those cases where the manufacturers had assumed control of transportation). They certainly did not hold themselves out to serve the general public; at least not in the same sense as the general commodities carrier did. Many of the auto haulers, therefore, filed for both a permit and a certificate and left it up to the Commission to determine the question of status. The Commission developed a set of standards to be applied in deciding such cases. Among the criteria employed were:

1. Contract carriers perform their service under written or oral contracts.³⁵
2. Contract carriers do not interline traffic with common carriers.
3. Contract carriers do not publish rates in tariff form.³⁶

4. Contract carriers do not hold themselves out to serve the public.³⁷

The promulgation of such standards seriously limited contract carrier operations and it did so in a manner not specified by the Act and perhaps not even contemplated by Congress.³⁸

Despite the determination of the Commission to obstruct the development of contract carriers, it was unable to please the common carriers who complained that the former were consummating so many contracts that they were in fact rendering common carrier service. In order to prevent this kind of challenge to the common carrier, the Commission gradually developed "numbers" and "specialization" tests.³⁹ Under these new rules, in order to qualify as a contract carrier, a trucker had to render a service which was specialized and he must limit himself to serving a limited number of shippers.

When the courts invalidated the numbers test,⁴⁰ the Commission turned to the Congress where it urged adoption of a bill amending Section 203 (a) (15) as follows:

The term 'contract carriage by motor vehicle' means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce for compensation... under continuing contracts with one person or a limited number of persons for the furnishing of transportation services of a special and individual nature required by the customer and not provided by common carriers.⁴¹

The Congress, after protests from "the contract carriers, some of their supporting shippers, the Department of Commerce and the Department of Justice,"⁴² deleted the last

phrase of the amendment. Congress was not willing to make the ability of contract carrier to serve a shipper dependent upon the unavailability or the unwillingness of common carriers to offer service.

The Commission, despite this rebuff, was determined, nevertheless, to promote common carriers at the expense of contract carriers.

In the first test of the new section of the law the Commission denied the application of a motor vehicle contract carrier who sought to transport airplane parts for Boeing.⁴³ Because of the fragile nature of the landing-gear bulkheads to be transported, the shipper claimed need for the specialized service of a motor contract carrier. One common carrier, U.S.A.C., had authority to perform the service, but its service had been tried and found wanting by Boeing. The Commission said that:

...we believe that our past holdings that existing carriers are entitled to transport all the traffic which they can economically and efficiently handle before additional authority is granted are equally valid today as they were prior to the 1957 amendments to the Act. There is, in effect, a presumption that the services of existing carriers will be adversely affected by a loss of 'potential' traffic, even if they may not have handled it before.⁴⁴

The Commission also decided, despite protests, that Boeing would not be adversely affected by a denial of the application of J-T. U.S.A.C., the Commission felt confident, could render adequate service. "In fact," the Commission observed, "its ability to obtain business depends on its ability to satisfy the needs of the shippers...."⁴⁵

In remanding the case to the Commission, Judge R. Jasper Smith said that the Commission apparently conceded that it could not deny the application on the grounds that the applicant failed to sustain the burden of proof that common carriers are unwilling or unable to perform the proposed service. But the Commission insisted that, "it is proper to consider the 'adequacy of existing services' in making a determination upon application for new services."⁴⁶ The court disposed of this interpretation in the following language:

The consideration of the effect on the services of protesting carriers is designed to afford a measure of protection for those carriers. This criterion does not contemplate consideration of the mere existence or availability of a protesting carrier but rather what effect, if any, granting a permit would have on the services of the carrier. If the protesting carrier was actually serving a shipper and participating in the traffic involved, the granting of a permit would divert traffic from the protesting carrier, and if this diversion would cause the services of the protesting carrier to be adversely affected to a material degree, this element certainly should be considered by the Commission. Where, however, the protesting carrier is not participating in the traffic involved, there can be no diversion of traffic and hence ordinarily there would be no adverse effect on the service of the protesting carrier.⁴⁷

The court went on to state that the Commission had misinterpreted the 1957 amendment. The court declared:

The statute now contemplates two forms of motor carrier service and quite obviously and clearly, under the statute, a contract carrier's permit cannot be limited and restricted to cases where no common carrier service is available. We conclude that decisions turning solely on the 'adequacy-willingness and ability' test cannot be justified and are clearly erroneous.⁴⁸

How does the new rule affect automobile shippers? It does not mean that Studebaker (which has expressed a preference for contract service)⁴⁹ can secure contract carriage from its old plant in South Bend. It does mean, however, (assuming the decision is not reversed in a higher court) that the chances of securing contract carriage from the site of a new plant are much improved even if there are common carriers already authorized to serve the new site as a place of origin.

The penchant for stressing the welfare of the common carrier evident from the foregoing was manifest in other ways. The Motor Carrier Act required that contract carriers sustain a lesser burden of proof in order to obtain permits than was required of common carriers seeking certificates.⁵⁰ It is difficult, however, to distinguish in what respects the requirements for permits differed from the requirements for certificates. In some cases involving General Motors carriers, the Commission appeared to acknowledge the existence of a double standard. In one instance the Commission declared:

Chevrolet...definitely prefers to use contract carriers. We have no desire to coerce it into any different position or control its decision in any way.⁵¹

However, there are many cases in which the Commission did not seem at all disturbed about coercing shippers. As a matter of fact, the Commission stated bluntly in one case:

The desire of a shipper to engage the services of a particular person as a contract carrier,

standing alone, does not constitute a sufficient basis on which to grant that person the right to enter the motor-carrier field, where the anticipated traffic may be handled satisfactorily by existing motor carriers.⁵²

The apparent inconsistency of decisions in the cases discussed above can be explained in terms of the policy of protecting the traffic of carriers already in a particular market. A contract carrier can secure a permit if no protest is received from common carriers who have the authority and the ability to perform the desired service. Where such a protest is launched, the Commission is likely to fall back on its dictum that, "existing carriers are entitled to transport all the traffic that they can handle adequately, economically, and efficiently without the competition of new motor service."⁵³

But what about attempts by common carriers to secure operating rights where contract service is already authorized? In one case, Arco Auto Carrier's pleas for rights to transport Chevrolet vehicles were opposed by Anchor Motor Freight, a General Motors contract carrier which was already serving the destination area from the plant involved. The Commission awarded the operating rights to Arco and observed:

We may officially notice the authority which Anchor Motor Freight holds, but the fact remains that a contract carrier is not compelled to serve all shippers desiring to use its facilities; and a shipper is entitled to dependable motor-carrier service which is not subject to the contingency of negotiating a satisfactory agreement for contract carriage, or of assuming the obligations of such a relationship.⁵⁴

In another case, however, the Commission reached an opposite conclusion.⁵⁵ The distinguishing characteristic in this particular instance which compelled a departure from the general rule evidenced in the Arco case was that the contract carrier had a contract with the supporting shipper. The Commission reasoned that:

...a contract carrier which has served a shipper for some time under a contract still in effect, and which stands to lose some of the traffic which it has enjoyed, has a more real and substantial interest as a protestant than a carrier which merely hopes to be able to negotiate a contract, with a possibly unwilling shipper, and thereby obtain additional traffic.⁵⁶

Before concluding the discussion of the relationships between common and contract carriers we might mention one additional area in which Commission efforts to assist common carriers met with Congressional disapproval. Common carrier complaints that they were unable to compete with contract carriers without knowing what rates the latter charged were sympathetically received by the Commission which finally decided that contract carriers would be required to "file, publish and keep open to public inspection...copies of each existing contract containing the charges of such carriers."⁵⁷ The Congress in the 1940 amendment closed these files to the public. As a result, contract carriers have the duty to file with the Commission for public inspection, schedules containing "the minimum rates or charges of such carriers actually maintained and charged for the transportation of passenger or property... and any rule, regulation, or practice affecting

such rates as charged, and the value of the service thereunder." ⁵⁸ This means, however, that except where a carrier has but a single contract, the charges for any particular movement cannot be discovered. ⁵⁹

Initial and secondary rights. One of the most significant of the limitations placed upon motor carriers of new motor vehicles concerned the character of the service which could be performed. Under the provisions of Administrative Ruling No. 75, motor carrier operating rights for the transportation of new motor vehicles were qualified by use of the terms "initial" and "secondary." ⁶⁰ Carriers with initial authority served shippers from points of manufacture or assembly whereas carriers with secondary authority transported the vehicles which they had received from other carriers to connecting carriers or to dealers,

Administrative Ruling No. 75 spawned its quota of difficulties. The early problems concerned the determination of the geographical limits of assembly and manufacturing plant areas and the definition of substantially complete motor vehicles. With respect to the first of these, the Commission has generally ruled that transportation within the limits of a municipality does not destroy the initial character of the movement. ⁶¹ So far as the second question is concerned, the ICC has consistently held that an operative vehicle which can be driven over the road is substantially complete. ⁶²

By far the most important controversy over the nature

of the initial and secondary qualifications of operating rights grew out of the development of TOFC service. In the typical TOFC operation a motor carrier hauled a loaded trailer to a convenient railhead from which point the railroad transported the trailer to a rail point in the destination territory. In many instances, the originating carrier then distributed the vehicles to the various dealers. The question of whether an automobile hauler who held initial authority could originate and terminate traffic with an intermediate rail TOFC service first arose in an application filed by the Convoy Company. Although examiner F. Roy Linn denied the request, he observed:

Consistently with Gilbert Carrier Corp. Extension-Kearney, N.J., 72 MCC 204...it would appear that applicant upon publication of appropriate tariff provisions for substitution of rail service lawfully might conduct the proposed operations under its presently-effective rights.⁶³

Since its "presently-effective rights" were initial rights, it was assumed by automobile haulers that the substitution of rail for motor service for a portion of the haul raised no question of the adequacy of initial rights in performing TOFC service.

Examiner Reece Harrison, in a case involving the Dixie Transport Company, arrived at a position diametrically opposed to that of Examiner Linn. In this instance, Dixie (which had initial authority from South Bend, Indiana to Florida points) transported loaded trailers to Cincinnati, Ohio, from which point the Louisville and Nashville Railroad moved the traffic to Atlanta, Georgia, or to some Florida

terminal. Dixie then distributed the vehicles to the various dealers.⁶⁴ The examiner (also relying on the Gilbert case) decided that, "this operation is unlawful in that applicant is not authorized to serve Cincinnati to Atlanta, thence Atlanta to points in its destination area."⁶⁵ Moreover, with reference to similar services performed by other carriers, the examiner stated, "All parties participating in such traffic are conducting operations which are unlawful...."⁶⁶ Under this interpretation, truckers who held initial rights would either have to apply for appropriate secondary authority or watch carriers with extensive secondary rights reap a windfall.

The NATA, at a special meeting of its Board of Directors on June 8, 1960, decided to request a declaratory order from the Commission to clarify the interpretation of the terms "initial" and "secondary" as used in grants to carriers of motor vehicles.⁶⁷ The notice of hearing which was issued July 8, 1960, stated:

This petitioner seeks a ruling as to whether a motor carrier holding initial authority only from A to D may transport the said traffic to B, -a non-service point intermediate to D, there load it on a rail flat car, for handling in trailer-on-flat-car, or 'piggy-back' service to C, another non-service point intermediate to D, where it would take possession of the shipment and move it to destination, without first obtaining specific authority either to serve B and C or to operate from C to D.⁶⁸

The position of the NATA was that:

...a motor carrier authorized to handle initial movements of motor vehicles may accept such traffic at any authorized point of manufacture or assembly and transport same to any point

in its initial-movement destination territory, utilizing rail Trailer-on-flat-car service (TOFC), ...or any comparable rail service, for any portion of the movement, without obtaining additional operating authority from this Commission.⁶⁹

The shippers strongly supported the interpretation urged by the NATA. In the first place, they had a preference for continuing relations with those carriers who had served them in the pre-TOFC days. Secondly, they were unhappy about the prospects of having to support the many applications for secondary authority that would be made by their carriers should the Harrison view prevail.⁷⁰

Two railroads filed a joint brief supporting the NATA.⁷¹ The interest of the railroads stemmed essentially from the fact that the Harrison ruling had resulted in the abandonment of TOFC service on some lines with a consequent loss of badly needed revenue.⁷²

The Clark Transport Company and Convoy Company, both of whom are motor carriers with extensive secondary authority, appeared in opposition to the interpretation advocated by the NATA. These carriers objected that the NATA did not seek a clarification of terms which heretofore had been clearly enough understood, but a redefinition of these terms which would protect their own traffic.⁷³ Convoy and Clark were in a position to reap a windfall at the expense of initial rights carriers and, understandably, they were anxious to secure it against diversion.

In his Report and Recommended Order Examiner William Tyers observed that:

It is readily apparent that what petitioner seeks here is not an 'interpretation' of Ruling 75, but rather a complete modification thereof in order that certain of its members might lawfully alter their motor operations to meet changing conditions without having to submit to the Commission's usual procedure for the establishment of new services.⁷⁴

The examiner decided:

...it is clear that a carrier holding initial rights only must have delivery authority to serve the point at which the traffic is turned over to the railroad, and it must hold either secondary or unrestricted authority to move the traffic from the point at which it receives the traffic from the railroad to ultimate destination. It cannot perform the latter service under 'initial' rights because it is not an 'initial' movement and further, because the carrier is not authorized to pick up traffic at that point under any circumstances.⁷⁵

Whether or not Examiner Tyers' decision is sound from a legal point of view is a question best left to those trained in the law. Regardless of whether the recommended interpretation makes legal sense, however, its economic wisdom is questionable. The framers of the Motor Carrier Act intended that the Act should strengthen the transportation system for the purpose of providing an improved service to the public. They did not seek to legislate all the terms and conditions under which transportation service could be provided because they believed that a flexible, expert commission could more effectively cope with rapidly changing circumstances. The examiner, by adopting an excessively legalistic approach, has forfeited the advantages

of flexibility. The initial and secondary restrictions which have been attached to grants of authority to carriers of motor vehicles were designed to deal with the circumstances which surrounded such transportation service in the 1930's. Surely conditions have been altered. It would, therefore, certainly appear advisable in a proceeding such as this to examine the consequences of alternative decisions on the motor carrier industry and upon the public welfare. Examiner Tyers scrupulously examined the legal aspects of the NATA's petition, but he gave no serious consideration to the impact of his recommended order upon the public.

It is difficult to see exactly how the Tyer's interpretation strengthens the motor carrier industry. What it means is that intercarrier shifts will occur in which carriers who formerly participated in traffic will forfeit their share to other carriers whose secondary authority has appreciated as a result of rail innovation. This traffic shift is not the result of improved service, superior efficiency or more effective management; it is purely fortuitous. It is not likely, therefore, to improve the performance of the industry.

But what about the public welfare? So far as the interests of the shipper are concerned it is safe to assume that these are not well served by the Tyers report. The practical result--should the ICC uphold the present report--is that shippers will have to sever some satisfactory relations with carriers and establish contracts with others.⁷⁶

A favored carrier could apply for appropriate authority but his chances of success would be dim.

It could be argued that the public welfare includes more than the well-being of shippers. This is certainly true. In this instance, however, it is simply assumed that public welfare is served by the rigid interpretation of a rule promulgated more than twenty years ago. Some more convincing showing ought to be required.

C. PUBLIC CONVENIENCE AND NECESSITY

Carriers who were unable to qualify for "grandfather" authority were required to secure a certificate or a permit from the Commission prior to engaging in non-exempt transportation. Before issuing such certificate or permit, the Commission was required to establish that the applicant was "fit, willing, and able properly to perform the service proposed," and to determine that the service "is or will be required by the present or future public convenience and necessity."⁷⁷ But, Congress did not present the Commission with a comprehensive regulatory scheme; it roughed in the general outlines and gave to the Commission the power to perfect the details.⁷⁸ The courts also allowed the Commission a great deal of leeway.⁷⁹ For example, the court permitted the Commission to foreclose a market to competitors in the interest of public convenience and necessity,⁸⁰ and it allowed the Commission to institute competitive service even where existing carriers might be put out of

business as a result.⁸¹

To a considerable extent, the Commission may be held accountable for the interpretation given to the standard promulgated by Congress for the institution of new transportation services. The purpose of the discussion which follows is to examine the principles which the ICC has thought important to a definition of public convenience and necessity as these appear in cases involving carriers of new motor vehicles.

We might suggest from the outset that the Commission has been particularly impressed by the view of the court in the Texas and N.O. Ry. case.⁸² In discussing the purpose of requiring carriers to obtain certificates or permits before instituting a new service the court declared:

The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carrier's operating in interstate commerce a competing line not required in the public interest.... The question, in substance, is whether the new operation or service is responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operation of existing carriers contrary to the public interest.⁸³

Public convenience and necessity and shipper preference for a given quantum of service. The courts suggested that public convenience and necessity encompasses more than the welfare of any individual shipper. The fact that this precept was so often repeated in the early days

of government attempts to regulate businesses "vested with a public interest" may reflect the fact that, up to that time, it had been taken for granted that when individuals and firms maximized their own welfare they, pari passu, maximized the welfare of the public. The stress placed upon public as opposed to private interests may have been necessary in the free-wheeling era of the robber barons. We ought not, however, lose sight of the fact that the general public interest is tied rather intimately to the interests of shippers. The public (as well as the shipper) benefits from safe, dependable, economical and efficient service. Let us then, examine the weight which the Commission has assigned to shipper desires in the evaluation of "public convenience and necessity."

Some shippers, for a variety of reasons, prefer to have available the services of several competing carriers.⁸⁴ The International Harvester Company, for example, supported the application of three motor carriers who sought authority to serve its new plant at Emeryville, California.⁸⁵ Two of these carriers served the shipper's Springfield and Fort Wayne plants, and the third served the Emeryville plant under temporary authority. The shipper had long followed a policy of three driveaway companies from all points.

Division 5 noted:

That policy which was arrived at after four years of experience, is deemed necessary in order to counter circumstances which might arise, such as fires, alterations in driveaway yards, quarantines, or any other cause, that would prevent one or two of the driveaway

companies from properly functioning.⁸⁶

With one Commissioner, William E. Lee, dissenting, Division 5 granted the request. After a protest by the Pacific Southwest Railroad Association, the Commission reconsidered and noted that the conditions which prompted International Harvester to seek three carriers had never arisen and that "the present or foreseeable future transportation requirements of Harvester, however, are not such as to provide profitable operations to three motor carriers."⁸⁷ The decision was reversed.

The efforts by Studebaker to secure duplicating authority were generally unavailing. In one case, the Commission explained its refusal to grant the desired rights by concluding that:

The needs of the manufacturer will adequately be met by the availability of one driveaway carrier in such territory. It is doubtful whether there is sufficient business to support both of these carriers in overlapping territory. Under the circumstances, the instant application, supported only by the manufacturers will be denied....⁸⁸

On the basis of the two cases cited and of similar decisions in other cases one might well conclude that the Commission sacrificed the shippers' desire for additional service in order to safeguard the interest of the public in a viable and efficient motor carrier service. The Commission decided that to divide the available traffic among one or two more carriers would result in so great a dilution that efficiency would be reduced. It could well be argued

that this constitutes a valid reason for refusing additional authority.

It is, however, less than clear that the Commission's primary interest in such cases is to see to it that traffic is adequate to support the carriers it authorizes. When, for instance, the Chrysler Corporation moved its plant from Evansville to St. Louis, it made a careful evaluation of its transportation needs and concluded that there was just enough traffic to support four efficient, generally non-competing carriers.⁸⁹ Chrysler selected four carriers from among the nine which served at its Evansville facility and supported their applications for authority from St. Louis to the various destination states. Unfortunately for Chrysler, there were already some carriers in St. Louis with initial authority to a nine-state area. The Commission refused, therefore, to grant authority to the petitioning carriers in these states because, in its view, existing carriers could provide the desired service and the certification of more carriers would dilute available traffic. So far as authority to serve the other states was concerned, however, the Commission didn't pay much attention to Chrysler's protest that traffic volume was sufficient for a few truckers only. The Commission decided that, "wherever possible, each applicant handling a substantial volume of Evansville traffic should be granted authority enabling it to serve Chrysler to the same states to which it transported traffic from Evansville."⁹⁰

Perhaps the decision in the Chrysler case is to be explained in terms of the Commission's much repeated rule that, "existing carriers are entitled to transport all the traffic that they can handle adequately, economically, and efficiently without the competition of new motor service."⁹¹ This rule, however, does not really drive to the heart of the Commission's philosophy with respect to the appropriate interpretation of "public convenience and necessity." The Commission relies on the rule when it produces results which seem desirable to the Commission on some other grounds, and it either forgets it or emasculates it when its application is embarrassing to the achievement of some more desirable objective. A few examples should suffice to illustrate the point.

Arco Auto Carriers petitioned for authority to serve various midwestern states from Toledo, Ohio. Arco already participated in this traffic by interlining with Dealers Transport at Chicago. Since Dealers did not have sufficient equipment to provide the shipper (Willys) with the service required, it leased Arco vehicles and drivers for the performance of the Toledo to Chicago portion of the trip. In other words, the entire trip was made in Arco equipment driven by Arco drivers. This arrangement was unsatisfactory to both Arco and to Willys. The Commission denied the authority and observed:

The reasons advanced by Willys in favor of the proposed service of Arco in lieu of the present Arco-Dealers service do not, in our opinion,

demonstrate any real inadequacy in the present service. Willys now is receiving reasonably satisfactory service from Arco and Dealers and there is no showing that, at least from a service standpoint, the proposed service would be any improvement thereover. While it may prove more economical and convenient to Arco, this, of itself, is not sufficient to warrant a grant of the requested authority.⁹²

The only thing provided by Dealers in this case was the requisite authority. To conclude that this constitutes adequate service is to endow the concept of adequacy with an unconscionable elasticity. The Commission admitted that Arco could render a more economical service, but it seemed willing to forego the advantages of economy.

One explanation which suggests itself for the Commission's decision in the preceding case is that the denial was based on the probability that a grant to Arco would have resulted in a loss of traffic for Dealers. The interpretation would explain the reluctance of the Commission to certify only four carriers in the Chrysler Case. It would also account for a peculiar decision involving Kenosha Auto Transport. In this instance, Kenosha had illegally transported busses for Transit Busses, Inc. Dealers Transport, which had shared in this traffic, opposed a grant to Kenosha on the grounds that it was willing and able to provide all the service desired by the shipper. The Commission granted the authority nevertheless suggesting that:

Dealers' interest in providing an exclusive service cannot serve to bar the grant of authority herein where the reinstitution of competitive service affords advantages to the public without in any material manner

adversely affecting existing operations.⁹³

The Commission was willing to protect Kenosha's participation in the traffic even though it was the result of an illegal operation and in spite of the ability of an existing carrier to provide the necessary service.

The Commission is undoubtedly preoccupied with protecting the interests of existing carriers, but it is sometimes difficult to decide which interests merit protection. A request for authority by the Pacific Motor Trucking Company (PMT) provides an excellent example of the problems which arise.⁹⁴

In 1955 and 1956 General Motors, anxious to secure additional service, supported the application of PMT for authority to serve various destination areas from General Motors plants at Raymer and South Gate, California. The shipper expressed a preference for the personalized service of the applicant, and represented the conditions in his shipping yards as being of such nature as to permit use by only one carrier. Six rail and seven motor carriers protested.

The Commission denied the grant except for service to points on the rail lines of the Southern Pacific stating that:

We deem it of controlling significance here that in the territory under consideration automobiles are commodities which can be economically and advantageously transported by rail to on-rail points, and that the nature of the movements from these three

California plants is such as to render it unlikely that a significant amount of freight would be diverted from the Southern Pacific to its motor contract carrier subsidiary if the proposed service were limited to Southern Pacific Points.

...On the other hand, use by General Motors of applicant's proposed service on a statewide basis would permit the Southern Pacific to invade the territory served by other rail lines and by existing motor carriers and would inevitably result in the diversion of a large percentage if not all of the traffic now moving in rail point-line service.⁹⁵

Moreover, the Commission asserted:

The fact that both General Motors and applicant have cooperated to permit the latter to establish receiving yards adjoining the former's assembly plants and thereby block the use by other carriers of normal egress routes, has no bearing on existing motor transportation facilities.⁹⁶

In application No. 78787 Sub. No. 36 (decided at the same time as the above request) PMT sought authority to transport new automobiles and trucks from Raymer to dealers located at points on the line of the Southern Pacific in Arizona. General Motors supported an exclusive grant to the applicant because, "use of any other carrier would require outgoing shipments to be dispatched through the shipper's incoming gate, causing confusion and disarranging the operations at the plant which are geared to the use of applicant's service from its nearby yard."⁹⁷ In addition, General Motors gave expression to its preference for the personalized, exclusive service of a contract carrier.

The exceptants, all of whom were principally engaged in hauling automobiles for other manufacturers, possessed the

authority to transport the considered traffic. The Commission however, decided in favor of an award to Pacific Motor Trucking on three grounds:

1. General Motors had demonstrated a need for a "personalized" service.
2. The applicant had served General Motors for a number of years, and,
3. Inasmuch as the considered traffic has been moving principally by rail, institution of the proposed service should have no adverse effect on existing carriers.⁹⁸

It is difficult to understand why General Motors had demonstrated a need for personalized service in one application and not in the other--especially since the evidence used to support such a need was the same in both instances. It is equally obvious that the fact that PMT had served General Motors for many years was not material to the decisions. This leaves us with the third of the Commission's grounds for its award. In one case, the protesting carriers were presumed to suffer no adverse effects as a consequence of the grant because the traffic had been moving by rail and would continue to do so if the grant were denied. In the other case, the points which PMT sought to serve were off-route points and, therefore, this was traffic which would be lost by other rail and motor carriers.⁹⁹

This would suggest that if a protesting carrier has no chance of participating in the traffic, the Commission

will award authority. But, if a carrier presently sharing the traffic is threatened with loss of that traffic a denial of requested rights can be expected.

But, must a carrier be presently sharing in the traffic or is it sufficient that a protestant suffer a loss of "potential traffic." This question cannot be answered unequivocally. In the J-T Case,¹⁰⁰ the Commission took the view that a loss of potential traffic was sufficient reason for refusing to confer operating rights. In another instance a shipper opened a new plant and made it clear that it "...prefers to use one carrier for the movement of its traffic."¹⁰¹ One of the protestants, Insured Transporters, Inc., had authority to serve three destination states from the site of the new plant. Division 1 agreed that:

Insured Transporters, Inc., is authorized to render truckaway service from the Trailmobile plant site to points in Arizona, Utah, and Washington, and should be afforded an opportunity to demonstrate the adequacy of its service before another carrier is authorized to compete with it.¹⁰²

However in another instance, a General Motors carrier sought authority opposed by Central Car Carriers, a small common carrier with authority to serve a three state area from the plant site. The Commission ruled that:

Because of the present and anticipated volume of traffic and the necessity for coordinating the services of the delivering carrier with production in order to eliminate congestion at the plants, Chevrolet desires the services of a motor contract carrier over which it will have complete control in much the same manner as it might control its own employees.¹⁰³

Again in the Speedway Transports application the Commission

denied a protest by Howard Sober, Inc. It stated:

Since Sober has not been enjoying any of the shipper's business from Kenosha in the past, it will not be adversely affected by a grant of authority to the extent indicated in our findings.¹⁰⁴

Single v. joint-line service. The Commission has had occasion to interpret public convenience and necessity in connection with shipper supported carrier requests for rights which would eliminate the need for interlining traffic. In general, shipper objections to joint-line service stemmed from the delays in transit and the increased damage hazards characteristic of such service. These difficulties assumed a special importance when the market under consideration was reached by rival shippers in a single-line service.

The Commission recognized from the outset that single-line service was advantageous from the shippers point of view. Division 5 ruled in favor of a contract carrier's petition for single-line rights in one of the first of such cases to come before the Commission. Despite protests of interlining rail and motor carriers, the Division held that, "there is nothing of record to show that any motor carrier other than applicant is offering through service on new automobiles, without change, from Detroit to Amarillo, Texas."¹⁰⁵ In another case, the Commission specifically acknowledged that single-line service conferred a competitive advantage upon those shippers to whom it was available. In granting the request of the Kenosha Auto Transport

Corporation for single-line rights the Commission declared:

In our opinion, this evidence, together with the fact that shipper's competitors have single-line service available to the same territory, demonstrates that American Motors is at a definite competitive disadvantage....¹⁰⁶

Such grants, however, inevitably resulted in a loss of traffic for carriers with secondary authority so that the Commission was impaled on the horns of a dilemma. The extent to which shipper interests should be compromised so that existing carriers might transport all the traffic they could handle efficiently never has been clearly resolved. In one instance, Division I stated, "We do not convey our function in proceedings such as this to preserve the status quo at all costs."¹⁰⁷ The same Division, in the same year, decided against granting a petition for single-line authority. The Division ruled:

On this record we are not convinced that the supporting shipper needs single-line motor service in the transportation of the considered commodities in the area involved. Collectively, the opposing motor carriers have the necessary authority and numerous units of equipment suitable to meet the reasonable transportation requirements of the supporting shipper.¹⁰⁸

This decision suggests that the adequacy of existing joint-line service is a crucial consideration in such instances. This conclusion would be reinforced by a decision involving Kenosha Auto Transport. In this case, the entire Commission reversed Division I and decided that American Motors needed single-line service, "... to reduce, as far as possible, the disadvantages which are involved in the use of joint-line service ..."¹⁰⁹ Commissioner Minor, speaking for

the four dissenters, declared that, "the evidence in this proceeding falls short of showing inadequacy in existing joint-line service."¹¹⁰

It would appear that what separated the Commission in the Kenosha case was a question of the adequacy of the existing joint-line service. Several other decisions suggest that adequacy of existing service is of critical importance. In the Cassens Case, Division I said that:

Although the opposing motor carriers characterize the demand for service in the late 1954 and the early 1955 as being temporary during a peak period. We do not believe that shippers should be deprived of sufficient transportation service to meet their needs for 4 or 5 months of the year in order that existing carriers will be assured of ample traffic throughout the year.¹¹¹

In another case, General Motors supported a carrier request for single-line authority on the grounds that the new air suspension systems used in its automobiles required that carriers employ special equipment. Division I agreed that the special equipment necessary warranted a grant of the requested authority.

It is not safe, however, to conclude that where no evidence of inadequacy exists the Commission will refuse to grant single-line authority. For example, the Commission granted single-line authority despite the protest of an interlining carrier which admittedly offered adequate service. In this instance, Division 5 stated:

Notwithstanding the fact that no occasion for complaining against United Transports, Inc.,

has arisen, the shipper desires a service without interchange to all points in the United States.¹¹²

It should also be pointed out that evidence of inadequate service does not in itself guarantee single-line authority. General Motors succeeded in convincing the Commission that its air suspension system required special handling in one instance but failed (on substantially the same technical facts) to do so in another. In this latter case Division I observed:

Although the shipper's principal dissatisfaction with the latter service (joint-line) concerns its apprehension that such service is not conducive to the proper handling of its new automobiles equipped with air suspension spring systems, the evidence shows no specific instances where existing carriers in transporting these cars have failed to provide satisfactory service.¹¹³

Again, in the Cassens case, the Commission was impressed by the fact that temporary peaks had inconvenienced a shipper. Under similar circumstances, the Commission decided in another case that these temporary shortages of equipment presented problems that shippers would have to learn to cope with:

The shipper is well aware that such peak periods occur annually, and with proper administrative planning, and due regard to adequate notice to carriers which will enable them to schedule their operations and utilize their equipment in an orderly manner....¹¹⁴

There may be some explanation for the inconsistency evident in the Commission's handling of the cases discussed above. Obviously, no simple, easily discernible rule can

reconcile so many conflicting verdicts. The Commission is obviously torn between the necessity of providing for shippers a genuinely adequate, efficient, and economic service, and its duty to promote a healthy carrier system. In a substantial number of instances the Commission is forced to choose between the preferences of shippers and what it considers to be the welfare of existing carriers. When faced with such a choice the Commission most often opts for that course which favors existing carriers. But, depending on the composition of the Commission, and perhaps also the character of the shipper, of the applicants, and, of the protestants, the Commission may reach a different verdict.¹¹⁵ It often appears that the Commission starts out by acknowledging the importance of promoting shipper satisfaction but that its resolve to do so weakens as vested carrier interests build up and come in conflict with shipper preferences. Such an interpretation is strongly suggested in the Commission's handling of carrier requests to follow traffic to which we turn our attention.

The follow-the-traffic principle. How does the movement of a plant affect a motor carrier? Is the carrier permitted as a matter of course to follow his traffic to a new source or must he prove public convenience and necessity?

The first major case involving automobile carriers in which the Commission was confronted with this problem involved the movement of a Chrysler Corporation plant from Detroit to Evansville, Indiana. In this instance the

Commission took the view that a carrier should follow his traffic. Frank Sober had followed this traffic without bothering to secure the necessary authority. In spite of this, Division 5 held that:

If this operation were not related to applicant's prior operation from Detroit, it would seem that it should be denied....However, the operation from Evansville is in reality only a continuance of a prior operation from Detroit....¹¹⁶

The existence of protesting carriers who possessed requisite authority was not seriously considered in this particular plant movement. Protestant motor carriers alleged that they had sufficient equipment to handle the entire output of the Evansville plant. The Commission nevertheless allowed the various carriers to follow their traffic.¹¹⁷

With the passage of time and the accumulation of broad rights by carriers, the Commission's "follow-the-traffic-theory" came into conflict with the principle which allowed existing carriers to handle all available traffic before new carriers were certified. A new set of rules began, therefore, to emerge. In the Clark Duluth extension, a carrier sought to follow traffic which was now being delivered at some other port. The entire Commission observed that:

In order to establish a basis for a grant of the requested authority from Duluth, applicant relies heavily on its purported need to follow the traffic of its shippers from the port of Milwaukee. Although a motor carrier does not have an absolute right to handle particular traffic, it has been found in some prior decisions that public convenience and necessity required that certain motor carriers be

allowed to follow their principal traffic to new sources of supply, where it was shown that existing carriers are unable and unwilling to provide a proposed service, that a denial of authority to permit the applicant to follow the traffic of its shipper or shippers would result in irreparable injury, would greatly exceed any adverse effect a grant of authority would have upon existing carriers.¹¹⁸

In this case Clark was not allowed to follow its traffic.

The Commission policy as expressed in the Duluth case above was tested in the recent movement of the Chrysler Company plant from Evansville to St. Louis. In this case, It will be recalled, Chrysler sought what it considered an ideal distribution pattern. Protesting motor carriers who had not served Chrysler, generally held authority to service a nine-state area in the midwest. Division I in denying the applications in the nine-state area declared that:

We have consistently held that existing carriers should be afforded the opportunity to transport all traffic which they can handle efficiently and economically in the territories they serve, without authorization of a new service.¹¹⁹

With respect to territories not served by existing carriers, the Commission adhered to a form of the follow-the-traffic theory in allowing each applicant to serve the territory served by him from Evansville and in denying rights to new carriers seeking to participate in the traffic.¹²⁰

Under the more recent interpretation, carriers are not allowed to follow their traffic. They must, in effect, prove that public convenience and necessity requires the

service they propose and, of course, where there are existing carriers willing and able to provide the service it is, to understate the case, difficult so to prove. If there are no existing carriers, applicants who serve the shipper at the old plant are given preference in the distribution of grants of authority.

Existing rail service and motor carrier operating rights. The conflict between the preferences of shippers and carrier interests is plainly evident in cases in which the Commission is asked to determine whether shippers are to be provided with alternative modes of transportation. In these instances, the Commission's initial inclination to consider shipper interests to be paramount eventually yielded to considerations of carrier welfare. Let us examine the development of the concept of "public convenience and necessity" as it applied to cases of this type.

What bearing does the existence of rail service have on the grant of motor carrier rights? There is no single easy answer to this question. The Commission's decisions have been vitiated by an appalling vacillation. Many of the questions which remained unanswered in the 1930's have still not been answered unequivocally. Evidence of this is the fact that rails are making the very same protests to grants of operating rights in 1960 that they were making in the 1930's. Moreover, although the Commission has tried to justify contradictory decisions on the basis of differences of fact, a close reading of the various cases fails

to sustain the claim to consistency.

Railroad arguments against motor carrier grants have generally been these:

1. The existence of adequate rail service precludes motor carriers.
2. The rails should not be placed in the position of losing the cream of their traffic.
3. Motor service, where allowed, should be carefully limited quantitatively and territorially.

Let us scrutinize the disposition made by the Commission of each of these contentions.

One of the first cases to come before the Commission involving an automobile carrier concerned an application for operating rights from Detroit to Baltimore.¹²¹ The applicant sought an agreement with a Baltimore dealer for the transportation of automobiles in direct service in lieu of the existing service which utilized a combination of barge service to Buffalo and truck service to Baltimore. There was no existing direct service by motor carrier. Division 5 denied the application after noting that rail carriers had adequate equipment to take care of "all present and probable future demands for service."¹²²

At about the same time, a Joint Board awarded motor carrier operating rights in spite of existing rail service.¹²³ The Board concluded that "... motor transportation of automobiles has certain advantages over rail transportation."¹²⁴ The Board additionally suggested a

test for deciding public convenience and necessity stating, "The fact that the contracting parties desire the services of applicant... indicates a demand and need for his services."¹²⁵

If early decisions left some doubt about the position of the Commission in cases involving motor carrier rights with existing rail service, these doubts should have been dispelled by the decision in the Brooks-Gillespie case.¹²⁶ With regard to rail claims that the existence of adequate rail service precluded grants to truckers, Division 5 stated:

We are advised by statute that it is the policy of Congress to foster and preserve in full vigor both rail and water transportation, but we are also directed in section 202 (a) to regulate transportation by motor carriers in such manner as to recognize and preserve its inherent advantages. There are many inherent advantages in the transportation of automobiles by motor vehicle.... That particular territory has adequate rail service is not sufficient reason for denial of a certificate. Shipper and consignees of automobiles are entitled to adequate service by motor vehicle as well as by rail.¹²⁷

This principle was adhered to in similar cases subsequently before the Commission. In the Reeser case, for example, Division 5 concluded that:

Atlantic City appears to have adequate rail service, but that is not sufficient reason for the denial of a certificate, because shippers and consignees are entitled to adequate service by motor vehicles as well as by rail.¹²⁸

In the Rainville application, the Commission reiterated:

While it is true applicant's proposed service would be competitive with rail service, the Commission has heretofore found that communities

are entitled to adequate service by motor vehicle as well as by railroad.¹²⁹

Despite what must have seemed a well-settled point of law, the railroads continued to oppose motor carrier grants on the grounds that rail service alone was sufficient; and it finally paid off. Kenosha Auto Transport sought authority to serve a manufacturer of tractors and handlifts from Gadsden, Alabama. The only service then available was by rail. The motor carriers contended that a shipper was entitled to adequate service by both rail and motor carrier. The rails urged that rail service was adequate and that no need had been shown for a competitive motor service. Despite its protestations to the contrary, the Commission clearly departed from the rule of its most recent decisions.

Division 5 declared that:

We are aware that in connection with numerous applications for authority to operate as a motor carrier in interstate or foreign commerce, it has been found that a shipper is entitled to both motor and rail service. But in so finding, the basic issue has always been whether the public convenience and necessity require a proposed operation. We do not, however, believe that, as a matter of law, a finding of public convenience and necessity must necessarily follow a showing that there is no existing motor service. Rather, the issue of public convenience and necessity is a question of fact which depends, among other things, on whether existing service is or is not adequate.¹³⁰

That this is a reversal of previous positions is readily apparent by an examination of cases cited above. The Commission did not find in these cases that shippers were entitled to "both rail and motor carrier service." It found

that they were entitled to both adequate rail and motor service. The recurrent use of the word adequate in the decisions cited clearly implies that the burden of proof imposed on motor carriers did not involve the showing of any inadequacy in existing rail service.

The theory of the Gadsden case was reaffirmed in the International Transport case.¹³¹ This was a reconsideration of a Division I denial of a grant to several petitioning motor carriers. One of the issues was, "... whether the supporting shippers who alledgedly are dependent solely upon rail carriers for transportation, are entitled as a matter of law to motor as well as rail service."¹³²

Division I repeated its position in the Gadsden case declaring that:

At the outset it is well to stress that the mere absence of motor-carrier service is not, standing alone, sufficient justification for the granting of an application to institute such service. In numerous proceedings where a grant of motor carrier authority has been made, it has been stated that the public is entitled to both motor and rail service. However, in all such proceedings it has been found, as required by statute, that public convenience and necessity required the proposed service, and such findings were based on all the facts of record in each proceeding including the non-existence of reasonably adequate motor carrier service. Any implication which might be drawn from the reports in these proceedings that the mere absence of motor service, without more, is enough to justify a grant of motor carrier service is inaccurate.¹³³

What plausible explanation is there for the abrupt about-face executed by the Commission? The most reasonable answer is that by 1950 the financial plight of the railroads

had become a matter of serious concern. Prior to the Gadsden case, railroads had urgently called their financial distress to the attention of the Commission in an effort to block the granting of competing motor carrier rights, but the Commission turned a deaf ear to such pleas. "The situation here, however," the Commission said in one such case, "does not permit these facts to outweigh public convenience and necessity."¹³⁴ In the Gadsden application the Commission seemed to accept at face value the railroad argument to the effect that, "... any savings shipper would accomplish by use of motor carriage is more than over-balanced by the rail carriers' loss of revenue which would have to be compensated by other rail patrons."¹³⁵ In deciding against the motor carrier grant, Division 5 declared that, "to deprive the rail carriers of the material volume they are now enjoying for the advantages which may accrue to shipper by use of motor transportation is not warranted."¹³⁶

There can be no quibbling about the fact that an industrial economy requires a sound transportation system, but to attempt the promotion of such a system on the basis of the principles declared in the Gadsden case is to let the tail wag the dog. In the first place, the efficiency of the transportation industry is not served by insulating inefficient carriers from the rivalry of more effective modes.¹³⁷ Secondly, the rail argument requires that certain shippers subsidize both the railroads and other shippers.¹³⁸ Again,

the Commission, in this instance, endeavored to support the railroads without inquiring into the efficiency of rail operation or the appropriateness of rail rates.

Despite this aberration, and in spite of the fact that the Commission has not specifically reversed the Gadsden principle, in no case involving the auto carriers were operating rights denied on the grounds that to grant them would deplete rail revenues. In the Harvester case, however, the Commission reiterated its view that the propriety of a grant to a rival mode hinged upon the adequacy of the service performed by existing carriers. The Commission stated in this instance:

But we cannot lawfully withhold from the public a needed transportation service solely for the purpose of preventing a diversion of traffic from a transportation agency which is not providing reasonably adequate service.¹³⁹

The concept of adequacy. The Commission has, on numerous occasions, expressed its willingness to grant operating rights where the existing service is inadequate. But by what standards does the Commission evaluate adequacy? Let us look at the record.

In the Metler case, the Commission conceded that, "Conceivably an existing service could be so inadequate to meet a shipper's or a community's need as to justify authorization of an additional service...."¹⁴⁰ This suggests that minor or isolated instances or poor service are not sufficient. This suspicion is confirmed in the Gadsden case where the Commission admitted that:

In any transportation service reaching the proportion of the movement here involved, there are bound to be some unsatisfactory experiences regardless of the form of transportation service utilized.¹⁴¹

There have been occasions when the Commission has been tempted to exhibit a magnanimous tolerance of carrier peccadillos. In the International case the shippers had complained that:

Required rail equipment is frequently unavailable when needed. Shippers are forced to reject railcars with rotted flooring or repair the flooring at their own expense to avoid delays attendant on obtaining substitute cars. Many dealers are not located on rail sidings or lack proper facilities for the unloading of heavy farm machinery. Others must travel considerable distances to rail stations to pick up their shipments. Delays in transit on nonemergency shipments by rail and the inability to obtain expedited service on emergency shipments... rank high among the objections of dealers to rail service. The pilferage of component parts from the commodities while in transit also results in the immobilization of the equipment...."¹⁴²

On reconsideration, Division I reversed its finding that rail service was adequate but the fact that it ever was considered adequate is a testimony to the leeway permitted the carrier.

It is equally obvious from the foregoing discussion that adequacy is not to be measured exclusively in terms of shipper satisfaction. Rail and motor carriers have often argued their service to be adequate while at the same time contending that a grant to a petitioning carrier would mean a diversion of all or a substantial part of the traffic from their lines.

How then does the Commission evaluate adequacy?

The Commission seems to start from the presumption that the concept of adequacy refers to the physical aspects of transportation. If the applicant can show that the existing carrier is unable to move the desired volume of traffic the services will be judged inadequate.¹⁴³ This does not, however, necessarily apply to failure to move all the desired traffic in peak periods, but only to a failure throughout some longer period of time.¹⁴⁴ What about the ability of a carrier to move a given amount of traffic between two points in a given amount of time? The record here is mixed. In some cases, the Commission has considered the time element an important part of the adequacy of existing service. In the Western Auto Shippers case, Division 5 asserted that:

"The time between acceptance of the traffic at the dealer's door is clearly shorter than is now required by the railroad. The shorter time in which a purchaser can secure an automobile of the desired color and upholstery, fitted with the desired accessories,... indicates its desirability in the public interest.¹⁴⁵

In other cases the Commission seemed reluctant to consider the time element seriously.¹⁴⁶ In the Gadsden case, the Commission considered the delays in rail service to be irrelevant in the absence of "... specific instances of any losses of sales occasioned by such delays..."¹⁴⁷ Considering the multitude of factors entering into the purchase of a particular type of motor vehicle, the task of segregating those losses resulting from delays is formidable.

The Commission is very careful not to allow the question of cost to enter into the determination of adequacy.¹⁴⁸ With few exceptions, the Commission is unwilling to permit a shipper to benefit from rate competition between authorized and unauthorized carriers. The fact that a shipper can increase his profit by dealing with one mode rather than another is given no weight in the consideration of the adequacy of the existing service. The exception to this seems to be when a shipper can prove that the lower rate is needed, not to improve his profit, but to secure business. In the Dallas and Mavis Extension, for example, Division I decided that:

The shippers require such service in addition to the existing rail facilities for reasons of economy and in order to meet the competition of other manufacturers of sweepers and eductors with like service available to them. The latter is an important consideration... as here, the units are sold to municipalities under a system of competitive bidding... the fact that institution of service of an additional carrier will result in the diversion of same traffic from the rail carriers is outweighed by the benefits that would flow to the public.¹⁴⁹

The failure to consider rates as relevant to the concept of a reasonably adequate service might be defended if in each case the Commission determined that the rates charged were reasonable. But the Commission does not do this. It is so preoccupied with the idea that competition in transportation is not viable, and it is so convinced that the calamities of destructive rate wars will be triggered by any kind of rate competition that it seems to have a

pathological fear of a full-blown examination of the justice of specific rates. In the New Automobiles case the Commission did investigate the relationship between rates and the profits earned by carriers. On the basis of this study it refused to issue a minimum rate order. The Commission did not, however, consider it a part of its obligation to promote the public welfare to require the reduction of the unconscionable and economically wasteful profits being earned by some carriers. If the Commission refuses to consider the lower rate offered by an applicant for operating rights as relevant to the determination of the adequacy of existing services then it must satisfy itself, after examination, that the rates and the profits of existing carriers are reasonable. This is especially important in the case of automobile haulers where, as we shall see in a subsequent chapter, a variety of factors combined to make unnecessarily high rates the rule. In other words, if the Commission chooses regulated monopoly over competition, then it has a duty to regulate the monopoly. It is too frequently apparent that the Commission devotes too much of its effort to protecting monopoly and too little to regulating it.

D. CONCLUSION

The legislation enacted by Congress allowed the Commission to exercise reasonable discretion in designing the national transportation system. The Commission might have

emphasized the role of competition as an allocating mechanism--at least to the extent that competition was consistent with the prevention of destructive rate wars and the maintenance and the promotion of an efficient, economical and dependable system of transportation operated in the public interest. In the assignment of grandfather rights, in the prescription of the boundaries separating the various specialized carriers, in the promulgation of the ground rules for relations between common and contract carriers, and in the definition of the content of "public convenience and necessity," the Commission promoted monopoly and hobbled competitive forces. Moreover, while it busily created monopolies, it failed to regulate these adequately. As a result, reasonable shipper interests consistent with the broad public welfare were denied in order to protect vested carrier interests. The Commission has indeed heeded judicial admonitions to prevent "endangering or impairing the operation of existing carriers," but it has not given equal emphasis to the requirement that it consider the public interest to be preeminent. It has manifested an unfortunate tendency to identify the public interest with the interests of existing carriers; and where the conflict of these interests is apparent, it has, on too many occasions, sacrificed too much of the public interest to promote the well-being of the existing carriers.

CHAPTER V

DEMAND AND SUPPLY CHARACTERISTICS IN THE MARKET FOR THE TRANSPORTATION OF NEW MOTOR VEHICLES

A. INTRODUCTION

We have, so far, reviewed the development of the industry and we have examined the character of the restraints imposed upon the motor carrier segment by the law and by administrative and judicial bodies. In order to assess the performance of the industry, it is essential that certain factors operating on both the supply and the demand sides of the market be recognized and appreciated. The purpose of the present chapter is to identify these characteristics and to indicate the influence these have had on the behavior of the market. We shall first concentrate on an analysis of the conditions under which rail, motor, and water carriers supply services. Then we shall turn our attention to those aspects of demand which are pertinent to the issues at hand.

B. THE SUPPLY OF TRANSPORTATION SERVICE

The rail carriers. In the discussion of the service offered by rail carriers of new automobiles we shall examine:

(a) the number of rail carriers and the extent of the participation of each carrier as measured by gross revenue; (b) some salient rail cost characteristics; and (c) rail institutions and practices insofar as these affect the nature of the service offered by the railroads.

(a) For reasons which are widely understood, railroads cannot be cast into the purely competitive mold. As a result of pronounced economies of scale, the purchasers of rail services have typically been confronted by monopolistic, or at best, oligopolistic sellers. The shippers of new automobiles have not been exceptions. In some instances, the automobile shipper has been able to discern alternative rail carriers. Under no circumstances would the situation be described as anything but a small numbers case; and, as we shall point out later, in the overwhelming majority of cases there has been overt collusion among the carriers. Overall, however, a substantial number of railroads participate in the movement of new motor vehicles as is evident from the array in Table 3.¹

(b) The literature on rail costs is decidedly not in short supply; and it certainly is not the intention of this section to add to the glut. However, it might be advantageous at this juncture to review certain aspects of rail costs which are pertinent to subsequent discussions.

The problem of cost analysis for railroads is complicated by the prevalence of joint and common costs.² Railroads produce passenger service and a freight service

Table 3.- Gross freight revenue¹ earned by rail carriers
in the transportation of passenger and freight automobiles-
1960

Rail Carrier	Gross Freight Revenue
Southern Pacific System.....	16,908,436
New York Central Lines.....	12,651,715
Union Pacific R. R.....	9,921,072
Frisco Lines.....	5,292,531
Atchison, Topeka & Santa Fe Ry. System.....	4,977,174
Pennsylvania System.....	4,435,936
Chicago, Milwaukee, St. Paul & Pacific R. R.	3,961,744
Missouri Pacific System.....	3,444,728
Chicago & North Western Ry.....	2,384,704
Great Northern Ry.....	2,026,887
Chicago, Rock Island & Pacific R. R.....	2,002,897
Northern Pacific Ry.....	1,765,973
Burlington Route.....	1,651,383
Atlantic Coast Line System.....	1,642,320
Denver & Rio Grande Western R. R.....	1,614,875
New York, New Haven & Hartford R. R.....	1,311,847
Missouri-Kansas-Texas R. R.....	1,135,627
Western Pacific R. R.....	1,048,948
Chesapeake & Ohio Ry.....	813,499
Southern System.....	639,385
Kansas City Southern System.....	569,583
Florida East Coast Ry.....	548,459
Baltimore & Ohio System.....	544,532
Erie-Lackawanna System.....	526,584
Canadian National System.....	511,071
Boston & Maine R. R.....	443,645
Delaware, Lackawanna & Western R. R.....	439,560
Seaboard Air Line R. R.....	406,066
Spokane, Portland & Seattle Ry.....	384,379
Canadian Pacific System.....	380,603
Illinois Central R. R.....	373,209
Gulf, Mobile & Ohio R. R.....	355,208
New York, Chicago & St. Louis R. R.....	177,152
Norfolk & Western Ry.....	159,830
Reading System.....	121,423
Lehigh Valley R. R.....	101,225
Maine Central R. R.....	94,430
Central of Georgia Ry.....	91,626
Western Maryland Ry.....	57,061

Table 3--Continued

Rail Carrier	Gross Freight Revenue
Rutland Ry.....	47,852
Monon R. R.....	45,617
Delaware & Hudson R. R.....	44,308
Lehigh & Hudson Ry.....	33,309
Chicago Great Western Ry.....	31,553
Green Bay & Western R. R.....	28,165
Spokane International R. R.....	18,189
Bangor & Aroostook R. R.....	15,895
Minneapolis & St. Louis Ry.....	14,372
Norfolk Southern Ry.....	12,413
Elgin, Joliet & Eastern Ry.....	10,047
Chicago & Eastern Illinois.....	9,799
Duluth, Missabe & Iron Range Ry.....	8,929
Texas Mexican Ry.....	8,738
Richmond, Fredericksburg & Potomac R. R.....	8,513
Kansas, Oklahoma & Gulf Ry.....	7,964
Pittsburgh & West Virginia Ry.....	7,277
Savannah & Atlanta Ry.....	5,151
Toledo, Peoria & Western R. R.....	4,211
Georgia & Florida R. R.....	3,504
New York Connecting R. R.....	3,288
Piedmont & Northern Ry.....	2,993
Atlanta & St. Andrews Bay Ry.....	2,621
Minneapolis, Northfield & Southern Ry.....	1,878
Lehigh & New England R. R.....	1,213
Pennsylvania-Reading Seashore Lines.....	874
Tennessee Central Ry.....	838
Detroit & Toledo Shore Line R. R.....	655
Missouri Pacific System.....	648
Chicago & Illinois Midland Ry.....	398
Akron, Canton & Youngstown R. R.....	393
Illinois Terminal R. R.....	288
Bessemer & Lake Erie R. R.....	123

¹"Gross freight revenue" means respondent's gross revenue from freight without adjustment for absorptions or corrections.

Calculated from: Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Freight Commodity Statistics, Class I Railroads in the United States, Statement No. 61100 (Washington: U. S. Government Printing Office, 1960).

which includes the movement of commodities with sharply divergent transportation characteristics. Engine switching expenses, fuel expenses, expenditures for labor, maintenance of way and miscellaneous expenses such as legal fees and salaries of administrative personnel are incurred in behalf of the transportation of bulk commodities, "high value" commodities, and LTL freight in such a way that the assignment of costs by commodity carried is a difficult if not impossible job. Moreover, movement of freight in one direction necessarily results in the availability of facilities for return hauls.

The railroad cost expert is beset by another swarm of problems which grow out of the difficulties involved in segregating fixed and variable expenditures. If this task seems easier than the identification of common costs, it is probably the result of a willingness to attribute greater accuracy to Commission techniques than is statistically defensible. The latter identifies the so-called "per cent variable" as a result of an analysis of elementary bivariate cross section relationships which ignores the influence of such factors as the average length of haul and the geographic region. Moreover, the analysis is so aggregative, i.e., total expenses include so diverse a group of costs as to adumbrate relevant characteristics.³ It should be noted, however, that both the Commission and independent scholars have substantially revised their estimates of the magnitude of the fixed factor in rail costs. The early

conclusion that fixed costs account for two-thirds of all rail costs has been modified so that the Commission presently argues that operating expenses, rents and taxes are 80 per cent variable and expenditures on road are 50 per cent variable.⁴

The problems which arise in the identification of common and joint costs and in the separation of fixed and variable expenditures are challenging enough to tax the ingenuity of any student of rail cost; but there are additional considerations which make cost analysis even more frustrating. For one thing, costs must be culled from accounting data which were devised to meet other needs. The Commission was originally concerned with total revenues and total expenditures for the purpose of providing reasonable earnings while preventing monopoly exactions. It, therefore, structured its accounting procedures to serve that purpose. Unfortunately for the cost analyst, while the Commission's problem has changed so that it is now interested in costs primarily as a standard to be employed in deciding issues in intermode competition, its accounting procedures have not been sufficiently modified to yield cost data appropriate to the new problems.⁵

There are defects in cost data prepared by the Commission and by the carriers themselves. For example, the Commission's penchant for averaging costs on system or regional bases makes application of much of the data appropriate only to the most generalized situation. Again,

while adversaries in rate matters before the Commission often prepare cost data, there is a frequent substitution of average figures for actual observation. Thus, in I & S Docket 7269, rail costs were adjusted to reflect higher wage and price levels by multiplying rail costs by an index number representing "the increases in wages and price levels for all the railroads in the Western District."⁶ Again, in I & S Docket 33392, the examiner observed that:

The respondent railroads, other than the Chesapeake & Ohio, based their rail costs on unit expenses as shown in Statement No. 5-59, Rail Carload Cost Scales by Territories for the year 1958 issued by the Bureau of Accounts of this Commission.... On its re-statement of the respondents' rail costs protestants used the cost for the year 1959 shown in Statement No. 5-60.⁷

Because of these procedures critical decisions may be made on the basis of cost data which do not reflect the actual cost of moving the commodity in question between the points which are actually to be served.

The only comprehensive study of costs involved in the transportation of new automobiles was made by the Bureau of Transport Economics and Statistics in the New Automobiles case and was based on data for 1939. The Commission described this study as reflecting:

... the transportation conditions pertaining to the movement of new automobiles, consideration being given to the length of the haul, the weight of the train carrying the automobile traffic, the weights of the locomotives used, the amount of helper-locomotive service, the amount of switching service received at origin, intermediate, and destination points, the net weight of the load, the tare weight of the

car, the per cent empty return of the equipment, and any special services.⁸

Quite obviously a study of rail cost made in 1939 is of limited usefulness in 1961 so that no elaborate review of the evidence there provided will be considered. The studies are not completely valueless, however. In comparing rail and motor cost characteristics most, if not all students, recognize the motor carrier to be the low cost carrier on short hauls and the rail carrier to possess a cost advantage on long hauls. A comprehensive recent analysis lends strong support to this conclusion.⁹ Since rational allocation of motor vehicles is to a significant degree a function of the distance-cost relationship for various transportation modes, we might examine the conclusions of Commission studies in the New Automobile case.

The Bureau of Transport Economics and Statistics trended the costs for the 175 rail movements it studied. The results of this investigation are shown in Table 4. It will be noted that, for out-of-pocket costs, the trend equation (in the form $Y_c = a + bx$) is approximately $Y_c = 15.6 + 1.92 (x)$ where 15.6 is the cost incurred at 0 mileage and 1.92 is the increase in out-of-pocket expenses for every twenty-five mile increment. For fully distributed cost with provision for a four per cent return, the trend line is given by $Y_c = 21.81 + 2.99 (x)$.¹⁰ Undoubtedly the values of a and b have been substantially altered through time. For present purposes, however, the absolute magnitude of these values is less important than their size

Table 4.- Trended rail out-of-pocket costs; also trended fully distributed costs adjusted for 20 per cent over-statement

Miles	Cents per 100 pounds		
	Bureau's out-of-pocket cost	Fully distributed costs adjusted for 20 per cent over-statement and including returns and passenger deficit	
		Including 4 per cent return	Including 5 3/4 per cent return
25.....	17.5	24.8	26.8
50.....	19.4	27.8	30.0
75.....	21.3	30.8	33.3
100.....	23.3	33.8	36.6
125.....	25.2	36.8	39.8
150.....	27.1	39.7	43.1
175.....	29.0	42.7	46.4
200.....	30.9	45.7	49.6
225.....	32.8	48.7	52.9
250.....	34.7	51.7	56.2
275.....	36.6	54.7	59.4
300.....	38.6	57.7	62.7
325.....	40.5	60.7	66.0
350.....	42.4	63.7	69.2
375.....	44.3	66.7	72.5
400.....	46.2	69.6	75.8
425.....	48.1	72.6	79.0
450.....	50.0	75.6	82.3
475.....	51.9	78.6	85.6
500.....	53.9	81.6	88.9
600.....	61.5	93.6	101.9
700.....	69.2	105.5	115.0
800.....	76.8	117.5	128.1
900.....	84.5	129.4	141.1
1,000..	92.1	141.4	154.2
2,000..	168.6	261.0	284.9
3,000..	245.1	380.6	415.6

Adapted from: New Automobiles in Interstate Commerce, 259 ICC 475, 574, (1945).

relative to those of competing carriers. We will return to this point when we examine relative rail-motor costs.

(c) We have already alluded to the fact that the railroad industry was characterized by fewness of sellers. The antitrust record is replete with a description of the artifices by which oligopolists have attempted to blunt competition-- especially price competition. Unfortunately, the conduct of the railroads has not been atypical. In point of fact, the collusive activities of the railroads received Congressional imprimatur when rate bureaus were legalized by the Reed-Bulwinkle amendment to the Interstate Commerce Act. Regardless of the wisdom of the exemption thus provided, it is worth noting that it elicits the wholehearted approval of the majority of railroad executives. Legally and by predilection, therefore, competition on a rate basis between rail carriers is muted. There is, of course, the possibility that a carrier will take independent action, but this is fraught with such difficulties as to be notably infrequent.¹¹ Railroads have competed for automobile traffic on a price basis (to the chagrin of rival rail carriers) but, in the main, price competition has been considered only in connection with intermode struggles for traffic.¹²

The railroad executive defends his unwillingness to engage in intramode price competition on economic grounds. In the struggle between Communism and Democracy certain types of competition are considered relatively safe while

clashes between the military forces of the principal antagonists are eschewed by both sides because of the danger that such encounters might prelude a nuclear holocaust. The railroad executive considers that competition in the railroad industry possesses many of the characteristics of the worldwide struggle for power. For him, every competitive price decline raises the ugly specter of a destructive rate war in which some firms collapse and all firms suffer enervating losses. However overdrawn the picture might be, and however questionable the logic, few things disturb the equanimity of the railroad leader more than the prospect of intramode price competition.

In order to ward off threatened rate wars, railroads resorted to rate bureaus such as the CFA Special Automobile Committee. The rate bureau was a tranquilizer dutifully ingested by the rail system; and, unfortunately, it was not free from harmful side effects. The railroads became so accustomed to the debilitating regimen of monopoly that they lacked the creative, innovating verve needed to counter truck competition. The most attractive suggestion they could offer was to hobble competitors by extending to them the restraining arm of regulation. Price cuts were tried but they were not nearly enough to attract traffic in view of rail service disabilities. Monopoly pricing was so rooted in the ratemaking bodies that rates failed to reflect the main competitive advantage of low cost possessed by railroads on long hauls.¹³ To some extent the Commission

by its policies governing interagency rate competition inhibited the railroads; but the railroads nevertheless cannot be considered hapless victims of regulatory shortsightedness. Professor Ernest Williams concludes after a thorough study of interagency rate competition:

While motor carriers have effectively pursued their highly advantageous policy (adoption of rail rate structure, with a parity of rates for high-rated traffic and minimum-rate stops and other devices to discourage low-rated traffic), railroads appear to have lost one opportunity after another to establish under regulation a basis for rates in the competitive area which would give scope to their cost advantage. If the Commission has refrained from an effort to detect and to recognize the advantages of the rails, it is clear that the fault lies heavily with the rail carriers themselves. In the formative period for the principles we have discussed in the critical years immediately after 1935, railroads were reluctant to focus any attention upon their cost advantages and failed to force the issue. A legislative policy capable of giving the railroads adequate scope for the exercise of their inherent advantages--of which low cost for certain types of haul is undoubtedly the greatest--was allowed by default of the rail carriers during the many opportunities open to them to develop adversely, until the weight of the decided cases has become a serious bar to reform.¹⁴

As a matter of fact, in *Passenger Automobiles in Southern Territory*, the Commission clearly implied that rails had not attempted to meet competition to a permissible extent from the manufacturing plants.¹⁵ In denying a rail request for an increase in the spread of rates between assembly and manufacturing plants dictated in the *Chrysler case*,¹⁶ the Commission invited the rails to reduce rates from the latter points.¹⁷

So far as automobiles are concerned, evidence of the fact that rail carriers had not nearly exhausted their ability to increase traffic by reducing rates is supplied by Commission statistics. A weighted average of the ratio of revenue to fully distributed costs reveals that for motor vehicles which the railroads transport in competition with motor carriers, revenues exceeded fully distributed costs by 88.8 per cent. Of the 263 commodities listed in the report, only 12 had a higher ratio; and the majority of these moved in relatively small quantities. For example, fewer than 10 carloads of 4 of these commodities were transported in the United States in 1958. Seven of the commodities supplied a total of only 102 carloads.¹⁸

Whether or not the rails could have recaptured the major portion of the long haul traffic through rate reductions is a moot question. Many railroad executives seemed too willing to relinquish this traffic without putting up a fight.¹⁹ Traffic managers of several firms agreed in interviews, however, that realistic rail pricing combined with service improvements then possible would have resulted in a shift of much long haul traffic to the railroads. Unfortunately, we shall never know what might have been done since the rail carriers seemed content to wallow in self-pity while plaintively beseeching both the Congress and the Commission to come to their assistance. One could argue, however, that when the railroads did venture from the protective

cocoon in which they had sought sanctuary; when they started to think in the context of competitive rather than monopolistic markets, they found the key that opened the door to technological and price innovations which have dramatically improved their position with respect to the transportation of new automobiles. Piggyback techniques were well known even before the motor carriers began their assault on new automobile traffic, and the rails always possessed a cost advantage on long hauls. Why could not the railroads have prevented the diversion which in fact occurred?

The motor carriers. Our discussion of the motor carriers will parallel the treatment awarded the rail carriers. We shall examine: (a) the structure of the industry; (b) the important cost characteristics of motor transportation; and, (c) motor carrier institutions and practices.

(a) It is difficult to discover for any particular year exactly how many motor carriers participate in the transportation of new motor vehicles. The Commission is preparing an index of carriers which will permit identification of all carriers who have authority to transport automobiles, but this index is not yet publicly available. The NATA provides a list of all of its members but not all eligible carriers are members of the Association. The most satisfactory source which the writer found was the "Financial and Operating Statistics of Class I and II Motor Carriers of Property" prepared by the Department of Research and Transport Economics of the American Trucking Associations.²⁰

Even this source is not perfectly satisfactory. One of the major deficiencies is that carriers are classified according to the principal commodities carried. This means that a firm such as Pacific Motor Trucking Company is classified as a general commodities carrier although it is one of the larger haulers of new automobiles. Since revenue is not broken down by commodities, there is no way of knowing from such a series what part of the total revenue was earned in the transportation of individual commodities. Of course, carriers who haul automobiles primarily also carry other commodities so that reported total revenue figures cannot be attributed solely to the movement of new automobiles. In some instances there is a substantial distortion resulting from the inclusion of terminal revenues or Plan I TOFC payments to a motor carrier.²¹ Since automobile shippers have in most instances been prevented by company policy from supplying information necessary to adjust these shortcomings, the figures had to be used as they were reported by the American Trucking Associations. Subject to these reservations we shall examine some of the characteristics of the structure of the motor carrier segment of the industry.

Table 5 lists all of the carriers of new automobiles reported in the American Trucking Association's report for 1960. Data was reported for seventy-two carriers in 1960. This compares with reports on ninety-eight in 1950. Twelve of the seventy-two carriers for 1960 are contract carriers and these account for 27.7 per cent of total operating

Table 5.- Revenues, Net Income¹ Operating Ratios, & Expenses for Motor Vehicles Carriers of Motor Vehicles- 1960

Carrier	Total Operat- ing Revenue	Per Cent of Total Operat- ing Revenue	Net In- come Before Taxes	Operat- ing Ratio	Line Ex- penses ⁴	Term- inal Ex- penses ⁵
Complete Auto Transit ² ..	43,413,558	9.80	3,329,003	91.8	.3228	1.02
Kenosha Auto Trans- port Corp. ^{1,3}	30,604,825	6.91	133,530	99.0	.3701	1.86
Commercial Carriers, Inc. ¹	26,715,360	6.03	967,564	96.0	.4072	1.68
Automobile Transport, Inc. ¹	19,091,957	4.31	1,143,359	93.4	.3478	.92
Dallas & Mavis Forward- ing Co., Inc. ¹	11,042,551	2.49	385,196	96.1	.3423	1.29
Howard Sober, Inc. ¹	12,885,201	2.91	214,826	97.8	.3254	2.99
E & L Transport Co. ¹	12,648,964	2.85	203,459	98.7	.3856	.58
Dealers Transport Co. ¹ ..	12,184,203	2.75	404,140	96.5	.3512	.60
Anchor Motor Freight, Inc., of Del. ²	11,943,007	2.69	604,437	95.1	.3287	1.30
Jack Cooper Transport Co., Inc. ^{1,2}	11,342,867	2.56	1,121,365	87.9	.2961	.84
Anchor Motor Freight, N. Y., Corp. ²	11,288,190	2.55	826,079	92.7	.3910	1.36
Arco Auto Carriers, Inc. ¹	11,069,300	2.50	333,427	96.7	.3147	1.02
Dealers Transit, Inc. ¹ ..	11,042,551	2.49	385,196	96.1	.3423	1.29
F. J. Boutell Driveaway Co., Inc. ¹	9,788,154	2.21	402,441	95.9	.3583	1.29

Nu-Car Carriers, Inc.2...	9,584,118	2.16	452,065	95.0	.3998	1.36
Hadley Auto Transport2..	8,607,277	1.94	682,944	91.4	.3968	.56
Associated Transports, Inc.1						
Convo Co.1	8,560,640	1.93	870,857	89.8	.2672	1.22
Auto Transports, Inc.1,2	8,527,302	1.92	311,271	95.9	.4278	1.56
Dealers Transport	7,711,036	1.75	577,384	92.7	.2865	.99
Company1,2	6,603,875	1.49	648,244	90.2	.2897	1.80
Speedway Transports, Inc.1	6,302,132	1.42	393,296	93.7	.3879	2.51
United Transports, Inc.1	6,062,934	1.37	(d)164,993	100.6	.3222	1.49
K. W. McKee Incorp- orated 2	6,013,676	1.35	289,295	96.7	.2572	.92
The Motor Convoy, Inc.1.	5,838,254	1.31	197,071	96.2	.3422	.51
Janesville Auto Trans- port Co.1,2	5,724,032	1.29	410,016	91.5	.2657	.77
Clark Transport Co.1....	5,536,196	1.25	499,907	89.9	.3260	1.23
Eastern Auto. Forward- ing Co., Inc.1	51120,862	1.15	164,358	96.7	.4248	.52
Motorcar Transport Company1	4,900,900	1.10	733,986	85.5	.3355	.39
Fleet Carrier Corp- oration1	4,862,138	1.09	416,767	91.7	.3498	.NA
Anchor Motor Freight, Inc. of Michigan2	4,821,456	1.08	337,190	93.1	.4021	1.41
Auto Convoy Co.1	4,600,975	1.03	318,550	95.0	.2900	.82
Automotive Conveying Co. of N. J.1	4,593,890	1.03	50,817	93.2	.3758	.66
Hulbert Forwarding Co., Inc.1	4,562,637	1.03	(d)114,471	103.1	.3611	.26
E. & L. Transport Co. of Kentucky1	4,438,429	1.00	(d)114,678	102.9	.3565	.13
Dixie Transport Co., Inc.1	4,397,883	.99	38,898	98.2	.2882	.58
Robertson Truck-A-Ways, Inc.1	4,276,495	.96	242,742	94.7	.6441	1.49

Automobile Shippers, Inc.1.....	4,244,917	.95	(d) 11,447	100.1	.3056	.26
Truckaway Corp.1.....	4,231,606	.95	d)314,000	92.9	.2989	3.33
Automobile Carriers, Inc.1.....	4,170,619	.94	29,742	99.2	.5083	.59
University Overland Ex- press, Inc.	3,874,217	.87	82,019	97.6	.4273	1.54
Great Lakes Forwarding Corp.1.....	3,862,223	.87	(d)126,770	103.2	.3611	NA
Cassens Transport Co.1..	3,835,191	.86	37,620	98.0	.3319	.74
C & J Commercial Drive- away, Inc.1.....	3,724,447	.84	367,861	89.9	.5273	.63
Highway Transport Com- pany.....	3,595,157	.81	334,498	90.3	.3719	2.96
Insured Transporters, Inc.1.....	3,151,222	.71	240,438	91.6	.3929	1.48
Texas Auto Transports, Inc.2.....	3,016,090	.68	357,378	88.9	.2649	.86
Baker Driveaway Co., Inc.1.....	2,677,128	.60	27,622	98.6	.3868	.65
M & G Convoy, Inc.1.....	2,658,206	.60	58,265	96.1	.4836	.34
Square Deal Cartage Co.1	2,600,351	.58	17,206	99.0	.4570	.29
National Trucking Co.1..	2,448,164	.55	61,455	96.4	.3231	.53
Contract Cartage Co.1...	2,160,435	.48	321,327	85.4	.3845	.10
P & M Auto Transport, Inc. of Ill.....	2,090,303	.47	2,057	100.4	.3377	.71
Robert R. Walker, Inc.1.	2,028,161	.45	135,095	94.8	.3246	.68
Daily Express, Inc.....	1,733,731	.39	108,134	93.2	.3758	.66
Industrial Transport, Inc.1.....	1,708,307	.38	229,919	86.1	.4080	.18
Blain Drive-A-Way.....	1,693,196	.38	82,765	95.0	.3356	2.56
Fugate & Girton Drive- away, Inc.1.....	1,347,142	.30	25,662	98.2	.3505	3.92
George F. Burnett Co., Inc.1.....	1,265,825	.38	1,640	99.5	.3856	.65

C & J Transport, Inc. ¹ ..	1,231,264	.27	171,077	85.8	.3960	.39
Transport Trucking Com- pany of Texas.....	1,175,674	.26	58,939	93.8	NA	NA
Keal Driveaway Company 1,2.....	1,150,748	.26	51,473	95.4	.3252	2.41
F. W. Myers Driveaway System, Inc. ¹	960,759	.21	70,952	91.3	.3283	1.42
Curtis Keal Transport Company, Inc.....	916,817	.20	8,049	98.5	.5682	.71
Car Carrier Co.....	910,975	.20	22,060	98.0	.2748	.54
Merill Motor Line, Inc..	840,977	.19	7,673	96.7	.3929	.73
McDowall Transport, Inc.	771,053	.17	(d)47,162	105.3	.3625	1.92
Campbell's Service.....	692,668	.15	(d)58,874	108.8	.2313	1.39
Mack's Transport Service Inc. ¹	647,294	.14	1,797	99.9	.2988	.36
Eastern Transit, Inc. ¹ ..	604,089	.13	(d) 4,211	99.8	.3325	.10
Treloar Trucking Co. ¹ ..	423,415	.09	13,203	99.0	.5489	NA
Case Driveaway, Inc. ¹ ...	321,680	.07	(d)45,433	113.4	.4951	.59
King Transport ¹	215,182	.04	(d)18,221	108.2	.5350	.11

¹Member of National Automobile Transporters Association.

²Contract Carrier.

³Includes amounts which Kenosha pays to rail carriers for Transportation under Plan I.

⁴Expense is per line vehicle mile (excluding terminal expenses).

⁵Terminal expense per ton carried.

Source: American Trucking Associations, Inc., Financial & Operating Statistics, Class I and II Motor Carriers of Property (Washington: American Trucking Associations, Inc., 1960).

revenue. Although no single carrier accounts for a particularly large share of total operating revenue, there is a significant concentration of revenue in the larger carriers. In 1950, the ten largest carriers accounted for 41 per cent of total operating revenue. Comparable figures for 1955 and 1960 were 39 per cent and 43 per cent respectively. In 1950 and in 1955, approximately half of the revenue was earned by fourteen carriers. For 1960, thirteen of the seventy-two carriers for which data was supplied earned one-half of all operating revenue. In 1960, thirty-eight carriers earned less than one per cent each of the total revenue.

The figures on concentration are altered somewhat if common ownership is taken into account as is evident from Table 6. For contract carriers alone, Anchor Motor Freight accounts for approximately 23 per cent of total contract carrier revenue. In view of Complete Auto Transit's 36 per cent share, this means that two carriers earn 59 per cent of total operating revenue for all contract carriers.

How does the automobile hauler compare with all other regulated carriers? In 1960 there were seventy-one carriers of motor vehicles listed in the ATA's summary report.²² This represented 2.7 per cent of the total of 2,666 motor carriers included in the summary. The motor vehicle carriers accounted for 7.5 per cent of total carrier revenue and 18.2 per cent of net carrier income. The operating ratio of auto haulers (95.1) compared favorably with the average for all carriers (97.5).

Table 6.- Revenues and rank of carriers under common control

	Total oper- ating reve- nue	Size rank	Per cent of total revenue earned
Group I			
Automobile Carriers, Inc. ..	\$ 4,170,619	39	.9
C & J Commercial Driveaway, Inc.	3,724,447	43	.8
Dealers Transit, Inc.	11,042,551	13	2.5
Group II			
Nu-Car Carriers	9,584,118	15	2.2
University Overland Express.	3,874,217	40	.9
Group III			
United Transports, Inc.	6,063,934	22	1.4
Auto Transports, Inc. ¹	7,751,036	19	1.8
Texas Auto Transports ¹	3,016,090	46	.7
Group IV			
E & L Transport, Inc.	12,648,964	7	2.8
E & L Transport, Inc. of Kentucky	4,438,429	34	1.0
Central Truckaway ²	N. A.		
Group V			
Dallas & Mavis Forwarding Co. Inc.	13,861,609	5	2.5
Robertson Truck-A-Ways, Inc.	4,276,495	36	1.0
Group VI			
Anchor Motor Freight of Del.	11,943,007	9	2.7
Anchor Motor Freight of N.Y.	11,288,190	11	2.6
Anchor Motor Freight of Michigan	4,821,456	30	1.1

¹Contract carrier.

²Revenue for Central Truckaway is not available for 1955 or for 1960. In 1950, Central Truckaway had a total of \$1,508,241.

Source: American Trucking Associations, Inc., Financial and Operating Statistics, Executive and Ownership Section, Class I and II Motor Carriers of Property (Washington: American Trucking Associations, Inc., 1961).

The automobile carrier is the largest of the specialized carrier group and, by the Commission's standard, the most profitable. Revenues for carriers of motor vehicles averaged \$239,092,783 in the period from 1948 to 1959. The next largest specialized carrier group, the carriers of liquid petroleum, averaged \$184,588,141 in the same period. So far as operating ratios are concerned, the carriers of motor vehicles for the same period, posted the lowest average of 93.3. This compares with the average for the same period for other specialized carriers of 95.6.²³

(b) Attempts to develop costs for the automobile transporter have generally been abortive. Motor carriers, unlike the railroads, have not regularly introduced cost data in proceedings before the Commission.²⁴ It is obviously beyond the resources of a single investigator (particularly one outside the industry) independently to make such a study. Of course, the Commission in the New Automobile case made cost investigations; and the transportation of motor vehicles is in many respects similar enough to the transportation of general commodities to make possible some conclusions about the character of motor carrier costs.

The problem of common costs which afflicts rail cost accountants is of far less importance in the case of truckers. By and large, carriers of motor vehicles are specialized and do not serve shippers offering a wide diversity of products. It should be understood, however, that, as has

been pointed out in Chapter IV, auto haulers do carry other commodities so that there are some common costs. These are, nevertheless, of relatively minor import.

So far as joint costs are concerned, the motor vehicle transporter shares a problem with the rest of the transportation industry, i.e., movement of traffic in one direction makes available capacity for a return movement.

There is no reason to suspect that the conclusions of Commission studies of the variability of motor carrier costs are significantly different for the specialized carrier of motor vehicles. The Cost Finding Section concluded that:

... approximately 90 per cent of the total motor carriers' expenses and taxes vary in proportion to the change in traffic and 10 per cent remain constant.²⁵

The Commission itself in the New Automobiles case observed:

The Bureau made no attempt to compute the out-of-pocket costs of motor carriers. It considered that over a long period such costs for carriers engaged almost exclusively in the transportation of new automobiles would closely approach their full costs with the possible exception of some part of the general overhead.²⁶

How do motor carrier costs vary with the length of the haul? In the New Automobiles case, the Commission made extensive studies of the relationship of cost to the length of the haul for truckaway and driveaway operators. It computed these on the basis of a return of 5-3/4 per cent on depreciated book investments as well as on returns of 5 and 10 per cent of gross revenues. (See tables 7 and 8). The

Table 8.- United States average motor contract-carrier costs in cents per 100 pounds including operating expenses, rents, and taxes, for 1939, plus return

Distance (miles)	Costs		
	Truck-away four-car	Single drive- away	Tow-bar
	Based on 5 3/4 per cent return on depr. book investments	Based on 5 3/4 per cent return on depr. book investments	Based on 5 3/4 per cent return on depr. book investments
25 ⁽²⁾	11.9	13.5
25.....	8.6	10.6	5.4
50 ⁽²⁾	18.6	22.4
50.....	13.4	17.0	7.9
75 ⁽²⁾	25.3	31.3
75.....	18.2	23.4	10.3
100 ⁽²⁾	32.0	40.3
100.....	22.9	29.8	12.8
125.....	27.7	36.2	15.3
150.....	32.4	42.6	17.8
175.....	37.2	49.0	20.2
200.....	42.0	55.4	22.7
225.....	46.7	61.8	25.2
250.....	51.5	68.2	27.7
275.....	56.3	74.6	30.1
300.....	61.0	81.0	32.6
325.....	65.8	87.4	35.1
350.....	70.5	93.8	37.6
375.....	75.3	100.2	40.0
400.....	80.1	106.6	42.5
425.....	84.8	113.0	45.0
450.....	89.6	119.4	47.4
475.....	94.4	125.9	49.9
500.....	99.1	132.3	52.4
600.....	118.2	157.9	62.3
700.....	137.2	183.5	72.2
800.....	156.3	209.1	82.1
900.....	175.3	234.7	92.0
1,000.....	194.4	260.3	101.9
2,000.....	384.9	516.4	200.8
3,000.....	575.4	772.5	299.8

2. For carriers with average haul of less than 75 miles.

Adapted from: New Automobiles in Interstate Commerce, 259 ICC 475, 579, (1945), Appendix 12.

Bureau's trended costs were given by the equation:

$Y_c = 5.245 + 5.255x$, where x is 25 miles and 5.245 is the level of cost at zero miles.²⁷ These costs have, of course, changed substantially since 1939. We shall reserve to a later section the implications of these changes.

(c) The enterprising group of small businessmen who started out in the decade of the 1920's to carve a slice of the transportation pie for themselves had several important assets. Unfettered by venerable traditions, these entrepreneurs concentrated on a realistic appraisal of the desires of the shippers and of their own potential in satisfying that desire. They were willing to experiment with different kinds of equipment in order to provide most efficient service. They offered cheap storage, split-delivery, off-route service, and other advantages at reasonable cost. They were willing to compete on a rate basis where they had to; but they made rate concessions no deeper than those dictated by competition. Their long suit was service; and this they wisely led. One of their biggest assets, of course, was the rail unwillingness or inability to adjust to changed conditions and rail distaste for rate competition which would have given effect to the rail cost superiority. The battle between the rails and the motor carriers was a pitifully uneven match; the motor carriers wisely selected weapons to reinforce their inherent abilities while the railroads foolishly joined in the fight on the motor carriers' terms and with defenses obviously

unsuited to them. The railroads were sadly outgeneraled.

On the whole, it would be inaccurate to suggest that motor carriers were as anxious to compete among themselves as they were to fight with railroads. There is evidence that, at a very early date, motor vehicle transporters formed local or regional associations. Although the activities of these groups are not part of the public record, it is not unlikely that efforts to mitigate intramode competition were an integral part of the association programs.²⁸ The National Automobile Transporters Association, incorporated in Michigan in June, 1931,²⁹ seems effectively to have limited competition between carriers. In response to a question from NATA attorney Harry C. Ames inquiring whether efforts had been made to eliminate "destructive competitive practices," Mr. Zenzius, General Manager of the NATA replied:

Yes, strong efforts were made in that direction in 1933 when the NRA code was in effect. An association was formed and a great deal of effort was made towards stabilizing the industry and stabilizing its rate structure. And I can truthfully say that at that time the industry was more or less charging a uniform rate for services performed in automobile hauling.³⁰

When asked whether these efforts were continued after the NRA was declared unconstitutional, Mr. Zenzius answered:

Yes, we continued the efforts through voluntary action until after federal regulation when we formed the Tariff Bureau of the NATA for the purpose of setting up uniform association rates.³¹

There can be no doubt that the purpose of the NATA was

to cramp intramode price competition. How well did they succeed? It is unfortunately difficult to assess performance in view of the lack of a publicly available record. A former NATA official describes the Tariff Bureau as a rate publishing agency which dutifully publishes rates submitted to it without entering into squabbles which might divide its members.³² On the other hand, there is admittedly consultation on a local or regional basis before rate changes are made. What happens if one or several carriers refuse to go along with the majority? A vigorous effort is made to convince the errant member of the folly of his ways but if he persists, the rate will be published. One might imagine that such action would produce, here as elsewhere,³³ a request for suspension from the rate bureau. That it does not is explained by a motor carrier as follows: If a carrier puts in a new low rate, and if other carriers protest the rate, they are running the risk of incurring the displeasure of a shipper who may provide all or a very substantial portion of their total revenue.³⁴ Whatever the situation may have been prior to the emergence of the new rail competition, there certainly have since been cases in which reduced motor carrier tariffs have been published despite the disapproval and the displeasure of other carriers; and a number of these have come to the author's attention.

Efforts to check on intramode competition through shippers proved inconclusive. One shipper asserted that motor carriers presented a solid front on rates and that he

had virtually no bargaining power. Another major shipper, however, referred to motor carriers as competing vigorously among themselves. On balance, most shippers seemed anxious for more competition than already existed between their motor carriers. It might also be pointed out that some shippers are taking positive action to secure increased intramode rivalry.³⁵

It is ironic that some motor carriers are making the very same mistakes that the railroads made three decades ago. The motor carrier had succeeded by 1960 in collaring about 90 per cent of the traffic in new motor vehicles. The rails were apparently in a moribund state and water carriers' competitive capabilities were severely restricted. When the railroads decided it was time to rise from their deathbed and have another fling at life, they sallied forth armed with their sharpest weapon--low cost. The motor carrier has run out on the field but his principal shield seems to be government intervention. The motor carrier protests rates which cover out-of-pocket costs and he protests rates which cover an irrelevant fully distributed cost. The government is unlikely to receive warm testimonials for the job it did for the railroads; and it is an illusion to think that it will do better by the motor carrier. Some of the leaders of the auto hauling companies are either unwilling or unable to grasp the realities of the day and to re-orient their thinking so that they can maximize their welfare given the radically altered position

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into which technological change and revitalized rail thinking have placed them.

Water carriers. Unfortunately, little can be added to what has already been said about water carriers. There is no recent public record by which this segment of the industry can be analyzed. Officials of the two Great Lakes carriers have been contacted on two occasions but they either did not answer or they offered no useful information on their operations. In order to convey some idea of the relative cost of water transportation, the results of Commission studies are summarized in Table 9.

The relative cost of rail - motor - water carriers. One of the things that is badly needed at the present time is reliable and up-to-date data on the relative cost of transporting automobiles by various modes. The New Automobiles case represented a welcome departure from the incantations previously relied upon by the Commission to dispose of interagency rate matters. In this instance, the Commission's staff developed relative costs as a basis for the consideration of the questions of allocation which were being decided. While the absolute level of these costs fluctuated with the passage of time, relative costs most probably were not seriously altered until recently. The motor carrier continued to rely on four-car equipment until 1955 and the railroad stumbled along with the Evans Loader while the water carrier sailed pretty much the same fleet. The pace of innovation has been quite rapid in the last few

Table 9.-
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Table 9.- Waterway, railway, and four-car truck-away, costs in cents per 100 pounds from Detroit to Buffalo, Chicago, Cleveland, and Duluth for 1939

From Detroit, Mich. to--	Waterway ¹	Railway	Highway	
	Out-of pocket costs ²	Out-of pocket costs	Fully distributed costs including 5 3/4 per cent return	
			Four-car truck- away	
			Common	Contract
Buffalo, N. Y.	29.5	39.2	80.2	71.9
Chicago, Ill	54.0	61.3	54.7
Cleveland, O.	23.9	28.9	40.3	35.7
Duluth, Minn.	66.4	75.4	168.3	151.7

¹\$1.25 per car, or 4.2 cents per 100 pounds, should be added for truck-away service covering the movement from plants to docks at Detroit.

²Where companies such as the Detroit & Cleveland Navigation Company and the Nicholson Universal Steamship Company operate practically exclusive automobile boats, the out-of-pocket costs approximate the fully distributed costs. See exhibit 331, textual statement, page 6.

Source: New Automobiles in Interstate Commerce, 259 ICC 475, 581, (1945), Appendix 14.

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years, however, and no systematic effort to consider the effect of these changes has been attempted.

The studies made in the New Automobile case are not altogether useless. They provide a reasonably adequate description of relative costs between 1939 and 1958 and hence they supply some yardstick by which the performance of the industry can be evaluated. Table 10 reproduced from Appendix 14 of the New Automobiles case, presents the relevant rail-truck comparisons. For hauls under approximately one hundred twenty-five miles the trucker is the low cost carrier while the railroad cost advantage is manifest as the length of the haul increases. The most important statistic here is, of course, the size of b in the trend equation. As has previously been pointed out, rail costs increase about \$1.92 for each additional twenty-five mile block whereas the comparable figure for motor carriers is \$5.255.

How reliable were these relative cost estimates? There was some criticism of the Bureau's procedures by parties to the controversy. By and large, however, it seems fair to suggest that the principal conclusions of the investigators would have been unaltered by any of the alternative methods proposed. It is highly unlikely that the slope of the various trend lines would have changed measurably. Moreover, no one seriously protested the really important contribution of the study which established the areas of relative cost advantage. As we have already seen,

Railway trended costs		cents per 100 pounds
Out-of-pocket in- cludes	Fully distributed	Highway four-car truck- away costs including

Table 10.- Comparison of railway out-of-pocket and fully distributed costs with highway four-car truck-away costs, year 1939¹

Distance (miles) (1)	Cents per 100 pounds						
	Railway trended costs				Highway four-car truck-away costs including 5 3/4 per cent return on depreciated book investment; United States average for--		
	Out-of-pocket including return on freight value of--		Fully distributed including passenger deficit and return on total value of--				
	4 per cent (2)	5 3/4 per cent (3)	4 per cent (4)	5 3/4 per cent (5)	Common carriers (6)	Contract carriers (7)	
10.....	18.8	19.9	23.0	24.8	7.3	5.8	
20.....	19.7	20.8	24.2	26.1	9.4	7.7	
30.....	20.6	21.8	25.4	27.4	11.5	9.6	
40.....	21.5	22.7	26.6	28.7	13.6	11.5	
50.....	22.4	23.7	27.8	30.0	15.7	13.4	
60.....	23.3	24.6	29.0	31.3	17.8	15.3	
70.....	24.2	25.6	30.2	32.6	19.9	17.2	
80.....	25.1	26.5	31.4	34.0	22.0	19.1	
90.....	26.0	27.5	32.6	35.3	24.1	21.0	
100.....	26.9	28.4	33.8	36.6	26.2	22.9	
120.....	28.7	30.3	36.2	39.2	30.4	26.7	
140.....	30.4	32.3	38.5	41.8	34.6	30.5	
160.....	32.2	34.2	40.9	44.4	38.8	34.4	
180.....	34.0	36.1	43.3	47.0	43.0	38.2	
200.....	35.8	38.0	45.7	49.6	47.2	42.0	

220	39.0	41.8	52.3	51.4	43.8
240	39.2	43.7	54.3	55.6	45.6
260	43.0	45.6	57.5	59.9	53.4
300	44.8	47.5	60.1	64.1	57.2
			62.7	68.3	61.0

220.....	37.6	39.9	48.1	52.3	51.4	45.8
240.....	39.4	41.8	50.5	54.9	55.6	49.6
260.....	41.2	43.7	52.9	57.5	59.9	53.4
280.....	43.0	45.6	55.3	60.1	64.1	57.2
300.....	44.8	47.5	57.7	62.7	68.3	61.0
320.....	46.6	49.4	60.1	65.3	72.5	64.8
340.....	48.4	51.3	62.5	67.9	76.7	68.6
360.....	50.2	53.2	64.9	70.6	80.9	72.5
380.....	51.9	55.2	67.2	73.2	85.1	76.3
400.....	53.7	57.1	69.6	75.8	89.3	80.1
420.....	55.5	59.0	72.0	78.4	93.5	83.9
440.....	57.3	60.9	74.4	81.0	97.7	87.7
460.....	59.1	63.8	76.8	83.6	101.9	91.5
480.....	60.9	64.7	79.2	86.2	106.1	95.3
500.....	62.7	66.6	81.6	88.9	110.3	99.1
600.....	71.7	76.1	93.6	101.9	131.3	118.2
700.....	80.6	85.7	105.5	115.0	152.3	137.2
800.....	89.6	95.2	117.5	128.1	173.4	156.3
900.....	98.5	104.8	129.4	141.1	194.4	175.3
1000....	107.5	114.3	141.4	154.3	215.4	194.4
1,200..	125.4	133.4	165.3	180.3	257.4	232.5
1,400..	143.3	152.5	189.2	306.5	299.5	270.6
1,600..	161.3	171.5	213.2	232.6	341.5	308.7
1,800..	179.2	190.6	237.1	258.8	383.6	346.8
2,000..	197.1	209.7	261.0	284.9	425.6	384.9
2,200..	215.0	228.8	284.9	311.0	467.6	423.0
2,400..	232.9	247.9	308.8	337.2	509.7	461.1
2,600..	250.9	266.9	332.8	363.3	551.7	499.2
2,800..	268.8	286.0	356.7	389.5	593.8	537.3

	246.7	303.1	340.6	413.6	635.8	575.4
3.000.0						

¹ Costs shown in columns (2) to (6) inclusive are computed from basic data as follows:

3,000.. 286.7 305.1 380.6 415.6 635.8 575.4

¹Costs shown in columns (2) to (6) inclusive are computed from basic data as follows:

	Line haul cost in cents per hundred-weight mile	Terminal cost in cents per 100 pounds
Column (2)..	0.0896	17.9
Column (3)..	.0954	18.9
Column (4)..	.1196	21.8
Column (5)..	.1307	23.5
Column (6)..	.2102	5.2

Notes:

Costs in column (7) are from exhibit 331, table III, page 3. Highway costs including a return of 4 per cent are not shown because the cost of return at 5 3/4 per cent was but about one per cent of total expenses, rents, and taxes. The common carriers studied actually earned an amount equal to about 5 per cent of total operating expenses, rents, and taxes.

Source: New Automobiles in Interstate Commerce, 259 ICC 475, 581, (1945), Appendix 14.

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the motor carriers had their own suggestions with respect to the use of cost data in deciding questions of interagency competition, but they did not question the fact that rails had a cost advantage on long hauls.³⁶

The Commission studies based on 1939 data are certainly of limited significance in current controversies. However, the fundamental character of interagency costs is still essentially unchanged. Recent studies have strengthened the conclusion that rail costs are less than truck costs on long hauls.³⁷ The relationship of rail-truck costs is not peculiar to the transportation of new automobiles; it applies, with some variation, to nearly all commodities. Essentially, it is a reflection of lower line haul costs of railroads and the lower terminal costs of the trucker. Recent rail and truck innovations have undoubtedly changed the point at which rail and truck costs are equal, but even the motor carriers do not argue that they enjoy lower cost on long hauls. Moreover, some of the automobile firms have conducted studies of their own to test the import of technological development and all agree that beyond three hundred fifty to four hundred miles, rails are low cost carriers.³⁸ The concensus of the Commission, of shippers, of motor carriers and of scholars is that the rail carrier is the low cost carrier on long hauls.

What about the position of the water carrier? As has already been noted, information on water carriers is not readily available. However, the only traffic for which

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they presently compete is that which moves via the Great Lakes. The New Automobiles studies, summarized in Table 9, revealed a substantial cost advantage for the water carrier; and the fact that major producers have resumed shipments by water after careful cost analysis indicates that they still possess advantages. Of course, when service disadvantages of water carriers are priced by manufacturers and added to the costs of water movement, the advantage of the water carrier is reduced. Moreover, the comparisons in Table 9 are based on a one-way movement. Ford does not ship from Detroit to Cleveland by water because it considers the truck with the backhaul obtainable from that point to be more economical.³⁹

C. THE DEMAND FOR THE TRANSPORTATION OF NEW AUTOMOBILES

The analysis of the characteristics of demand for the transportation of new automobiles may be divided conveniently into three periods. In the first period which stretched from the introduction of the automobile to about 1935, transportation was purchased by a large number of dealers and wholesalers scattered throughout the country. Until the advent of the motor truck and except for points served by water, these buyers were confronted by sellers with substantial monopoly power. In view of the relatively inelastic nature of the demand curve for transportation of this particular commodity, a discrimination-minded railroad

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industry extracted high rates for service from generally uncomplaining buyers. In the second period, from 1935 to about 1958, the automobile firms assumed responsibility for transportation and prepaid charges. As a result of this change, the market assumed the characteristics of bilateral oligopoly. The third period, from about 1958 to the present is characterized by a willingness on the part of the shippers to utilize the bargaining leverage which they had long possessed.

We ought, perhaps, at the outset, to clear away some of the confusion which has surrounded the nature of the demand curve for the transportation of motor vehicles. The demand curve facing the industry (composed of rail, motor, and water carriers) is indisputably inelastic as a result, essentially, of the fact that the cost of transportation is so small a percentage of the selling price of the delivered vehicle. The Commission has repeatedly made reference to this inelasticity at some point in almost every rate case involving this commodity.⁴⁰ It is important, however, to understand that an inelastic industry demand curve does not mean that the demand curves facing individual sellers may not be quite elastic. Obviously, elasticity of demand is a function of many factors including the availability of substitutes which is particularly relevant in this case. The emergence of motor carriers capable of delivering automobiles not only shifted rail demand curves to the left, it also flattened them; and it flattened them to such an

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extent that an increase in rail rates on this commodity would have reduced rather than increased rail revenues. In other words, the demand curve facing the railroad became elastic within the relevant range. The degree of elasticity varied, of course, with the relative desirability of water and motor substitutes. Generally speaking demand for rail service became more elastic as the length of the haul was reduced and as speed of delivery increased in importance. Unless the Commission considers the cartelization of the industry a legitimate and desirable goal of regulation, the demand curve facing particular carriers should be reviewed for what it is--relatively elastic.⁴¹

There isn't a great deal to say about the first period that has not already found its way into the discussion in the earlier chapters. In order to place current events in perspective it is important, however, to understand some of the policies of shippers in the period between 1935 and 1958 and it is to this that we now turn our attention.

When the automobile companies assumed responsibility for arranging for the transportation of automobiles they were in a position to confront the carriers with what Professor Galbraith termed "countervailing power." Under such circumstances it would appear that the public interest would be reasonably safeguarded. Indeed, serious students of transportation, speaking of concentration among motor carriers hauling automobiles, concluded that, "Since such large shippers have considerable bargaining power, the

present level of concentration represents no problem for public policy."⁴² The assumption that shippers exercised bargaining power seems realistic enough but at the same time it is difficult to reconcile with certain available evidence. As a matter of fact, it must be recorded that if the railroads lacked a monopoly in the transportation of new automobiles, they also suffered a lack of monopoly of unimaginative and flaccid management. Traffic directors at many automobile companies too often took the easy way out; and, as one official pointed out, it was easier to let one mode handle 90 per cent of the traffic.⁴³ Interviews with various shipper representatives produced many examples of laxity. In some cases at least, motor carriers derived the entire benefit from newly developed five-car equipment. Shippers continued to pay the same rate per vehicle even though costs had been reduced. One carrier used an alternate route which was considerably shorter while charging the shipper for the longer haul. One traffic official bluntly stated that people in the traffic department had been "gratuity takers."

The rates paid by the automobile companies are further proof of management laxity. For example, what kind of bargaining was General Motors engaged in when Commission studies revealed that in 1939, contract carriers had earned a return of 77.4 per cent on their depreciated investment? Is a return of 17.1 per cent of gross revenue for eleven contract carriers in 1940 indication of countervailing power

which protects the public? The common carriers, while not so well off, still managed a respectable return of 28.1 per cent on depreciated investment in 1939. The Commission reported that the rates which permitted such returns "are not considered unreasonable by General Motors."⁴⁴ On what grounds did General Motors consider such extraordinarily high returns justified? Mr. Richard J. Mollica of the Traffic Division of the Chevrolet Motor Company suggested simply, "Our carriers are not overpaid."⁴⁵

A representative of a trucking firm testified in the New Automobile case to the effect that when he needed extra funds he simply asked the shipper for an increase. When this witness was asked whether or not Chevrolet had ever indicated that the carriers ought to reduce their rates, he replied:

I tell you that is our consistent policy, it has been the consistent policy between Chevrolet and ourselves to do this thing. "How much does it cost to operate? Figure out your costs, and as long as you are good operators and you operate well for us and give us service, don't talk to us about reducing rates. If you can't give service, come and get increased rates if you need them, to give the service. But make it on a cost plus basis."⁴⁶

Other motor carriers have confided that this arrangement was not peculiar to General Motors.

On what grounds did the shipper decide whether or not "how much it cost to operate" was or was not reasonable? The Chevrolet representative refused to discuss the matter but other shippers admitted to considerable laxity in evaluating the financial status of carriers. None of the

shippers who discussed the issue had prepared estimates of the rate of return earned by their carriers. Conceivably, of course, some such studies may have been made in traffic departments that have not come to the attention of the officials interviewed. If such is the case it would be interesting to discover what characteristics of motor carriage were believed to have necessitated returns at reported levels. On the face of it, the writer sees none.

What explanation is there for the attitude of shippers in the period under discussion? One traffic official explained that most traffic departments were filled with people trained by the railroads who believed that automobiles, as high-value commodities, should bear a disproportionate share of the transportation burden. There were, however, more compelling reasons for the rate policies of shippers. A basing point system in which rail rates from Detroit to destination were charged regardless of the origin of the vehicle or the mode of transportation was a major factor in shaping the rate pattern which developed. Since the transportation charge assessed to the consumer did not reflect the actual cost of transporting a vehicle, and since it appeared that the burden of high rates had been successfully passed forward to the consumer, the automobile manufacturers were not disposed to subject carrier costs to painstaking scrutiny. Of course, shippers were interested in transportation costs, but they were more concerned about relative cost levels than they were about the absolute level.

A shipper was more concerned about the fact that a rival may have gotten vehicles to market more cheaply than he was about the fact that both may have been paying an unnecessarily high rate.

It should also be remembered that there has been vigorous rivalry among automobile manufacturers. As a result, the manufacturer is willing to pay a high price to purchase assurance that firms which supply parts or services will do so without interruption.⁴⁷ The prospect of one automobile firm being closed down while others continued in production is a nightmare which Walter Reuther has capitalized on. To imagine production lines backing up because of the failure of transportation facilities is intolerable.

Some time after 1955, the traffic departments of several manufacturers were "shaken up" for the express purpose of cleaning house. Mr. Henry Crawford of the Ford Motor Company explained that up to that time, manufacturers had assumed they could simply shift cost increases forward to the consumers.⁴⁸ The unsatisfactory experience following the record year in 1955 convinced them that the consumer was unwilling or unable to absorb annual price increases. As a result, there developed a general cost consciousness which affected the policies of the traffic departments.⁴⁹ The willingness to exert bargaining power coincided with a marked increase in that power as a result of the development of rail TOFC and multilevel service. As evidence of the impact of their new will to bargain, most shippers

pointed to a reduction in motor carrier rates or, at the very least, to the fact that no rate increase has been granted in the last several years despite undisputed increases in motor carrier costs.

The laxity so often manifested in traffic departments of auto manufacturers is in sharp contrast to the energetic effort to manage efficiently the transportation affairs of the corporation which is evident in certain companies. One automobile manufacturer submits the financial records of its motor carriers to the scrutiny of its accountants and reworks them where necessary according to the rules and practices employed in preparing the accounting records of the firm itself. This includes the deflation of salaries which are considered excessive and the elimination of payments to non-working officers in addition to a restatement of expenses.⁵⁰ The purpose is to arrive at what is conceived to be a true rate of return. The company then bargains for rates which will provide for its carriers, returns deemed adequate and necessary for stability, dependability and progress. Because of higher than average obsolescence, this company allows the motor carrier of automobiles a somewhat higher rate of return than that earned by the general commodities carrier.⁵¹

Other companies probably do not keep as close a check on their carriers although some may. The fact that a major shipper is taking advantage of his bargaining leverage is bound to have an effect in an industry where shippers are

still sensitive to relative charges for the transportation of their new motor vehicles.

Before concluding the discussion of the demand side of the market, we might point to some of the transportation features for which automobile shippers have indicated preference. In the first place, shippers have generally indicated that they consider single-line service to be desirable. All shippers prefer that their motor carriers use tractors manufactured by the shipper himself. Most shippers do not relish the idea of carriers mixing their vehicles with those of other manufacturers on a trailer, although the smaller firms such as Studebaker, are not in a position to object very strenuously. The Ford Motor Company tolerates mixing except where vehicles of General Motors are concerned.⁵² Again, some shippers prefer to be served by motor carriers who devote all their equipment to a single shipper; others express a desire to see their truckers serve other automobile firms. A spokesman for Studebaker-Packard expressed the view that because of relatively low levels of output and the wide fluctuations in production, carriers serving Studebaker might be better off if they could depend upon other traffic.⁵³ On the other hand, the same shipper at a different time, expressed concern that under such circumstances the carrier might, when confronted with a choice, decide to give preference to the larger shipper.⁵⁴

Finally, a noticeable change has taken place in the

attitude of shippers toward the optimum number of carriers. Most companies seem to be coming around to the point of view long espoused by General Motors, namely; it is better to have a small number of large carriers than to depend upon a large number of small carriers. A representative of one shipper confided that they were working down to a system in which only one carrier served a particular geographical region from any one plant. Motor carriers themselves feel that the number of carriers ought to be reduced. Both carriers and shippers repeatedly, in this connection, referred to the situation at the Studebaker-Packard plant where alleged poor service was said to result from too many carriers and too little steady volume. Whether or not the suggested prescription will improve service, it seems likely that the prospect is for further concentration among motor vehicle carriers. The advent of multilevel service which has placed many carriers who depended on long hauls in a precarious position and the drastic reduction in ton miles can be expected to accelerate the pace of concentration.

D. CONCLUSION

The market for the transportation of new motor vehicles has operated very imperfectly both on the side of supply and on the side of demand. On the supply side, carriers have not given expression to the cost of transporting motor vehicles so that a misallocation of transportation resources was developed and perpetuated. On the demand side, shippers

failed, until recently, to bargain vigorously for reasonable rates so that the cost to the public of transporting new automobiles was excessive. Recent developments on both the supply and the demand side of the market encourage the hope that improved performance, better service, and more reasonable rates will be forthcoming.

CHAPTER VI

THE ALLOCATION OF RESOURCES IN THE TRANSPORTATION OF NEW MOTOR VEHICLES

A. INTRODUCTION

One of the most important functions to be performed by any economic system is the allocation of society's scarce resources. For a substantial segment of the American economy, allocation is the result of the interaction of more or less impersonal forces operating in markets with varying degrees of freedom. In some segments of the transportation market, however, allocation is less the result of competitive forces than it is of legislative, judicial, and, most importantly, Commission policies. In this chapter we shall examine and evaluate the allocation theory of the Commission and we shall suggest an alternative mechanism through which more efficient traffic assignments can be effected.

B. THE ALLOCATION OF NEW AUTOMOBILE TRAFFIC: THE PHILOSOPHY AND THE RECORD OF THE COMMISSION

One of the first problems confronting the Interstate Commerce Commission was the selection of standards

by reference to which critical decisions involving resource allocation might be made. Under competitive conditions, cost is an important factor in deciding what will be produced. But, the Commission and early transportation economists both rejected cost as a major determinant of rail rates. Costs were thought of primarily as a sum which must be exceeded if the enterprise were to operate successfully. The rejection of a cost standard was explained by the Commission in its First Annual Report in which it declared:

It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good, the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose bulk or weight loom large as compared with their value.¹

The Commission further observed that had pricing been cost oriented, some commodities would not have moved at all and others would have been carried at prices which were "absurdly low"-- low when compared to the value of the articles, and perhaps not less so when the comparison was with the value of the service in transportation.²

Some of the early transportation economists considered the problem of the determination of appropriate rail rates to involve ethics rather than economics. Professor G. Cohn, for example, described railway rate theory as follows:

Briefly the theory is that railway rates are fundamentally like taxes. All experience shows that rail rates are based not on the cost of

furnishing the service, but on what the purchasers can afford to pay.... The problem therefore, is at bottom one of ethics, involving those considerations of public policy and of right and wrong which recur in the discussions of proportional or progressive taxation.³

Professor Taussig, while eschewing Cohn's theory on the grounds that it inevitably leads to "public ownership or public regulation of rates," lauded the Commission because it had "mostly refrained from putting the test of reasonableness in any assumed cost of services."⁴ The Commission shared Professor Cohn's view as is clear from its comment with respect to the rate system adopted. "Such a system of rate-making," the Commission observed, "would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it." ⁵

Rather than revamp an existing rate structure, the Commission validated the pattern established by discriminating rail monopolists, rationalizing this position on two grounds: In the first place, the Commission argued that as a result of the difficulties incident to the separation of fixed and variable costs and as a consequence of the prevalence of joint and common costs, the isolation of the direct costs associated with the movement of any particular commodity was a virtual impossibility.⁶ Secondly, it argued that since the public interest is best served by a rate structure "so apportioned as to encourage the largest practicable exchange of products," rates should not be tied

to cost!"⁷ This seemed reasonable to the Commission in view of the fact that under cost oriented rate structures, "some kinds of commerce... could never have existed at all...."⁸ Obviously, if some commodities moved at rates which fell short of covering full cost, others must-- if transportation is to be sustained without subsidy-- move at rates in excess of costs.⁹ These rates were, of course, to be most effectively determined by considerations of the value of the service performed.

The most serious deficiencies of Commission rate policy were given emphasis by the emergence of intermode competition. The general misallocation of resources which surely followed discriminatory rail pricing was less obvious than the pattern of inefficient use of transportation facilities which later developed.¹⁰ There is no point in describing in detail the Commission's rate policy in matters of intermode competition; competent scholars have already worked the field over.¹¹ The consensus seems to be that the ICC has limited rate competition by allowing the intrusion of value-of-service principles,¹² by enforcing a rate parity (sometimes allowing for service disabilities) which deprives a carrier of an inherent cost advantage,¹³ and by seeking to allocate traffic in such a way that all existing modes can stake out a "fair share" of available traffic.¹⁴

One cannot absolve the Commission of all responsibility for the misallocation of the resources used in

transporting new motor vehicles. While it is true, as we have already observed,¹⁵ that the railroads did not take advantage of the rate latitude the Commission was prepared to allow, some onus may nevertheless be legitimately placed upon the Commission. After all, it was the Commission which, since its inception, had been beating the drums for value-of-service pricing. Moreover, despite the suggestion in the New Automobiles case that out-of-pocket costs should be considered to be the appropriate minimum in assessing the compensatory character of rates, and regardless of the injunction found there against "umbrella rate-making," the Commission continued to decide cases in accordance with its hallowed customs. Dr. Ford K. Edwards who played an important part in shaping the principles upon which the New Automobiles case was decided, interpreted that decision as signalling the initiation of a policy in which traffic allocation would be made a function of "market pricing factors."¹⁶ The promise of this decision unfortunately was never realized. In fact, the latitude occasionally permitted by the Commission is more reasonably explained in terms of a conviction by the Commission that railroads were not getting a "fair share" of the traffic. The Commission has recently permitted many reduced rail TOFC and multilevel rates; but it is not yet evident that it would be prepared to allow rail rates which would give the rail carriers more than their "fair share" of the new automobile traffic. It is not clear, in other words, that the Commission is amenable

to placing reliance upon market factors in the determination of the appropriate allocation of traffic.

C. COMPETITION AND THE ALLOCATION OF NEW AUTOMOBILE TRAFFIC

If the policies to which the Commission has subscribed have resulted in a misallocation of the resources devoted to the distribution of new automobile traffic what available tolerable alternative is there? An examination of the economic characteristics of the industry suggests that a market oriented pricing policy would result in a reasonably efficient allocation of resources under conditions which are equitable to carriers, to shippers and to the public. There is little need to elaborate on the characteristics of such a structure since it is pervasive in the economy; it is in fact an integral part of the free enterprise competitive system. Carriers should be free to take advantage of whatever elasticity demand curves may possess. It goes without saying, of course, that the effects of both intermode and intramode competition should not be tempered by collusive arrangements. Carriers, moreover, should be free to exploit whatever "inherent advantages" they may have. For the motor carrier, this means that no effort directed at neutralization of the service advantages detailed elsewhere should be tolerated. On the other hand, the rail carriers should be free to have their rates reflect the lower costs which they enjoy on long hauls.

Further, the appropriate cost to consider in evaluating the compensatory character of rates is the economist's long run marginal cost rather than the Commission's out-of-pocket or fully distributed cost standards.¹⁷

What kind of a distribution pattern would such a system spawn? Given, the present state of the arts, the rails would transport the lion's share of the long haul traffic to high volume points. On such hauls, rails are the low cost carrier, and except for special circumstances, motor carrier service superiority is insufficient to compensate for the high cost of truck operation. Traffic to low-volume points and traffic destined for delivery within a short distance of the shipper's place of business would move by motor carrier. In addition, of course, the motor carrier would be called upon to distribute much of the traffic from railheads to dealers in the surrounding territory. An industry sensitive to demand and supply factors would in all probability leave the water carrier in substantially the same position in which he presently finds himself.¹⁸

What rules should be provided for carrier clashes on traffic to intermediate points? What happens if the long run marginal cost of the railroad is less than the long run marginal cost of the motor carrier but motor carriers offer superior service? On a theoretical level, there is nothing particularly difficult in these cases. As a matter of fact consumers have, for a wide range of products, the choice

between products which sell at low prices with a minimum of service and products for which higher prices are a reflection of attractive fringe benefits. The shipper of automobiles should be allowed the same choice.

D. OBJECTIONS TO MARKET DETERMINED ALLOCATION OF TRANSPORTATION RESOURCES

Several objections have historically been made to the kind of pricing system suggested above. Some critics urge a much larger role for demand in pricing while they deprecate the emphasis on costs. Let us examine and evaluate the most important criticisms of market pricing and some of the alternative solutions which have been proposed.

Demand pricing: The value-of-service theory. The NATA has consistently argued that the value-of-service concept should be given prime consideration in pricing transportation service on new automobiles. It will be recalled that this was the position of the Association in the New Automobile case; and an examination of a recent protest against a rail tariff on automobiles suggests that there has been no change in view.¹⁹ Since motor carriers base so much of their argument on value-of-service it is essential to appreciate what this rate theory involves.

The term "value-of-service" is not used unambiguously by the Commission.²⁰ Most recently, Glenn L. Shinn, a Commission examiner, described value-of-service as involving four general concepts:

1. It gives consideration to the value of the commodity transported and tends to justify higher rates on high-priced than on a low-priced commodity where the two have similar transportation characteristics in other respects.
2. It gives consideration to what has been termed public policy, the advantage to the community of having some kinds of freight carried at a less rate than other kinds.
3. It gives consideration to the relative cost to shippers of transporting a competitive commodity, also referred to as relative value of service.²¹
4. It gives consideration to the economic and commercial conditions surrounding the production and sale of a given commodity, including especially market and carrier competition, or a combination of two or more of these elements.²²

Value-of-service pricing, as defined by Mr. Shinn, is subject to serious shortcomings, but an important objection is that value-of-service so defined can be used to justify any rate. A high rate on automobiles can be justified on the grounds that this is a high-priced commodity able to bear a high rate;²³ that the high rate is necessary so that other commodities needed by society may continue to be carried by the railroads;²⁴ as well as by arguing that from an economic point of view, "automobiles have a relatively inelastic demand."²⁵ On the other hand, low rates on

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automobiles can be defended equally well on value-of-service principles. The contract carriers, it will be remembered, argued against higher rates in the New Automobiles case on the grounds that it would promote "proprietary carriage." The rails defended lower rates from assembly plants on the grounds that "economic and commercial conditions," principally the presence of competing motor carriers, made these rates necessary. Examiner T. Russell Roper justified lower rail TOFC rates consistently with Mr. Shinn's definition of value-of-service by pointing out that carrier competition had reduced the value of the rail service. Two completely different decisions involving automobile rates were reached within ten days of each other, both consistent with value-of-service as defined by Mr. Shinn.²⁶ Obviously, a standard so defined begs the question; it is in effect no standard at all.

So far as automobile traffic has been concerned, the motor carriers have identified value-of-service with the high-value-of-the-commodity concept whereas rails have understood it, recently at least, to include the effects of intermode competition. Since value-of-service is really an alternative way of giving expression to the concept of elasticity of the demand curve,²⁷ both of these factors along with all other factors affecting elasticity have in all cases to be considered for true demand pricing. The failure to do this often produces consequences which cannot be explained in terms of demand--at least not in terms of

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demand as understood by economists. When current critics blame the loss of traffic experienced by the common carrier on value-of-service pricing, they are thinking in terms of Shinn's first concept. A realistic assessment of demand would have led to rate reductions which would have preserved traffic. The carriers have not lost traffic because they applied demand pricing but because they applied it badly.²⁸ Most criticism of value-of-service is not directed at pricing structures which take demand into account, but at those which assume demand elasticity with reference to a single determinant of elasticity--the value of the commodity. This is the error into which the NATA has consistently fallen.

The opposition to value-of-service stems from an understanding of what its proponents really intend. What they seek is a rate system based on ability to pay as measured primarily by the value of the commodity. They are not arguing for demand pricing as such--at least not when reference is to the demand curve facing an individual carrier. When the NATA and Examiner Dahan argue that demand for automobiles is inelastic, what they are really saying is that intermode competition should not be permitted. Mr. Shinn's defense of value-of-service, in spite of the assertion that people have erroneously assumed "that value-of-service relates only to the commodity,"²⁹ makes it clear also that his preferred interpretation does not include intercarrier competition. With respect to the reduced

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value-of-service which results from intermode competition

Mr. Shinn declares:

The fact is, however, that in actual practice this meaning generally applies only, and we mean ONLY, in tight carrier competitive situation, and then only when there is no effective regulation of competitive rate making....³⁰

In other words, with "effective regulation," value-of-service excludes inter-carrier rate competition.

It might of course be argued that "high rated" commodities should bear high rates so that other goods desired by the community might find their way into the channels of commerce. Two comments might be made in this connection. In the first place, as even an elementary economics student knows, man's wants are substantially in excess of his ability to satisfy them so that individuals and societies are faced with a problem of allocation. Economic theorists have convincingly demonstrated that optimum allocation does not result from the production of goods for which the consumer is unwilling to pay prices high enough to cover the costs incurred in their production.³¹ If, therefore, the consumer is unwilling to pay a price sufficiently high to cover the cost of transporting a particular commodity, a prima facie case against its transportation has been established. One could argue that the consumer may err in evaluating the relative merits of various goods, or that long run considerations require the production of some goods not justified in the short run.³² Regardless of the wisdom or

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necessity for such a policy, it is difficult to disagree with Meyers that, "It is questionable wisdom to require private firms to execute public policy at the serious sacrifice of their own financial health."³³ Meyers further comments that, "If some kind of economic planning is desired its source would not be the ICC."³⁴ The Commission has been deservedly criticized for its lack of planning in the sphere of its primary responsibility; it would be folly to expect it to develop plans for an efficient, economy wide utilization of resources. It has neither the information, the manpower nor the competence necessary. If such planning is required it should be entrusted to an agency with a broader constituency³⁵ and with resources adequate to the task.

In the second place, it is sheer nonsense to argue that the rails need high rates on automobiles in order to permit the railroads to continue to carry necessary low-rated commodities. The fact is, that under the high rates urged by those who so argue, practically no traffic moves by rail. Dahan's view that, "high rated traffic must be called upon to bear its full burden so that the public may not be denied the railroad facilities for deficit traffic such as passenger and less than carload traffic," is pure Alice in Wonderland.³⁶ As Examiner Roper observed:

... it must be borne in mind that even this high-grade traffic when hauled over the highways or waterways, in lieu of via rail at rates providing some return, makes no contribution whatsoever to rail income and the other

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traffic has an even greater burden.³⁷

In view of the testimony of traffic executives that with rail-motor rate equality they would ship by motor carrier, Dahan's prescription of equal rates would bring no revenue to the rails. It would, of course, increase revenue for the truckers, but since these latter carry no low-rated commodities it would appear that the benefit would be rather narrowly concentrated.

The argument that high rates on automobiles are needed to subsidize low-rated traffic fails on other counts. In the first place, no convincing evidence has been offered that demonstrates that "low rated" commodities cannot move at compensatory rates.³⁸ Secondly, even if demand functions dictate prices on some commodities that fail to cover full costs including a reasonable return, the decision with respect to the magnitude of the contribution to overhead from any commodity is best left to the discretion of railroad management. Lucile S. Keyes argues:

... the net result of adding regulatory review to managerial initiative can be a gain only if the regulators possess substantially greater commercial ability than the managers, so that the salutary effect of their wisdom will offset not only its extra administrative cost, but also the other probable harmful effects....³⁹

She then asks, "Is it probable that the regulators are appreciably better businessmen than the managers?" Her answer is bound to be discouraging to those who seek solutions for difficult transportation problems through

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Does the job of regulation attract people whose commercial aptitude is appreciably greater than those attracted to business careers? Does the experience of regulation develop this aptitude better than managerial experience? I should venture to say that the answer to these questions-- at least in this country at the present time--must be no.⁴⁰

The value-of-service theory is frequently supported in NATA briefs and by its advocates generally on the grounds that it is the "established," the "traditional" way of doing things. The most recent articulate defense of value-of-service by Mr. Shinn refers to "landmark rate decisions," to "settled legislative policy" and to legislation such as the Hoch-Smith resolution. However, impressive this may be from a legal point of view, it attributes to courts, commissions and lawmakers a degree of economic wisdom greater than they may in fact possess. An economist, in evaluating alternative market structures, must take note of whatever contributions these bodies may make, but he obviously cannot confuse such pronouncements with statements of economic fact.

Finally, it might be noted that whatever merit there may be to value-of-service pricing for railroads, this discriminatory technique is, as George Wilson has convincingly demonstrated, inappropriate for motor carrier rate determination.⁴¹ The Cost Finding Section of the Commission itself provides evidence of the inapplicability of value-of-service pricing in motor carrier operations. It declares:

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to "value of service" in rate making may be briefly summed up as follows: Cost of service considerations go principally to the apportionment of the out-of-pocket (long run variable) costs. Value of service (demand) considerations go to the apportionment of the constant and joint costs.⁴²

The Commission in the New Automobiles case agreed with its Bureau of Economics and Statistics that out-of-pocket costs, "for carriers engaged almost exclusively in the transportation of new automobiles would closely approach their full costs."⁴³

The role of cost in the determination of rates. A second group of objections to a pricing system which reflects market conditions centers around the use to which cost functions should be put. On the one hand, there are those who argue that rates should be tied closely to costs. On the other hand, others (and the NATA is in this group) contend that an emphasis on costs is conducive to destructive competition in addition to being objectionable on a variety of other grounds. Let us examine each view.

The argument that rail rates should equal marginal costs is an outgrowth of the principles of welfare economics. The case for marginal cost pricing is concisely presented by Ralph L. Dewey who contends:

...what is to be the guiding principle in securing this ideal system? The precept I offer is this: The rate structure must correspond to marginal costs if the optimum allocation of resources is to be achieved. In this way, the burden of charges for transportation is minimized for each industry and firm, and each unit of the several factors of production... is employed in the transportation so as to maximize its contributions to the satisfaction of the

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A system of mandatory marginal cost pricing is open to serious criticism. In the first place, from a practical point of view, the identification of incremental cost is difficult at best.⁴⁵ Of the available measures of cost, the Commission's out-of-pocket cost comes closest to the concept of marginal cost. Out-of-pocket costs are, however, really average variable cost.⁴⁶ As a result, depending upon the behavior of costs as output is expanded, out-of-pocket costs may either understate or overstate relevant marginal costs.⁴⁷ Despite this defect, some authorities argue that out-of-pocket costs do serve as rough approximations of long run marginal costs and that they are at least of the "same order of magnitude."⁴⁸ In any event, the means are at hand, even with the present state of knowledge, to develop much more accurate cost data--a step which is enthusiastically recommended.

A more serious criticism of marginal cost pricing is that under such a standard, railroads would continuously operate at a loss. This is so because in a declining cost industry marginal cost is below average cost.⁴⁹ This might be tolerable if there were some accepted and equitable means of raising funds through public levies to cover such deficits as may arise, but no such scheme is at hand.

A final criticism of mandatory marginal cost pricing questions the efficacy of the static conditions of ideal allocation in promoting the dynamic objectives of growth

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and stability. On this subject Tibor Scitovsky writes, "... as concerns dynamic efficiency, perfect competition is far from being a model of perfection."⁵⁰

Even if the above criticisms are invalid and if both static and dynamic optima are reached by marginal cost pricing, the advantages of such a system should be applied to all industries. Presumably marginal cost pricing would reduce profits; and the transportation industry might well complain if it alone were selected. Quite obviously, universal enforcement of such a principle would require more government regulation of private business affairs than a democracy is willing to tolerate.

For these and for other reasons, some who would argue the general validity of cost-determined prices urge that the appropriate cost concept is fully distributed cost or some closely related concept of average cost.⁵¹ To the extent that it is amenable to the use of costs in matters affecting traffic allocation, the NATA argues in favor of the fully distributed cost standard.

The idea that rates must cover fully distributed costs may be, as Professor Roberts has observed, "good law" but certainly it is poor economics.⁵² Rates which are adequate to cover long run marginal cost do not burden other traffic; and to the extent that rates exceed this standard they lessen the burden on other traffic. Moreover, this is true regardless of volume. It should be remembered that the assessment of a charge above direct cost is a purely

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arbitrary method of providing for joint and common expenses and, as such, it is not a reflection of the full cost of carrying any particular commodity.

The NATA insistently argues that to assign a larger role to costs than has been traditional would herald a rail campaign of destructive competition against the specialized carrier.⁵³ The vulnerability of the auto hauler results from his dependence on a single commodity while the railroads are in a position to compensate for losses on automobiles by raising rates on other commodities.⁵⁴ The strategic position of the railroads in any predatory campaign is undeniably superior to that of motor carriers and the possibilities for exploitation of this advantage should be carefully examined.

At this point, however, it is well to recall the description of "destructive competition" supplied by the NATA as described in chapter ii. To some extent, the attitude of the NATA is a natural product of the anticompetitive philosophy of the Commission which has regularly sought through rate regulation and restriction of entry to insulate certificated carriers against the kind of competition to which the rest of the business community is exposed. Surely, competition which displaces a high cost mode with a more efficient one should not be prohibited on the grounds that it is contrary to the national interest. The extension of such a theory would result in an ossification of the economic system. Rate reductions which serve

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to increase net operating revenue are not destructive of economically efficient allocations. What has been destroyed so far by rail rate reductions is a result of an uneconomic growth made possible by the past mistakes of railroads, of shippers and of the Commission, and of the technological changes which have occurred.

The argument that motor carriers should be preserved so as to provide competition for the railroads is self-serving and patently without merit. In the first place, the devotion to competition now manifested by the motor carriers was sadly not in evidence when they themselves enjoyed a monopoly of the traffic. There was then no urgent plea to divert traffic to the rails in the interest of competition. Of course, to argue that an inferior mode be preserved as a competitive check on a superior mode is absurd. One might well have argued on this basis that the price of automobiles should be kept sufficiently high to permit carriage makers to continue to provide competition.

Realistically, the danger of a renaissance of the rail monopoly power on this traffic is slim. There is plenty of evidence that the purchaser of transportation today is more discriminating than he has been. This is certainly true of the automobile shipper. The present competition is certainly not of an "all or nothing" character so that there will be a motor carrier industry ever eager to take any advantage rail rate structures allow. Moreover, there is here

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the prospect of private carriage. As a matter of fact, ICC dictated rate levels which ignore rail costs may prove more destructive of motor carriers than cost oriented rates. Some shippers have indicated that they would resort to private carriage if the Commission rebuffs the railroads in their attempts to adopt realistic rate structures.

The Commission sometimes defines competition as destructive when a carrier succeeds in securing for himself more than his "fair" share of the traffic. The ICC, for example, has approved rail rates below truck rates where these were intended to compensate for rail service disabilities. The idea is that under such circumstances carriers can compete for traffic on a fair basis. Now, it is true that we Americans are great admirers of "fair contests." We match boxers on the basis of weight and experience and we handicap horses to neutralize speed and endurance. But, however appropriate handicapping may be in "the sport of kings," it has no place in an economic contest in which the purse is the efficient use of resources. In connection with efforts by the Commission to assign fair shares, Professor Nelson pointedly commented that, "... no board can determine the economically right sphere for each transport agency.... This must necessarily be determined in the market place."⁵⁵

There is the possibility that the rail carriers will take advantage of their strategic position to engage in predatory competition. Should this occur, prompt action

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should be taken to bring such activities to a halt. But what are the prospects of such an undertaking? If the railroads are attempting to maximize profit, it is unlikely, as Professor Roberts has pointed out, that they would embark on such a venture.⁵⁶ On the other hand, if rail management is seeking the maximization of some other variable such as total revenue, they may well consider the destruction of motor carriers.

Would rails be likely to engage in predatory competition? Would they be likely to quote rates below long run marginal cost for the purpose of driving motor carriers out of business? It's possible but unlikely. For one thing, the rail disability on short hauls is so great that rates would have to be at extremely low levels to attract traffic away from motor carriers. Secondly, railroads are here dealing with informed buyers who would not be likely to sit still and allow the rails to destroy a mode of transport shippers consider superior on short hauls; this is especially true if the rail intent is to place themselves in a position to exploit their resulting monopoly power. Again, such a policy must surely represent a most shortsighted management appraisal of market prospects. Since there are no substantial scale economies in trucking and since threshold costs are low, any effort by rails to raise rates after driving competitors out would certainly result in a resurgence of motor carriers. Finally, it is unlikely that either the Commission or the courts would sanction

rail rates which are patently non-compensatory.⁵⁷

The national transportation policy. At some point in NATA briefs in rate matters there is usually a reference to the mandate contained in the statement of the "national transportation policy." This policy, as the NATA understands it, prohibits "destructive competition" and enjoins the Commission to prevent a return to the "law of the jungle." The appeal to the "national transportation policy" for the purpose of limiting rail rate reductions is questionable on several grounds. In the first place, even a casual student of the transportation scene must be aware of the failure to secure a consensus on the interpretation of the "national transportation policy." Perhaps the request by President Kennedy that the Department of Commerce work out some proposals for a "national policy" may bear fruit, but the outlook is not especially bright.

A more serious objection is that rates are condemned as offensive to the "national transportation policy" without even a perfunctory effort to demonstrate in what respects the proposed rates are deficient. For example, Examiner Dahan recommended that Plan III rates on automobiles be condemned because they hampered "the development and preservation of a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."⁵⁸ By what stretch of the imagination can a rate proposal on automobiles affect the needs of the "Postal

Service?" If this particular rate is to be condemned because it interferes with defense needs, there certainly ought to be some effort to demonstrate how and to what extent the contested rate weakens our defense posture. Despite references in other cases involving automobile rates to the demands of the Postal Service and the needs of defense, the present writer has yet to find a shred of evidence to support the allegation that the proposed rate schedules adversely affected either the national defense or the Postal Service.

E. CONCLUSION

The misallocation of resources which is evident in the distribution of new automobiles is due in substantial measure to the rate theories of the Commission. The obstacles to the adoption of a market oriented policy stem from carriers who feel that they would fare badly under such a system and from traditionalists who either refuse or are unable to grasp the significance of the developments taking place in transportation. Value-of-service pricing simply doesn't make sense in this particular industry. At the same time, the motor carriers have been unable to make a reasonable case for the destructive nature of competition in free markets.

CHAPTER VII

REGULATION AND THE TRANSPORTATION OF NEW MOTOR VEHICLES

A. INTRODUCTION

We have outlined the nature of the ideal organization of the motor vehicle transporting industry. Under what circumstances is this ideal most likely to be attained? Is it necessary that there be an overseer with power to assign operating rights and to curb rate competition? The purpose of this chapter is to explore the necessity of regulation. We shall look into three questions: (1) does intermode competition require regulatory restraint; (2) is intramode competition possible without Commission supervision; and, (3) does the welfare of shippers or of the public dictate regulation.

B. INTERMODE COMPETITION

Do railroads require protection from motor carriers?

The answer here has to be an emphatic no! None of the legitimate or publicly desirable objectives of railroads in the transportation of new motor vehicles requires regulatory restraints on motor carriers. Of course, if the

railroads intend to invade the short haul area, Commission action to restrain truckers from exploiting cost and service advantages would be necessary. Few would argue that this is desirable from the standpoint of public welfare. In the 1930's the rails argued (and the Commission still does) that without regulation of motor carriers, rail rates are characterized by instability and by an alarming tendency to gravitate to unreasonably low levels. It must be remembered, however, that the rails were then trying to insulate discriminatory rate structures from the effects of competition; and an unreasonably low level of rates was any level below that made possible by monopoly.¹ The continuation of discriminatory rates is contrary to the public interest; it isn't even realizable in this particular case. It is not in the public interest because, as we have already noted, value-of-service pricing sires an uneconomic resource allocation. The fact that enlightened and alert shippers would prefer to resort to private carriage rather than submit to unnecessarily high rates makes the preservation of hallowed rate structures unrealizable.

The rails, given current technology, can reasonably expect to transport the bulk of the long haul traffic. Is it possible that motor carriers could engage in a campaign aimed at the elimination of rail participation in these movements? It is difficult to visualize the conditions under which such an attempt would be made and even more difficult to understand the circumstances under which it

could be successful. For one thing, the motor carriers are relatively small firms with resources entirely inadequate to sustain a predatory venture against the railroads. Moreover, out-of-pocket cost for the motor carrier is very close to full cost so that deep slashes in rates without immediately observable losses are not possible. In addition, the motor carrier of automobiles, as a specialized hauler, could not expect to subsidize a rate war on motor vehicles by maintaining discriminatory rates on other commodities. The possibility that motor carriers can mount an offensive spearheaded by lower rates for the purpose of wresting from the railroads that traffic for which the rails are the more efficient carrier is so remote as to deserve little serious consideration.

Anyone foolish enough to argue that the railroads must be protected from motor carriers by a Commission is invited to examine the record. Some half-hearted (and thoroughly objectionable) attempts to protect railroads have been sporadically attempted.² Nevertheless, it cannot be contradicted that under Commission "protection" the share of this traffic going to the railroads declined in spite of the fact that rails were low cost carriers on long hauls. From the railroad viewpoint, Commission policies could hardly have been more detrimental for they neutralized rail cost advantages without limiting the service superiority of motor carriers. If the Commission sought seriously to promote the welfare of the railroads by

these policies, the latter might profitably have prayed, "Lord, spare us from our friends."

Do motor carriers need protection from railroads? It is impossible to answer this question without first agreeing upon which motor carrier interests ought to be protected. We have already noted that railroads would need Commission interference to register gains in motor carrier short haul territory. Similarly, if the motor carrier is to recapture the long haul traffic, some kind of government action is necessary since, economically, the rails enjoy a superior position. But again, while such action might be to the advantage of motor carriers, it would not be in the public interest since it would substitute a high cost for a low cost agency. Moreover, the perpetuation of the previously uneconomic allocation is neither a legitimate nor a desirable goal of a regulatory agency except to the extent that it can demonstrate collateral non-economic gains which outweigh the losses of inefficient allocation. This, however, requires more than a perfunctory allusion to the needs of the Postal Service and of the defense establishment. Except to the extent made necessary by non-economic considerations, the motor carrier should have assurance that his rivals will not, by predatory actions, deprive him of traffic which he can transport at a lesser cost to society. This is the only kind of protection consistent with the public welfare.

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respect to the competitive practices of the rails are not entirely without foundation. The railroads have sought to prevent motor carrier service in numerous instances;³ they have persistently attempted to engage in motor carrier operations of their own in competition with truckers;⁴ and they have not been above the use of highly questionable tactics designed to hobble the motor carrier industry.⁵

Where is the rail threat to motor vehicle transporters most likely to materialize? On long hauls motor carriers protest that the rails, by ignoring value-of-service, are competing unfairly. Since on economic grounds this traffic belongs to the rail carrier in the first place, this is hardly a legitimate complaint.⁶ The motor carrier advantage both from a cost and from a service viewpoint on short hauls is such as to make a rail offensive in this area unlikely. In this connection, it is noteworthy that all shippers interviewed stressed the fact that motor carrier service is much superior to rail service on short hauls. It is improbable, therefore, that shippers would sit idly by while rails drove truckers out of business. Between the "short haul" and the "long haul" there is, however, a no-man's land of indeterminate size,⁷ in which a clear-cut advantage is not readily discernible. In such instances, the railroads could, by publishing rates which fail to cover long run marginal costs, deprive more efficient motor carriers of traffic. The NATA has already charged that the New York Central has done this on Detroit to Pittsburgh

traffic.⁸ The NATA claim has been echoed by Senator Mike Monroney who, in a speech before the ATA, asserted that:

Dealing with a small number of shippers, the railroads have put into effect rates for the transportation of automobiles which barely return out-of-pocket cost, if that.... He (the motor carrier) is simply and literally put out of business, not because of the technological advances of piggyback but because the railroads have arbitrarily set a rate with which he cannot compete because it bears no relation to the cost of providing service....⁹

In the event the feared rail depredations should occur, what action should be taken to protect truckers? We will argue later that rail intramode competition probably requires regulatory supervision. One of the legitimate functions of the Commission might be to prevent the railroads from publishing rates which fail to cover long run marginal costs, especially when the effect of such rates is to deprive a more efficient carrier of traffic. A suitable alternative would be to allow carriers to publish whatever rates they choose, but to subject them to suits in which triple damages are awarded in cases where non-compensatory rates have injured competing motor carriers.¹⁰

Perhaps the most realistic and certainly the most serious threat to motor carriers results from rail efforts to secure authority to engage in unrestricted motor carrier operations. This is not the place to debate the merits of the so-called "integrated transportation company," but the history of the transportation of new automobiles is eloquent testimony to the sterility of monopoly and the

productiveness of intermode competition. Most of the technological improvement that the industry has seen is the product of intermode struggles. There is no doubt that whatever improvement there may have been in rate levels is likewise the fruit of intercarrier competition. The demonstrated advantages of competition should not lightly be abandoned.¹¹

Water carriers and intermode competition. There was a time when the only serious competition for traffic experienced by the railroads came from water carriers. For many commodities between certain points this rivalry is still vigorous and it gives rise to numerous questions of public importance.¹² This is no longer true, however, in the industry with which we are here concerned. So far as traffic destined for the continental United States is concerned, water carriers are in a position to compete only for traffic moving along the Great Lakes between a limited number of ports.¹³ The rails have made sporadic attempts to compete for this traffic on a rate basis, but by and large, these efforts have not been successful.¹⁴ It is true that the water carrier share declined from an average of about 6 per cent between 1933 and 1950 to a low of 2 per cent in 1959. However, this decline was not occasioned by intercarrier competition; it was rather a product of shipper failure correctly to assess the advantages of lake carriers.¹⁵

The principal competitive advantage of the water

carrier is low cost while the main disadvantages have to do with slow transit times, limited navigation seasons, and greater damage risks. For reasons which have been explained elsewhere, water carrier rates should be allowed to reflect lower costs and competing agencies should be permitted to vie for this traffic so long as rates do not fall below long run marginal costs. This, of course, does not mean that the water carrier, as the low cost agency, should be permitted to set a rate as it would "in the absence of competition" with assurance that higher cost modes could not undercut the established rate. Such a policy sterilizes the intermode relations so that none of the really beneficial fruits of competition are forthcoming.¹⁶ Because of cost factors, the motor carriers are not in a position to engage in a rate battle with water carriers and should the railroads attempt this, the Commission or the courts should prevent rates which are below long run marginal cost levels.

We conclude, therefore, that so far as intermode competition is concerned, the safeguarding of the publicly desirable objectives of rail and water carriers does not indicate the necessity for economic regulation of motor carriers. On the other hand, both water and motor carriers require protection from the railroads. Whether or not this protection should be provided by a regulatory commission such as the ICC or through special legislation enforced by the courts is a question we will not debate.

C. INTRAMODE COMPETITION

The regulation of intramode competition. Before discussing the characteristics of intramode competition it might be well to place this type of rivalry in proper perspective. Professor Merrill Roberts has suggested that the gains to be derived from effective intermode competition outweigh, by a considerable margin, the benefits which flow from intramode struggles. In the first place, Professor Roberts claims that intermode rivalry supplies a greater stimulus to innovation. Secondly, the cost to society of misallocation of traffic between firms of a single mode is substantially less than the cost of misallocation resulting from deficiencies in intermode competition.¹⁷ The history of the automobile transporting industry strongly supports the validity of Professor Roberts conclusions. As a matter of fact, some shippers have never sought to encourage intramode competition. General Motors in its Chevrolet Division specifically eschewed such rivalry. Other shippers, however, have assiduously sought to stimulate intramode rivalry as a means of improving service and lowering rates. However, while society might benefit most from a relaxation of controls over intermode competition, the fruits of intramode competition should not escape harvest except upon a showing that such competition is not viable.

Rail intramode competition. There is wide agreement that regulations aimed at preventing enervating rate wars

and unreasonable and discriminatory pricing are legitimate goals of public policy. The railroads unquestionably possess many of the classic industry characteristics which are conducive to unstable rate structures: most markets are oligopolistic in character; all firms have relatively high fixed costs; and average costs decline with increased output in the relevant range. Does rail intramode competition require regulatory supervision? The present writer has made no systematic study of this problem. It is, however, informative to note that despite the plethora of suggestions for revisions in regulatory statutes and policies, few if any recommendations for rail deregulation are found. While there appears to be a consensus among transportation economists that the Commission's grip over the railroads should be relaxed, there is no substantial support for eliminating the Commission altogether.

But what powers should the Commission be permitted to exercise? The Commission should be allowed to retain its minimum rate powers. However, this power should be used to prevent predatory rate wars; it should not be a device by which the Commission substitutes its judgment of what is best for a carrier for that of the carrier itself. While the Commission should have the authority to require that rates cover marginal costs, it should not attempt to prohibit all intramode competition nor should it allow carriers through rate bureaus to thwart such rivalry.¹⁸ In sum, the powers of the Commission should be oriented toward

the preservation of competition insofar as this is consistent with the goals of stability, efficiency and justice.

Intramode competition and water carriers. The question of intramode competition among water carriers can be dealt with most easily. There are at present only two inland carriers of any consequence and they operate non-competing routes.

Motor carrier intramode competition. The debate over whether or not economic regulation of the motor carrier industry is a prerequisite to an efficient and orderly functioning of that industry has persisted for three decades. In general, supporters of deregulation argue with Adams and Hendry that, "the trucking industry epitomizes the classical model of 'perfect competition'."¹⁹ Advocates of regulation contend that without regulatory supervision, chaos, inadequate service, and eventual monopoly result. It is not our present purpose to debate the relative merits of these views. We might even concede for purposes of argument, that motor common carriers of general commodities must be regulated in the public interest.²⁰ Even under these conditions it is still appropriate to inquire into the necessity for regulation of a specialized carrier.

No serious analysis of the necessity for regulating motor vehicle transporters has ever been made. Of course, the Commission and the carriers themselves, in speeches and through their attorneys, have argued the case for regulatory supervision. In each instance the defense of the

status quo leans heavily on the arguments relied upon in the defense of carriers of general commodities when what is really required is that advocates of control demonstrate that the characteristics of this particular industry are such that regulation is necessary. We shall examine the arguments most frequently urged in the defense of regulation of motor carrier intramode competition in order to ascertain the extent to which each is justified.

1. Unrestrained competition among motor carriers is destructive.

The most common defense of motor carrier regulation is that the economic characteristics of motor carriage are such that competition is unworkable. With some variations, the argument usually runs like this: As a result of low threshold costs and free entry, overcapacity develops. The ensuing struggle for available traffic is conducted under the "law of the jungle" with a consequent "survival of the fittest." The struggle itself is marked by rates which gravitate to out-of-pocket levels; but, in the end, the consumer is left to shoulder the monopoly exactions of the surviving giants.²¹

To support the validity of this analysis and prognosis, its advocates rely heavily on history and upon economic analysis. The historical part of the argument leans upon references to the disorderly state of the motor carrier industry prior to 1935.²² Not all transportation economists ascribe the shabby performance of the industry

prior to 1935 to a lack of regulation; many prefer to explain this in terms of the youth of the industry and the generally prevailing business condition.²³ We have already noted that conditions in the motor vehicle transporting industry were chaotic in the early 1930's.²⁴ However, it must be pointed out that this chaos was dissipated as a result of the assumption by manufacturers of responsibility for transportation; and, in some cases, this antedated the Motor Carrier Act. Since all manufacturers now control the transportation of their motor vehicles, the lesson of history (whatever it might be) has no important application in this instance.

The basis upon which the economic argument rests centers around the ease of entry and the consequent large number of independent owners, devoid of managerial and business ability whose behavior sires a perpetually unstable industry.²⁵ Whether or not such an argument is appropriate for the carrier of general commodities may be a moot question, but there can be no serious doubt that it is wholly inapplicable to the specialized carrier with which we are here concerned. This is so, essentially because there exists in this instance a substantial entry barrier which is rooted primarily in the pronounced predilection of shippers for dealing with large, dependable carriers with long records of satisfactory service. We have already noted Chevrolet's long established policy of assigning all motor traffic from any particular plant to wide destination

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areas to large, single, non-competing carriers. It will be recalled that Chrysler also, when it moved its plant from Evansville to St. Louis, sought a reduction in the number of motor carriers authorized to serve it on the grounds that "a limited number of motor carriers... will provide it with most economical service."²⁶ Other shippers have also indicated interest in service by fewer but larger carriers.

The fact that automobile manufacturers prefer to deal with familiar suppliers is not peculiar to the transportation of new motor vehicles. Kenneth Alexander in studying the policy of the automobile companies vis-a-vis their suppliers observed:

In fact, purchasing officials of automobile companies took pride in pointing out what was expressed by one of them as follows: "If another supplier comes in and offers a lower price there is little chance that he will be given preference over an old and loyal supplier"²⁷

Traffic officials who were interviewed supported Alexander's view. All agreed it would be very difficult for a new, small trucker to get any traffic even at cut-rate prices. There is, therefore, in this instance, a definite entry barrier so that the specter of myriad, small, fly-by-night operators preying upon guileless shippers is totally inapplicable.

We do not mean to imply that deregulation would not enlarge the area of intramode competition. The removal of restraints imposed by operating rights would mean that any

carrier could make a bid to transport motor vehicles to any part of the country from any manufacturing or assembly plant. Would this presage a struggle under the law of the jungle in which only the fit survive?

At least part of the conflict evident in answers to this question results from semantic difficulties. Both the Commission and the carriers themselves appear frequently to use the term "law of the jungle" indiscriminately to refer to desirable as well as to undesirable types of competition. Commissioner Freas declared, "We encourage competition."²⁸ But his definition of "competition" immediately preceding this declaration included monopolistically determined prices.²⁹ Almost all transportation economists have detected that when the Commission talks about protecting "competition," it really means that it is trying to protect competitors. The motor carriers themselves have consistently defined "destructive competition" in terms of the failure of all existing companies to survive. Competition, thus defined, is certainly inconsistent with the elimination of regulation. By the same token, however, the "law of the jungle" is the statute under which a vast segment of our economy presently operates; and "destructive competition" characterizes most commercial enterprises.

The economist uses terms such as "the law of the jungle" and "destructive competition" to refer to a congeries of unfair and predatory acts by which one firm seeks to deprive rivals of business. The devices (sales below

cost, legal harassment, commercial bribery, unfair and deceptive labelling, etc.) under which such competition may be effected are generally understood not to include the exploitation of cost or service advantages enjoyed by the various competitors. The competitive system does not guarantee the survival of all participants. As a matter of fact, there is, as an integral part of the system, an assurance that inefficient firms will fail. In a truly competitive system only the fit survive; but the test of fitness is economic efficiency. In the absence of substantial scale economies this does not mean that monopoly results; and with effective antitrust enforcement it does not imply that firms most willing to employ predatory tactics will eventually dominate.

How would the motor carrier segment of the industry be structured in the event economic regulation is abandoned? Potentially, as we have already mentioned, competition would be increased. Theoretically, a carrier heretofore limited to handling secondary movements between various destinations in the southwest could now solicit traffic from South Bend to Michigan points. The probability of substantial traffic shifts is, however, remote. In the first place, a carrier would have to make a relatively substantial investment in an adequate terminal and he would have to establish offices and service depots in the new territory. Secondly, the new carrier would have to counter management preference for dealing with old suppliers since, in view of

the frequently repeated desire of shippers to reduce the number of carriers serving them, it is most improbable that there would be a net increase in truckers serving particular plants.

On the other hand, there would undoubtedly be inter-carrier traffic shifts. Some of these would represent attempts to correct uneconomic allocations which resulted from awards of rights by the Commission in accordance with the policy of protecting carriers even at the expense of efficiency.³⁰ Some carriers might fail altogether as a result either of past unsatisfactory service or of inefficiency.³¹ It should be emphasized, however, that traffic would not shift to the extent that only one or two firms would remain as a result of competition. Professor Roberts has convincingly demonstrated the fact that there are no substantial economies of scale in trucking.³² Relatively small carriers could, therefore, hold their own in competition with larger firms.

The most probable structure in the majority of markets would appear to be an oligopoly tempered by the threat of entry. Would such a result become intolerable either as a result of collusion or of warfare? We have seen that almost from birth these specialized motor carriers have sought to mitigate the rigors of competition through collusion. Carriers were encouraged in these efforts by the NIRA codes and later by the Commission. It is reasonable, therefore, to expect that efforts directed at producing concerted action

would be attempted even without regulation. There appears to be no sound reason why this segment of the industry should be given immunity from antitrust laws which apply to the rest of the business community.

If, however, collusion is thwarted, will warfare result? The possibility of such conflict cannot be entirely discounted although the odds seem very much against it. In the first place, each firm has a large enough share of the market so as to be cognizant of the fact that its actions affect rivals who can be expected to retaliate.³³ It is probable that some kind of quasi-agreement which does not cover the entire range of market variables would be reached.³⁴ The variable most likely not to be covered by tacit agreement is technological change. This latter is, as Fellner has pointed out, an accepted method by which an oligopolist may seek advantage over rivals.³⁵ Moreover, it is the kind of competition which shippers would eagerly support. We do not mean to suggest that there might be no price competition (especially in the early stages when downward revisions from rail adopted discriminatory rates are to be expected) but simply that, here as elsewhere, oligopolists might be expected to move gingerly in the area of price competition.³⁶

We must conclude, therefore, that the argument centering around the destructive nature of unregulated motor carrier competition does not apply in this instance. Whatever threat there may be to satisfactory performance stems from

the fewness rather than from the excess of carriers. Without regulation, efficiency would probably increase as a result of rational traffic assignments. The rate of technological improvements would probably increase because the opportunity of carriers to profit from innovation would be enhanced.³⁷ So far as rates are concerned, the situation would be no worse than at present although in all likelihood some downward adjustments would continue to come, as in the recent past, from stiffer management bargaining and from rail competition.

2. The common carrier system which is so vital to national welfare could not survive without regulation.

The gist of this argument is that only through a common carrier system can adequate, non-discriminatory service be available to all shippers, big and small, and to every community. The carriers with which we are here concerned restrict their service almost completely to producers of motor vehicles, the vast majority of whom never have had difficulty in attracting carriers. Neither the prosperity nor the adversity of the automobile haulers can have any effect on the fortunes of those carriers upon whom small shippers must rely. Even if the concept of the "common carrier" has validity, there is no advantage to be derived from an extension of regulation to specialized automobile transporters.

3. Regulation is necessary to insure that the needs of the national defense and of the postal

service are adequately served.

George Wilson in commenting upon the validity of economic arguments in favor of deregulation argues:

The economic argument is logically impeccable but the purpose of the Interstate Commerce Act encompasses more than economic efficiency. The interests of national defense and the postal service must also be considered.³⁸

Examiner George A. Dahan, in connection with a case involving the transportation of motor vehicles, has appealed to the needs of the Postal Service and the national defense.³⁹ Admittedly, these are worthy non-economic goals. But the burden of proving that these objectives are better attained by regulation rests upon those who advocate regulation. No such proof has ever been offered.

The foregoing is not, of course, an exhaustive list of the arguments advanced in favor of continued regulation. The arguments presented have been singled out for discussion because they most often appear in motor carrier briefs and in the decisions of the Commission which involve transporters of motor vehicles.

D. PUBLIC WELFARE AND REGULATION

Does the public welfare require protection by the Commission? It is conceivable that carriers themselves might thrive in the absence of regulation but that the results might be intolerable for shippers or for the public at large. Some assessment of the gains of regulation from this viewpoint ought, therefore, to be made.

The best judges of whether or not shippers benefit from regulation are the shippers themselves.⁴⁰ Certainly no one is in a better position to judge what advantages are generated for automobile manufacturers by the economic regulation of motor carriers than these manufacturers themselves. If we accept the judgment of shippers, we must inevitably conclude that automobile manufacturers would be better off without regulation. Traffic officials at the Ford Motor Company were most emphatic in asserting their desire to see an end to economic regulation of their motor carriers transporting vehicles.⁴¹ Mr. Paul Fritzching of Chrysler and Mr. Rudy T. Fick and Mr. Earl Wiseman of Studebaker agreed that protection of their interests did not require motor carrier regulation.⁴² Mr. Richard Mollica of the Chevrolet Division of General Motors was noncommittal, but he couldn't think of any advantages his company had derived from regulation.⁴³

The attitude of shippers is not very difficult to understand. After all, what advantage do the automobile manufacturers derive from regulation? The Commission first accepted, then actively promoted a discriminatory rail rate structure which it permitted motor carriers to adopt without regard for their own cost characteristics. One of the most appealing arguments in favor of regulation is that the Commission will intervene so that firms will not be permitted to gather the fruits of monopoly. But in this instance, the Commission made no systematic, continuing

effort to determine motor carrier rates of return. As a matter of fact, in its one major study of the industry, it reported rates of return as high as 77.4 per cent on depreciated investment without batting an eye.⁴⁴ About the only rate concession shippers were able to win from the Commission was in the Chrysler case; and an examination of subsequent rail shipments from manufacturing plants attests to the fact that this was a hollow victory.

If the Commission has showered pitifully few favors upon shippers of automobiles, it has unquestionably taken from them an exasperating toll in time and money. A substantial amount of time is spent in each traffic department in preparing exhibits, in conferring with attorneys, and in testifying before the Commission. All shippers have had to sacrifice as a result of the limitations imposed by operating rights.⁴⁵ Moreover, they have been forced to deal with carriers with whom they prefer not to do business because of higher rates, poorer service or both. In some instances, shippers have had to alter company policy to conform to ICC rulings.⁴⁶ In addition, some firms which have expressed preference for contract carriage have been forced to rely on common carriers. In view of all of this, it comes as no surprise that shippers subscribe to deregulation.

It can, of course, be argued that the interests of shippers do not always coincide with those of the public. A shipper might be content, for example, if he has to pay

no more for transportation than is required of his rivals. The public, however, has an interest in rates as low as economically feasible. This is no doubt true. But the Commission has afforded the public no protection; it has been wholly derelict in its efforts to assure that rates charged by automobile transporters did not exceed a reasonable maximum. It has on occasion compelled carriers to raise rates but, except in the Chrysler case, no major downward revision was ever ordered. There is not a single instance in the Motor Carrier Reports of a motor vehicle transporter who was compelled to reduce his rates because they were considered unreasonable.

How well would the consumer's interest be safeguarded in the absence of motor carrier regulation? In view of the structure of the market as a bilateral oligopoly, and considering the past attitude of the Commission, the best protection for the consumer's interest is a willingness on the part of shippers to engage in arm's length bargaining with their carriers. It cannot be gainsaid that the benefits which recently have accrued to consumers in the form of lower rates had their roots, not in any ICC action but, rather, in the increased cost consciousness of the automobile producers. This was reflected in pressure upon railroads to improve service and in efforts to lower motor carrier rates. So long as traffic departments remain cost conscious, the prospects for reasonable rates are good. This market is one in which

Professor Galbraith's countervailing power is operative. We must, of course, be alert to the possibility raised by George Stigler that the oligopolists will maximize joint welfare at the consumer's expense.⁴⁷ But, if this indeed should happen, the consumer is not likely to find a friend at the Commission. The best guarantee that such a conspiracy does not materialize is to insure that competition among shippers is vigorous so that inefficient and costly distribution patterns are not tolerable.

Even if motor carriers are not subjected to economic regulation, the Commission will still have authority over the railroads. Since, as we have already pointed out, the most valuable competition is that which occurs between modes, maximization of consumer interest requires that the Commission remove roadblocks in the way of effective rail competition. In its obsession with preventing price wars, the ICC has neutralized the cost advantages of railroads but it has done little to offset the service advantages of motor carriers. The result has been an inefficient allocation of transportation resources. The public welfare demands that the Commission stop providing sanctuary for high cost modes and that it limit itself to condemning rates which are not compensatory, i.e., which are less than long-run marginal cost.

E. CONCLUSION

We may, therefore, conclude that there is no sound

reason for economic regulation of motor carriers. Regulatory supervision is not dictated by intermode competition, it is not essential to effective intramode rivalry, and neither the needs of shippers nor the public interest are served by such regulation. While rail intramode competition probably demands supervision, this should not give the ICC license to interfere with legitimate intermode competition.

CHAPTER VIII

CONCLUSION

The depression of the 1930's brought Americans face to face with a problem of staggering proportions. Nearly everyone sought to discern the cause of the economic pestilence which had settled on the land. Some perceived the difficulty to be rooted in imbalances in aggregate consumption, aggregate saving and aggregate investment. Those who so interpreted the problem urged a congeries of measures subsequently to be included within the context of monetary and fiscal policies. But there were others who identified the culprit as the conflict between modern specialized production techniques and the institutional framework within which business firms had to operate. Advocates of this view attributed economic paralysis to the competitive orientation of the business community. They offered cooperation as a substitute for competition; and they sought to encourage this substitution through the implementation of the industry codes which were an integral part of the philosophy of the National Industrial Recovery Act of 1933.

In most sectors of the economy, cooperative experiments were abandoned rather quickly. They did, however,

enjoy an extraordinary longevity in the transportation industry. It was not particularly difficult for the railroads to conclude that it was in their interest to limit competition. For one thing, the railroads themselves possessed many characteristics conducive to the existence of destructive rate wars so that they were conditioned to think of competition as "suspect." For another, there was no denying that the advent of truck competition had raised havoc with rail institutions. The railroad executives had come to regard monopoly as a normal state of affairs; it was little wonder, therefore, that they considered competition disruptive.

The motor carriers, although they were skeptical about being subjected to Commission supervision, were nonetheless anxious to mitigate the rigors of intramode competition. Again, this can be understood. The industry was in its infancy and had to endure a normal quota of growing pains. In addition, the ravages of the most severe depression in American history left a full complement of economic miseries. In other words, the motor carriers had genuine problems which they were interested in solving.

The decade of the 1930's was one of national experimentation. As a part of its economic experiment, the Congress subjected a vast segment of the interstate motor carriers to regulation by the Interstate Commerce Commission. It was generally assumed that a public overseer would safeguard and promote the health of the carriers while protecting

the interests of shippers and the public alike. By and large, for the industry studied, this assumption has not been warranted.

The Interstate Commerce Commission has been an indulgent parent. It has been afflicted with an almost psychotic fear of competition and, as a result, it has consistently sought to insulate as many carriers as it could from what it considered the noxious effects of genuine rivalry. In the pursuit of its objectives it has discriminated against potential carriers in favor of existing carriers, and it has given an advantage to carriers whose operations were extensive on the grandfather date. Moreover, the Commission has exhibited a marked inclination to give carrier welfare greater weight than shipper welfare. As a result, shippers have been denied reasonable requests for increased or improved service. The Commission is primarily responsible for the perpetuation, and, in some instances, for the initiation of countless petty monopolies.

The Commission must also shoulder a share of the responsibility for the missallocation of traffic that has been noted. Because it distrusts price competition, it has not been willing to allow allocation to be determined by cost-oriented pricing. For some time, it shared with railroads and with other carriers the delusion that a pricing system anchored in value-of-service principles was an adequate and appropriate substitute for cost-based pricing. The railroads have finally seen the light of day, but it

remains to be determined whether or not the Commission has at last understood the economic facts of life.

One other criticism is certainly justified by the evidence presented in previous discussions. The Commission has been guilty of an appalling lack of consistency. The Commission often attempts to justify contrary decisions by pointing to differences in circumstances surrounding individual cases, but the record too often fails to support such justification.

It would be clearly an error to imagine that all of the ills which beset the industry are to be ascribed to Commission policies. The railroads, until quite recently, doggedly persevered in attempting to make an upside-down world of economics work. Railroad management was neither progressive nor imaginative. For too long, the railroads were content to tell shippers that if the game was not to be played by the railroads' rules, then the rails would pick up their marbles and go home. In the very first cases involving rail-motor rate competition, the railroads might well have emphasized that low cost was an inherent advantage they intended to exploit. Instead, they concluded that regulation had solved their problems and that everyone could share the fruits of monopoly. When they were finally convinced of the error of this view, they had to contend with the task of reversing the precedents which had accumulated over a twenty year period.

The motor carriers have consistently advocated value-

of-service pricing, and they, at least, have a logical self-interest reason for doing so. Their satisfaction with the status quo is a reflection of the fact that they are the prime beneficiaries of Commission policies. They secured a larger share of traffic than they would have in competitive markets, and, at the same time, they were accorded far more security than free markets would have given them. The Commission was reluctant to allow price competition, but it was amenable to the more "gentlemanly" quality competition. This meant that the motor carrier could exploit his service advantage to the fullest while the railroads were permitted to make only limited use of their cost advantages.

A good share of the public interest might have been salvaged if the shippers had engaged in vigorous, arms-length bargaining. But most of them seemed content to pay generously for transportation, confident that it was the consumer who ultimately footed the bill anyway. Recent discoveries about the elasticity of the demand curve for new automobiles have served, however, to sharpen shipper interest in reduced costs of distribution. The pressure from shippers (along with the changed attitudes of rail carriers) has brought to a head the argument over the role of costs in the determination of intermode controversies.

In sum, regulation has produced (or at least tolerated) a missallocation of transportation resources devoted to the transportation of new motor vehicles; it has saddled shippers with time-consuming litigation while denying them the kind

of transportation service they desire; it has spawned an unconscionable and unnecessary fragmentation of motor carrier rights; and it has fallen short of serving consumer interests by permitting a system which exacted tolls that were higher than necessary. We have had government interference in private business affairs, but we have had few of the beneficial by-products of government planning. If the community is to be subjected to regulation, it ought at least to gather whatever fruit regulation can produce. If the government promotes monopoly, it ought to do so in accordance with some carefully worked out plan aimed at an efficient use of resources rather than in the haphazard manner which results from the adjudication of private controversies. Moreover, if the government sponsors monopoly, it creates for itself an obligation to regulate that monopoly. The Commission should do more than collect operating statistics and balance sheets from the firms it regulates. It should (as was done with public utilities) insist that the rate of return be reasonable. It should scrutinize expenses and salaries to guarantee their appropriateness. The Commission should not, as it did in the New Automobiles case, satisfy itself by pointing out that substantial rates of return were even higher because of exorbitant salaries and expenses. It should not be necessary for an individual shipper to rework and evaluate the financial records of his carriers. This is a task for the regulator.

It might be argued that a Commission adequate to such

a task would assume gigantic proportions. This is undoubtedly true. But it suggests that regulation ought to be limited to markets whose economic characteristics are such as to make supervision imperative. The Commission should certainly not have to regulate industries which can operate efficiently in free markets. Except for the reservations expressed in Chapter vii, the segment of the transportation industry which we have examined does not require regulatory supervision.

The motor carrier segment of the industry protests with considerable vehemence that the industry requires regulation. This position is not difficult to understand. In a free market, the motor carriers would probably lose some traffic to the railroads and they would have to compete with other motor carriers. Because they have operated within a monopolistic framework since the inception of the industry, the transition to a free market would be a shock of substantial proportions. Motor carriers are not different from the vast majority of businessmen; they are firm believers in competition in general and in those markets in which they must purchase inputs, but they sincerely believe that competition in their own industry would be catastrophic. They seek competitive bids from their suppliers and rightfully cherish the opportunity to choose from among many potential suppliers. But they are unwilling to have shippers exercise the same rights.

It would probably be both impractical and unwise to

undertake complete and immediate deregulation. Nevertheless, there are certain steps that can and should be taken by the Commission which would correct some outstanding present deficiencies. For one thing, the Commission can permit genuine intermode competition by allowing the rail carriers to take advantage of their low cost. Value-of-service pricing (at least in the traditional sense) should be promptly interred. This, of course, does not mean that rail carriers should be permitted to engage in predatory competition; it does suggest, however, that so long as rates cover long run marginal cost they should not be set aside. Whether a rate is profit maximizing or not is a decision best left to carrier management.

The Commission might also begin to relax its unnecessarily rigid and legalistic interpretation of motor carrier rights. Distinctions between initial and secondary rights, for example, decrease competition, and, strictly interpreted, may (as the initial rights carriers have discovered) produce unwarranted traffic losses or undeserved windfalls. The Commission ought, moreover, in considering applications for operating rights, give greater weight to shipper views with respect to the kind of service required. If a shipper desires contract carrier service, he should not have to settle for common carrier service; if a shipper wants single-line service, or if he seeks duplicating authority, it should be available to him.

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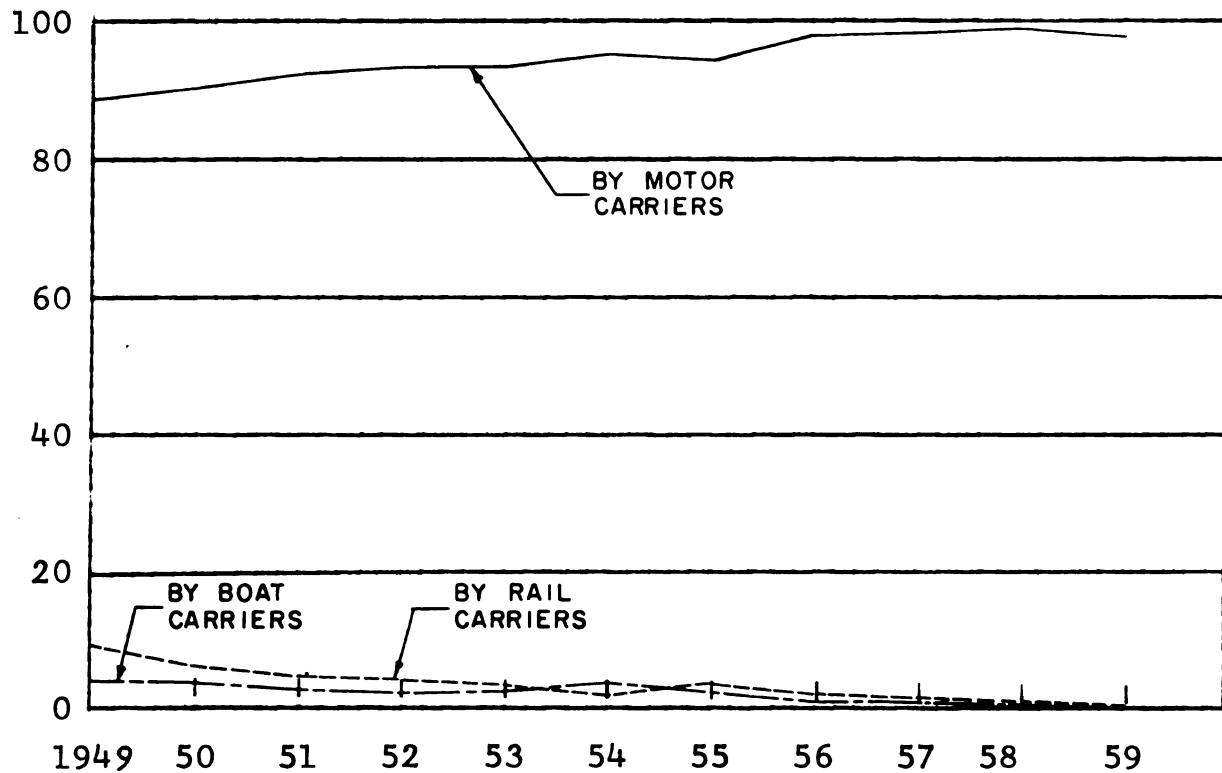
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interests of carriers and of shippers requires the deregulation of motor carriers of new motor vehicles and the relaxation of government controls over rail carriers. Although this is not an industry which possess all the characteristics of pure competition, competitive forces are pervasive enough to permit a performance which is more satisfactory than has been the case under regulation.

APPENDIX A

DISTRIBUTION OF TRAFFIC FOR NEW AUTOMOBILES
FORD MOTOR COMPANY¹

Per cent

¹Excludes International Division.

Source: Page 2 of unnumbered exhibit submitted by the Ford Motor Company in: I & S 33392 et al., Motor Vehicles-- Cleveland, Detroit, Lorain to New England and Trunk Line.

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Plan II

Plan III

APPENDIX B

TOFC PLANS

Plan I. Plan I service (sometimes referred to as substituted service) is a motor carrier operation in which the motor carrier originates and terminates the traffic which moves under tariffs published by the motor carrier and on a bill of lading issued by the motor carrier. These tariffs usually specify that the motor carrier may, at his discretion, substitute rail for motor service for some part of the line-haul unless specifically requested by the shipper not to do so. The railroad is compensated for its portion of the haul by the motor carrier who absorbs the cost out of his charges to the shipper. Under Plan I, the status of the railroad is that of a connecting carrier.

Plan II Under Plan II, the railroad provides all of the service. It furnishes the flatcar and the trailer; it performs pickup and delivery; and it solicits the traffic.

Plan III In a Plan III operation, the shipper supplies the trailer and is responsible for transportation to the loading ramp. The railroad loads the trailers, performs line haul service and unloads them at

destination. The shipper is responsible for arranging transportation to ultimate destination. The railroad charge for Plan III service is usually stated in amounts per flatcar and applies whether trailers are loaded or empty.

Plan IV Plan IV service contemplates the provision of flatcars and trailers and the performance of all delivery and unloading functions by the shipper. The railroad furnishes only the motive power and the rails.

Plan V Plan V provides for joint through routes. A motor carrier originates the traffic and he delivers it with the intermediate rail carrier performing some part of the line haul.

APPENDIX C

RAIL MULTILEVEL AND TRUCK PER VEHICLE RATES FROM
SOUTH BEND, INDIANA TO SELECTED RAILHEADS--1962¹

Destination	Rail Rates		Truck Rates		
	Bi-level	Tri-level	5 car	6 car	7 car
Albany, N. Y.	51.70	42.27	91.45	76.60	70.60
Atlanta, Ga.	56.20	43.60	80.05	68.90	
Baltimore, Md.	53.40	41.40	77.00	65.00	57.20
Belen, N. M.	98.20	77.33	174.30	169.80	
Birmingham, Ala.	51.90	40.27	76.10	65.50	
Boston, Mass.	65.10	53.27	106.20	93.60	90.20
Buffalo, N. Y.	33.30	26.30	60.20	50.90	43.50
Council Bluffs, Ia.	45.00	35.67	73.40	61.70	
Denver, Colo.	78.60	61.93	136.00	132.50	
Des Moines, Ia.	33.80	26.60	57.20	48.40	
Ernest (Phila.), Pa.	56.90	42.53	85.40	71.70	63.90
E. St. Louis, Ill.	26.10	20.67	48.40	41.70	
Houston, Tex.	77.80	61.27	123.00	102.50	
Irving (Dallas), Tex.	71.10	56.00	109.60	91.40	
Jacksonville, Fla.	74.50	58.67	114.30	111.30	
Kansas City, Mo.	41.40	32.80	68.05	51.30	
Las Vegas, Nev.	170.30	133.60	244.80	238.40	
Laurel, Mont.	95.60	75.27	171.40	167.00	
Long Beach, Cal.	170.30	133.60	263.30	256.50	
Memphis, Tenn.	43.80	34.00	75.80	72.35	
Miami, Fla.	100.20	78.90	140.10	136.40	
Minneapolis, Minn.	38.80	30.73	68.00	57.50	
New Orleans, La.	67.40	53.07	116.15	100.05	
Port of Newark, N. J.	59.60	48.27	72.20	60.90	69.50
Omaha, Nebr.	45.00	35.67	74.00	61.70	
Phoenix, Ariz.	135.20	106.40	230.80	224.90	
Pittsburgh, Pa.	30.50	24.13	50.60	42.50	36.70
Portland, Ore.	158.80	118.40	274.10	267.00	
St. Louis, Mo.	28.50	22.80	49.40	41.70	
St. Paul, Minn.	38.80	30.73	66.80	55.90	
Salt Lake City, U.	116.20	89.53	190.50	185.60	
Sanford, Fla.	82.50	65.08	124.40	121.20	
Seattle, Wash.	158.80	125.07	270.60	263.60	
Spokane, Wash.	135.90	107.00	239.80	233.60	
Tampa, Fla.	85.00	66.93	126.40	123.20	

APPENDIX C--Continued

Destination	Rail Rates			Truck Rates	
	Bi-level	Tri-level	5 car	6 car	7 car
Tulsa, Okla.	53.10	41.80	100.10	97.50	
Winston Salem, N. C.	62.30	48.07	77.80	74.30	
Orlando, Fla.	84.10	66.20	126.20	122.90	

¹The rail rates do not include costs of loading and unloading. Five unloading cost estimates were provided. In four cases, the cost was \$1.50 and in the other, \$2.50. Mr. Earl Wiseman, of the Studebaker-Packard Company, estimates loading costs to be \$4.00 per vehicle.

Source: Material for this appendix was supplied by Mr. Paul Skipworth of the George F. Burnett Company.

FOOTNOTES

CHAPTER I

¹There are many who will object that competition has always been vigorous in transportation. It should be noted, however, that we are here faced with a semantic difficulty. The term "competition," as it has been used in transportation, has a special meaning. As former Commissioner Anthony F. Arpaia put it, "But competition as it has been construed in the transportation world is quite a different thing. As between carriers controlled by law it means in fact, not the best at the lowest price but trying to preserve the existence of all entries in the field to the detriment of the most efficient." Anthony F. Arpaia, Address to the New Haven Traffic Association, September 11, 1961, cited in Traffic World, September 16, 1961, p. 51. When economists and the railroads talk of increasing the role of competition, they are speaking of that kind of competition which gives effect to cost and service advantages which are reflected in the rates charged for services.

²Ibid., p. 52.

³U. S. President, 1961--(Kennedy), The Transportation System of Our Nation; Message from the President of the United States Relative to the Transportation System of Our Nation, April 5, 1962, 87th Cong., 2d Sess., 1962, House Doc. No. 384, p. 2.

CHAPTER II

¹J. A. Whitcomb v Chicago & Northwestern Railway Company et al., 16 ICC 27, (1909).

²H. L. Keats Auto Company v Oregon-Washington Railroad and Navigation Company et al., 28 ICC 412, (1913).

³C. R. Gleason Company et al., v Ann Arbor Railroad Company et al., 140 ICC 461, (1928).

⁴New Automobiles in Interstate Commerce, 259 ICC 475, (1945).

⁵C. R. Gleason Company et al. v Ann Arbor Railroad Company et al., 140 ICC 461, 462, (1928).

⁶For descriptions of early rail equipment and for a discussion of the alterations made by shippers see; Pope Manufacturing Company v Baltimore & Ohio Railroad et al., 17 ICC 400, 402, (1910); H. L. Keats Auto Company v Oregon-Washington Railroad and Navigation Company et al. 28 ICC 412, 413, (1913); Auburn Automobile Company v Pennsylvania Railroad Company et al., 151 ICC 120, 121, (1929); B & M Motor Company et al., v Abilene & Southern Railway Company et al., 201 ICC 35, (1934).

⁷Hammond Motor Company et al., v Alabama Great Southern Railroad Company et al., 151 ICC 288, (1929).

⁸W. A. Patterson Company v Pere Marquette Railway Company et al., 87 ICC 357, (1924). In this instance an automobile was shipped from Flint, Michigan on March 30, 1920, and arrived in Portland, Oregon sometime prior to May 18, 1920. A request for re-shipment to Los Angeles was made by the shipper on June 7, 1920, and the car arrived in Los Angeles about October 1, 1920. The request for reparation on the grounds that the sale was lost as a result of the delay was denied by the Commission. pp. 357, 358.

⁹F. B. Alexander v Southern Pacific Company et al., 24 ICC 306, (1912).

¹⁰Martin-Nash Motor Company v Chicago, Milwaukee & St. Paul Railway Company et al., 152 ICC 179, (1929). See also: Covey Ballard Motor Company v Chicago, Milwaukee & St. Paul Railway Company et al., 177 ICC 309, (1931).

¹¹Dallas Freight Bureau v Missouri Kansas & Texas Railway Company et al., 12 ICC 427 (1907); Alkire-Smith Auto Company et al., v Atchison, Topeka and the Santa Fe Railway Company et al., 52 ICC 507, (1919).

¹²See for example: Van Dyke Motor Company v Missouri Pacific Railroad et al., 122 ICC 411, (1927).

¹³Shippers' Union of Phoenix v The Atchison, Topeka & Santa Fe Railway Company et al., 9 ICC 250, (1902).

¹⁴The failure of water carriers to participate in automobile traffic was due principally to three factors: (1) The automobile plants were inland and at points well served by rail. (2) Because of damage hazards, shippers were anxious to minimize the handling of automobiles. (3) There was a widespread belief that automobiles were not adapted to long sea voyages without incurring damage

to the mechanism. Transcontinental Westbound Automobile Rates, 209 ICC 549, 552, (1935).

¹⁵The low rate charged by the water carrier was the most important factor in explaining the diversion of traffic. Water carriers offered a through rate to the west coast made up of the lowest rail rate charged from the manufacturing plant to the nearest eastern port plus the water rate to the west coast terminal. On shipments through ports to which the rail rate was higher, the water carrier equalized the cost to the shipper by lowering the water rate. Ibid., pp. 551, 552, 553.

¹⁶The rail service advantage resulted from faster transit times and a reduced damage hazard. From Michigan and Indiana manufacturing plants the rails could effect delivery to California in ten days compared with twenty-eight and one-half days for water carriers. Ibid., p. 557.

¹⁷The \$.30 differential was made up of \$.20 which, it was estimated, represented the value of superior all-rail service, and \$.10 which was the added cost incurred in the transfers of lading necessary in water movements. Ibid., p. 558.

¹⁸The proposed schedules would have reduced rates from group C points (which included almost all the major automobile manufacturing areas) from \$4.65 to \$2.25 per hundred pounds. Ibid., p. 559.

¹⁹Ibid., p. 555.

²⁰Ibid., p. 560.

²¹Ibid., p. 557.

²²Birmingham Traffic Bureau v Director General, Alabama Great Southern Railway Company, et al., 115 ICC 33, 37, (1927).

²³Ibid.

²⁴New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. Hugh O'Neil at pp. 4055, 4056 of the Transcript of Oral Hearings.

²⁵At this early date, driveaway consisted simply of driving a single vehicle over the road under its own power. Later, tow-bars were used to permit simultaneous transportation of two vehicles, and the saddle-mounting technique, which allowed the carriage of two or more commercial vehicles at the same time, was initiated. Technically, driveaway refers to the transportation of a vehicle under power supplied by the shipper. In truckaway

operations, the carrier provides motive power.

²⁶Statement by Mr. George F. Burnett, personal interview, July 18, 1961.

²⁷Automobile Manufacturers Association, Motor Truck Facts, (Detroit: Automobile Manufacturers Association, 1960), p. 52.

²⁸Coordination of Motor Transportation, 182 ICC 263, 296, (1932).

²⁹Customers were usually unaware that automobiles had been driven to the dealer's showroom because speedometers were generally disconnected, and dealers chose not to apprise them of the method of transport. New Automobiles in Interstate Commerce, 259 ICC 475, 481, (1945).

³⁰Ibid.

³¹Ibid., testimony of Mr. George F. Burnett, p. 448, of the Transcript of Oral Hearings.

³²Ibid., testimony of Mr. Hugh O'Neil, pp. 4057, 4058 of the Transcript of Oral Hearings.

³³Two types of rigs were developed. The Illinois Special permitted two automobiles to be carried on a truck and two more in an attached trailer. In the other type (the clipper or tank type) a tractor pulled a trailer into which up to four vehicles were loaded. See Ibid., testimony of Mr. H. L. Zenzius, at page 307 of the Transcript of Oral Hearings.

³⁴Ibid., p. 505.

³⁵Cars to be shipped by rail were loaded right at the plant so that when difficulties arose, finished automobiles piled up in the manufacturer's yard. The motor carriers provided terminals with adequate storage space, and they ran shuttle trucks which carried automobiles from the end of the production lines to their own lots to be loaded when shipments were requested.

³⁶In the early 1930's, this difference amounted to approximately one to two dollars per vehicle. New Automobiles in Interstate Commerce, 259 ICC 483, (1945).

³⁷Ibid.

³⁸Ibid., p. 485.

³⁹Ibid., p. 484.

⁴⁰Ibid., testimony of Mr. Eugene Casaroll at pp. 314, 315 of the Transcript of Oral Hearings.

⁴¹Ibid.

⁴²Ibid., testimony of Mr. O. R. Bromley at p. 1772 of the Transcript of Oral Hearings.

⁴³Mr. Hugh O'Neil described the situation at a Chevrolet assembly plant in the following words:
 "In 1933 the Chevrolet assembly plant at Tarrytown, New York, was served by an excess of fifty different carriers, many being individuals operating one or two trucks, and they own approximately 167 different pieces of equipment, operating out of as many yards or back yards or gasoline stations and telephones usually answered by some gas station attendant or housewife who could give no information by which Chevrolet could check its distribution." Ibid., testimony of Mr. Hugh O'Neil at page 4052 of the Transcript of Oral Hearings.

⁴⁴Ibid., p. 4055.

⁴⁵Chrysler Corporation et al., v Akron, Canton & Youngstown Railroad Company et al., 279 ICC 377, 382, (1950).

⁴⁶New Automobiles in Interstate Commerce, 259 ICC 475, 489, (1945).

⁴⁷Statement by Mr. Charles Pieroni, personal interview, January 3, 1962.

⁴⁸New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at p. 1755 of the Transcript of Oral Hearings.

⁴⁹New Automobiles in Interstate Commerce, 2 USMC 359, 360, (1940).

⁵⁰Ibid., pp. 361, 362.

⁵¹New Automobiles in Interstate Commerce, 259 ICC 475, 488, (1945).

⁵²Ibid., testimony of Mr. O. R. Bromley at pp. 1773, 1774, of the Transcript of Oral Hearings.

⁵³Ibid.

⁵⁴Consolidated Southwestern Cases, 173 ICC 263, 306, (1931).

⁵⁵Coordination of Motor Transportation, 182 ICC 331, 332, (1932). Some evidence of the skepticism of railroad executives with respect to the efficacy of rate cutting is seen in the fact that only 15 per cent of the members of the American Short Line Railroad Association who responded to a Commission questionnaire believed that rate reductions would help regain traffic. Ibid., p. 332.

⁵⁶"The Auto-loader consists of two frames or racks suspended from the freight car structure by steel arms upon which the automobile or truck is driven and raised by means of a hoist and cable to an angle position in each end of the freight car. Chains and turnbuckles are provided on these frames to tie down the vehicle." Motor Vehicles-Detroit to Texas and Oklahoma, and from and to Kansas City; No. 33263, (1960), Statement of Mr. A. W. Richardson, Exhibit No. 23, p. 8.

⁵⁷New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at p. 1782 of the Transcript of Oral Hearings.

⁵⁸Motor Vehicles-Detroit to Texas and Oklahoma, and from and to Kansas City; No 33263, (1960), Statement of Mr. A. W. Richardson, Exhibit No. 23, pp. 8, 9.

⁵⁹New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at p. 1782 of the Transcript of Oral Hearings.

⁶⁰The Interstate Commerce Commission which, after all, had learned its economics in the same school in which railroad leaders had been trained, aided and abetted the railroads in their campaign to regulate the motor carriers. It is interesting to note that shippers did not advocate regulation, and at the outset at least, neither did motor carriers. The ICC confessed that: "So far as this record shows, the demand for Federal regulation of the transportation of property by motor truck comes mainly from the railroads. There is little present demand by shippers for such regulation." Coordination of Motor Transportation, 182 ICC 331, 332, (1932).

⁶¹See for example: Automobiles From Cincinnati, Ohio, 219 ICC 381, (1936); Automobiles to Oklahoma City-Ada-Atoka Railway Points, 219 ICC 314, (1936); Automobiles From Buffalo, N. Y., 223 ICC 471, (1937); Automobiles From Dallas, Texas, 226 ICC 705, (1938); Automobiles to Boone and Des Moines, Iowa, 235 ICC 24, (1939); Automobiles to Iowa, Minnesota and South Dakota, 235 ICC 21 (1939); Automobiles in the Southwest, 278 ICC 437, 438, (1955); Automobiles and Parts to Southern Territory, 215 ICC 488, (1936).

⁶²The Commission approved such rates in: Automobiles and Chassis to Chicago, Ill., 227 ICC 223, (1938).

⁶³Mr. O. R. Bromley explained the rail rate-making technique as follows: "The formula was this: from Detroit to New York the existing first-class rate was \$1.35, the truck rate ... based on 3000 pounds was \$41.93 per machine, the boat-truck rate was \$36.69 per machine. Taking the all-truck rate of \$41.93 and deducting \$2.45 disability resulting in \$39.48, and dividing this by 3000 pounds, gives you a rate of \$1.32 per hundred pounds. Taking the boat-truck rate of \$36.69, deducting a disability of \$2.45, gives you \$32.24, which divided by 3000 pounds equals \$1.14 per hundred pounds. Those two rates thus secured total \$2.46, divide this by two, and you get an average which results in \$1.23 which is the rate published by the rail lines Detroit to New York." New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at pp. 1801 of the Transcript of Oral Hearings.

⁶⁴Fifteen Percent Case, 1937, 1938, 226 ICC 41, (1938).

⁶⁵Ibid. In this case the Commission repeated the view previously expressed in General Increases 1937, 223 ICC 657, (1937). The ICC declared: "The fact is well known to us, and it is to some extent developed in this record, that conditions similar to those which have adversely affected the railroads have operated to like or possibly greater, financial disadvantage of the motor, and water carriers. It is not unlikely that they would be glad to join with the railroads in an increase in the level of the competitive rates which would leave the relative position of all unchanged and at the same time improve the financial condition of all." p. 72. The American Trucking Associations intervened and pleaded that "if the proposed rail rates are authorized and published, the motor carriers will thereby be enabled to increase their rates on like traffic without disturbing the relative competitive position." p. 73.

⁶⁶New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at p. 1799 of the Transcript of Oral Hearings.

⁶⁷NATA, Protest and Request For Suspension and Investigation of Certain Tariffs and For an Order Instituting a General Investigation Into the Subject of Rates on New Automobiles, December 21, 1938.

⁶⁸The NATA made this clear when in its petition it declared: "While it is true that reductions have been made by rail carriers since 1938 in many sections of the country, it is fair to say that the starting point for most of them--

certainly for the most important ones--has been the alleged necessity in meeting the rates maintained by contract carriers employed exclusively by the Chevrolet Motor Division of the General Motors Company." NATA, Petition on Behalf of NATA for Subpoena Duces Tecum, October 21, 1941, p.5.

⁶⁹The Association explained its position as follows: "We believe that we have shown that the rates and charges which now are and in the past have been maintained by the contract carriers are in contravention of the National Transportation policy of the act in that they have been primarily responsible for putting in motion a chain of destructive competition within the meaning of that declaration of policy. We avert that these rates are 'destructive'. . . ." NATA, Brief in Behalf of the National Transporters Association, Inc., November 16, 1942, p. 71.

⁷⁰Ibid.

⁷¹New Automobiles in Interstate Commerce, 259 ICC 475, 507, (1945). See also Exhibit 331 and pp. 3963, 3964 of the Transcript of Oral Hearings of that proceeding. The profit figures for common carriers are probably understated for, as pointed out by the Bureau of Transport Economics and Statistics, "part of what otherwise would be net operating income is included in salaries of general officers, account 4611." Exhibit 331.

⁷²Ibid., Transcript of Oral Hearings, pp. 3963, 3964.

⁷³Ibid., Transcript of Oral Hearings, p. 1852.
(Emphasis mine.)

⁷⁴NATA, Protest and Request For Suspension and Investigation of Certain Tariffs and For an Order Instituting a General Investigation Into the Subject of Rates on New Automobiles, December 21, 1938, p. 12.

⁷⁵Ibid., p. 4.

⁷⁶Ibid., p. 12.

⁷⁷NATA, Brief in Behalf of the National Automobile Transporters Association, Inc., November 16, 1942, p. 23.

⁷⁸Ibid.

⁷⁹NATA, Protest and Request For Suspension and Investigation of Certain Tariffs and For an Order Instituting a General Investigation Into the Subject of Rates on New Automobiles. December 21, 1938, p. 4.

⁸⁰Under the first proposal, rates would be tied to

first class which the Association considered reasonable per se. Because of the exigencies of competition and the possibility of private carriage, it was proposed that rates should begin at 50 per cent of first class for all distances up to one hundred miles and that they should graduate into full first class at six hundred miles and remain there. The second alternative specified an acceptable scale of rates while the third provided for stabilization at the going rate level with each agency enjoined against further competitive rate cuts. Brief in Behalf of the National Automobile Transporters Association, Inc., November 16, 1942, pp. 137, 138, 139, 140.

⁸¹NATA, Protest and Request for Suspension and Investigation of Certain Tariffs and For an Order Instituting a General Investigation Into the Subject of Rates on New Automobiles, December 21, 1938, p. 15.

⁸²New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. O. R. Bromley at p. 1803 of the Transcript of Oral Hearings.

⁸³Answer in Behalf of Southern Carriers to the Petition of the National Transporters Association For Expedited Action and For Other Reliefs, September 13, 1941, p. 15.

⁸⁴This is evident from studies prepared by the Commission's Bureau of Transport of Economics and Statistics. For the one hundred and seventy-five movements which the Bureau examined, rates exceeded out-of-pocket costs by 91 per cent on an average, and they exceeded fully distributed costs by 16 per cent. Only fourteen rates were below out-of-pocket costs. Some of these were over intrastate routes, some were paper rates over circuitous routes, and in the other cases, the difference was so small as to be insignificant. Obviously then, the rails still had considerable ability to reduce rates.

⁸⁵New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. Hugh O'Neil at p. 4092 of the Transcript of Oral Hearings.

⁸⁶"I wish to state", said Mr. O'Neil, "that we agree with the railroads that the rates on automobiles should not be frozen. This is the worst thing that could happen to the carriers of automobiles, because it must not be forgotten that we are here dealing with a commodity that does move and can move in great quantities on its own wheels and with its own power." Ibid., p. 4066. In an earlier portion of the testimony, after stating that rates must reflect the economies of contract carriage, Mr. O'Neil declared, "Now unless this type of carriage conducts its

affairs in this manner, the result will be that industry will undertake to transport its own automobiles in its own trucks." Ibid., p. 4064

⁸⁷In support of this view the NATA cited the following passage from the testimony of Commissioner Joseph Eastman before a committee of the House of Representatives: "So far as the regulation of these private and contract carriers is concerned, it seems to me that the important principle which should govern and which justifies any such regulations is the need for protecting the common carrier or what it takes to serve all the public. The common carrier is the one, it seems to me, that the government ought, particularly to foster and protect. Now the contract carrier or private carrier can operate in such a way as to be detrimental, unfairly or improperly, to the interests of the common carrier. To the extent that such conditions exist, the government is justified in interfering for the sake of protecting the common carrier; and it is on that principle that the regulation of the contract carrier in this bill very largely rests." NATA, Brief in Behalf of the National Automobile Transporters Association, Inc., November 16, 1942, p. 70.

⁸⁸New Automobiles in Interstate Commerce, 259 ICC 475, 531, (1945).

⁸⁹Ibid.

⁹⁰Ibid., p. 556.

⁹¹Ibid., testimony of Mr. J. J. Crimmins at p. 2706 of the Transcript of Oral Hearings.

⁹²We shall consider relevant portions of these studies in subsequent chapters.

⁹³Frederick G. Freund, "Statement Before the Senate Committee on Commerce on Bill 1197," May 11, 1961. (Mimeographed.)

⁹⁴Report and Order Recommended by Examiners H. C. Laughton and William A. Disque, May 11, 1944, p. 70.

⁹⁵New Automobiles in Interstate Commerce, 259 ICC 475, 534, (1945).

⁹⁶Ibid., p. 548.

⁹⁷Ibid., p. 555.

⁹⁸Ibid., p. 556. By order of the Commission dated November 13, 1945, this was raised to 85 per cent of the

contemporaneous first class rates.

⁹⁹Ibid.

¹⁰⁰Chrysler Corporation et al. v. Akron, Canton & Youngstown Railroad Company et al., 279 ICC 377, 389, (1950).

¹⁰¹"Memorandum of the New York Central Railroad Company", March 7, 1949.

¹⁰²Ibid.

¹⁰³Chrysler Corporation et al. v. Akron, Canton & Youngstown Railroad Company et al., 279 ICC 377, (1950).

¹⁰⁴Reply of Complainants to the Petition of Certain Defendants For Postponement of Hearing, April 3, 1948, p. 3.

¹⁰⁵Ibid., p. 4.

¹⁰⁶Chrysler declared: "They are plainly concerned because they handle inbound coal and outbound parts from the Michigan plants of General Motors and Ford and, being anxious to maintain themselves in the good graces of those companies, they are responsive to the fact that General Motors and Ford benefit from the continuance of high rates on new automobiles from the plants of complainants and low rates from their own assembly plants to common destinations." Complainants Exceptions to Report Proposed by Paul O. Carter and Henry C. Laughton, Examiners, January 16, 1950, pp. 24, 25.

¹⁰⁷Reply of Complainants to the Petition of Certain Defendants For Postponement of Hearing, April 3, 1948, p. 9.

¹⁰⁸Chrysler Corporation et al. v. Akron, Canton & Youngstown Railroad Company et al., 279 ICC 377, 398, (1950).

¹⁰⁹Ibid., testimony of Mr. J. E. Goggin at p. 1681 of the Transcript of Oral Hearings.

¹¹⁰Ibid., testimony of Mr. Lawrence Chaffee at p. 1644 of the Transcript of Oral Hearings.

¹¹¹Ibid.

¹¹²Ibid., testimony of Mr. George W. Holmes at pp. 1675, 1676 of the Transcript of Oral Hearings.

¹¹³Ibid., p. 405.

¹¹⁴Ibid., p. 419

¹¹⁵Passenger Automobiles in Southern Territory, 288 ICC 85, 93, (1953).

¹¹⁶There were some exceptions, of course. The New York Central attempted to recapture traffic that had been moving via the Great Lakes by adopting a scale of drastically reduced rates that were to be applicable only during the season of open navigation. A badly split Commission approved the new schedules but no diversion of traffic resulted. Automobiles From Detroit to the East, 288 ICC 167, (1954).

CHAPTER III

¹Delos Rentzel, "Statement Before the Senate Committee on Commerce in Support of Senate Bill 1197, May, 1961." (Mimeographed.)

²The idea of loading freight in one kind of vehicle for transportation in a different vehicle goes back at least to 1843 when sectionalized canal boats were transported on rail flatcars in a joint rail-water service between Philadelphia and Pittsburgh. This and other experiments with trailer-on-flatcar (TOFC) techniques are described in: Coordination of Motor Transportation, 182 ICC 263, (1932).

³Despite motor carrier claims to the contrary, TOFC has not entirely eliminated the rail service disability. Shippers have indicated that with identical rail TOFC and motor carrier rates they would continue to ship by truck. Delos Rentzel, "Statement Before the Senate Committee on Commerce in Support of Senate Bill 1197," May, 1961. See also: Motor Vehicles -Kansas City to Ark., La. & Tex., testimony of Mr. E. S. Knutson, Director of Corporate Traffic, Ford Motor Company, pp. 413, 414 of the Transcript of Oral Hearings, Ibid., Exhibit 80.

⁴The development of TOFC service by the Frisco is detailed in: J. E. Gilliland, "Statement Before the Surface Transportation Sub-committee of the United States Senate Committee on Interstate and Foreign Commerce," April 10, 1961. (Mimeographed.)

⁵Traffic from the Studebaker plant destined for points in the southern states, for example, was transported from South Bend, Indiana, to Cincinnati, Ohio by motor carrier and there loaded on flatcars. The railroad carried the vehicles to Atlanta, Georgia from which point

they were distributed by truck. Interview with Mr. R. T. Fick and Mr. Earl Wiseman, June 29, 1961. (Mr. Fick was the Director of Traffic for the Corporation and has since been succeeded by Mr. Wiseman.)

⁶The various Plans are described in Appendix B.

⁷Interview with Mr. J. H. Stark, Jr., Vice-President of Howard Sober, Inc., November 11, 1960.

⁸"National Automobile Transporters Association, Petition For a Declaratory Order, MC-C-3024, March 7, 1962." (Mimeographed.)

⁹Interview with Mr. R. T. Fick and Mr. Earl Wiseman, June 29, 1961.

¹⁰Mr. Sidney Zagri, a Teamster attorney, testified that "one third of the National Automobile Haulers have already gone out of business since 1958." No evidence to support this allegation was offered and a letter requesting further information was never answered. Mr. Zagri's testimony was contained in: "Statement Before the Committee on Interstate and Foreign Commerce of the United States on S. 1197," May 17, 1961, p. 7. (Mimeographed)

¹¹Morris H. Glazer, "Impact of Piggyback," Transport Topics, May 1, 1961, p. 6.

¹²Delos Rentzel, "Statement Before the Senate Committee on Commerce in Support of Senate Bill 1197," May 1961, pp. 20, 21. (Mimeographed.)

¹³Motor Vehicles-Kansas City to Ark., La. & Tex., I & S 7269, Exhibit 121.

¹⁴Ibid., testimony of Mr. Charles Pieroni, at p. 113 of the Transcript of Oral Hearings.

¹⁵"National Automobile Transporters Association, Petition For a Declaratory Order, MC-C-3024, March 7, 1962." (Mimeographed.)

¹⁶Interview with a shipper representative who desires his identity be withheld.

¹⁷J. E. Gilliland, "Statement Before the Surface Transportation Subcommittee of the United States Senate Committee on Interstate and Foreign Commerce," April 10, 1961. (Mimeographed.)

¹⁸The Indiana Harbor Belt, for example, encountered

clearance difficulties in four places. To provide trilevel clearance under bridges, the company lowered its tracks in the problem areas. Railway Age, July 3, 1961, pp. 22, 23.

¹⁹Ibid., pp. 21, 22, 23.

²⁰Ibid., July 24, 1961, pp. 12, 13.

²¹Ibid., p. 19.

²²Motor Vehicles- Kansas City to Ark., La., & Tex., I & S 7269, testimony of Mr. Rudy T. Fick at p. 96 of the Transcript of Oral Hearings.

²³Ibid.

²⁴The reduced rate on automobiles is in large part a result of the lower cost of transporting vehicles in the rack cars. One obvious reason for this is the greatly increased capacity of the basic transportation unit. There are other factors to be considered. For example, the cost of the rack car is fairly modest. Moreover, the railroad must haul only 8500 pounds of tare weight per automobile in trilevel service compared with 15,000 pounds tare weight per vehicle in boxcar service. Ibid., testimony of Mr. J. E. Gilliland at p. 156 of the Transcript of Oral Hearings.

²⁵Ibid., Exhibit 9. Studebaker officials confided in an interview that savings might even be more substantial if motor carriers reduced their rates as a result of the increased competition. This has already occurred. One carrier has offered a new seven-car rate which yields only slightly more revenue than the old five-car rate. For example, the rate from South Bend to Butler, Pa. is \$48.80 per vehicle for a five-car load and \$35.30 per vehicle for a seven-car load. The carrier is, therefore, handling two additional vehicles for \$3.10. The rates to New York City yield \$56.65 more for seven cars than they do for five cars, but to New Castle and Sharon, Pa., they provide only \$.60 and \$.30 more respectively. I am indebted to Mr. Paul Skipworth of the George F. Burnett Co. for data on the seven-car rates.

²⁶Interview with a shipper representative who desires his identity be withheld.

²⁷Delos Rentzel, "Statement Before the Senate Committee on Commerce in Support of Senate Bill 1197," May, 1961, p. 3. (Mimeographed)

²⁸Most shippers contacted stated that company policy prevented them from disclosing information which would

indicate the extent of the diversion which has taken place.

²⁹Letter from C. E. Brown, General Traffic Manager, Automobile Manufacturers Association, Inc., February 15, 1962.

³⁰Letter from Mr. Paul G. Fritzching, Director, Corporate Traffic Office, Chrysler Corporation, February 9, 1962.

³¹U. S., Statutes at Large, LXXII, p. 572. The section referring to the national transportation policy was added by the amendment of September 18, 1940 and reads: "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;-- all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." U. S., Statutes at Large, LIV, p. 899.

³²A bill (S. 1197) which would require emphasis on the second part of Section 15 a (3) was the subject of hearings before a Senate Committee. By a vote of twelve to three, consideration of the bill was postponed. *Traffic World*, September 2, 1961.

³³See for example: Peter T. Beardsley, "Statement Before the Senate Committee on Commerce on S. 1197," May 11, 1961 (Mimeographed); and Frederick J. Freund, "Statement Before the Senate Committee on Commerce," May 11, 1961. (Mimeographed.)

³⁴On this point see the testimony of Senator Burton K. Wheeler who was chairman of the Interstate Commerce Committee and one of the managers of the Transportation Act of 1940. In response to a question by Senator George Smathers, Senator Wheeler explained the intent of the Congress in the Act of 1940. Question: "Was there ever, at any time, an intention expressed on the part of any members of the committee, or of the Senate that the

Interstate Commerce Commission should in effect, set rates so that one mode of transportation would be protected against another mode?" Answer: "Definitely not. There was never any such intention. We thought we were making it perfectly clear that there was no way in which water carriers' rates could be raised so as to protect the railroads, and nothing to protect the motor carriers, and nothing to protect the railroads. We wanted it so that each one of them would have full advantage of their inherent advantages." U. S. Congress, Senate, Committee on Interstate and Foreign Commerce, Hearings, Rate-Making Rule--ICC Act, 85th Cong., 2nd Sess., May 20, 21, 1958, pp. 8, 9.

³⁵ On this issue the motor carriers indict the Commission for inconsistency. In Automobiles- Duluth, Minn. to Washington, 308 ICC 523, (1960), the Commission ruled that rates which did not reflect different weights and the different values of the automobiles were unlawful. The Commission declared, "The mere fact that the proposed rate may be compensatory does not establish its reasonableness. Compensativeness is only one of the factors to be considered in determining reasonableness. The proposed rate gives effect to the distance hauled, but the weight and value of the automobile to be transported are ignored." p. 526. Since the contested tariffs name flat rates per carload or per vehicle, they obviously fail to meet the criteria of reasonableness suggested in the Duluth case.

³⁶ For an exception, however, see: NATA, Petition For Suspension, October 12, 1961. The protest concerns rates published by the New York Central on motor vehicles between Detroit and Pittsburgh. The Commission has suspended the rates in docket I & S 7702.

³⁷ Motor Vehicles -Kansas City to Ark., La., Tex., I & S 7269. Unnumbered exhibit submitted by Mr. Gilbert Parr.

³⁸ By this, of course, the railroads do not suggest that they have not been injurious to motor carriers. Mr. Jervis Langdon explained the rail view in recent testimony: "To hold that the railroads must stop short of producing an adverse effect upon their competitors is to hold that the railroads cannot compete. For the entire purpose of competition is to allow one competitor to advance against another, and as long as this is done openly and for the purpose of improving net earnings, there can be no valid complaint." Jervis Langdon, "Statement Before the Senate Committee on Commerce", June 15, 1961. (Mimeographed.)

³⁹ Motor Vehicles -Kansas City to Ark., La., Tex.,

I & S 7269, Report and Order Recommended by George A. Dahan, Hearing Examiner, June 15, 1961, p. 1. (Mimeographed)

⁴⁰Ibid., p. 15.

⁴¹Ibid., p. 16.

⁴²Ibid., p. 17.

⁴³Ibid. (Emphasis mine.)

⁴⁴Ibid., pp. 17, 18.

⁴⁵Motor Vehicles -Cleveland, Detroit, Lorain to New England and Trunk Line, I & S 33392, Report and Order Recommended by T. Russell Roper, Hearing Examiner, June 5, 1961. (Mimeographed)

⁴⁶Out-of-pocket costs are here taken to be the long-term variable costs which are "the expenses which can be directly assigned to any given product or service and they include the direct costs for labor, material, equipment, supervision, interest, etc., incurred solely as a result of the production of the given product or service." Ibid., p. 20.

⁴⁷Ibid.

⁴⁸These averages are not weighted by the volume of movement between the various points.

⁴⁹Ibid., p. 21.

⁵⁰Ibid.

⁵¹Ibid., p. 22.

⁵²Eastern Central Motor Carriers Association, Inc. v. Baltimore & Ohio Railroad Company et. al., No. 32533, (1961), p. 64. (Mimeographed)

⁵³Ibid., p. 65.

⁵⁴Ibid., pp. 65, 66.

⁵⁵Ibid., pp. 71, 72.

CHAPTER IV

¹For a complete description of these factors see: Classification of Motor Carriers of Property in the Matter

of the Classification of Brokers and Motor Carriers of Property, Ex parte No. MC-10, 2 MCC 703, (1937).

²Carriers separately classified by commodity transported included: (1) Carriers of general freight; (2) Carriers of household goods; (3) Carriers of heavy machinery; (4) Carriers of liquid petroleum products; (5) Carriers of refrigerated liquid products; (6) Carriers of refrigerated solid products; (7) Carriers engaged in dump trucking; (8) Carriers of agricultural commodities; (9) Carriers of motor vehicles; (10) Carriers engaged in armored truck service; (11) Carriers of building materials; (12) Carriers of films and associated commodities; (13) Carriers of forest products; (14) Carriers of mine ore, not including coal; (15) Carriers engaged in retail store delivery service; (16) Carriers of explosives or dangerous articles; (17) Carriers of specific commodities, not subgrouped. Ibid., pp. 711, 712.

³Ibid., p. 711.

⁴One carrier, for example, sought to have its authority to transport motor vehicles interpreted in such a way as to authorize it to carry any kind of vehicle. J. A. McDowall, Common Carrier Application, 17 MCC 642, (1939).

⁵Some carriers sought to have grants of authority limited by specifying the make of automobile which could be transported thereunder. See for example: Pacific Motor Trucking Company Extension--Oregon, 71 MCC 561, (1957).

⁶The position of the Commission is illustrated in its decision in a dispute over whether busses might be transported under the authority to transport trucks. Some carriers (with shipper support) argued that a bus was no more than a special body mounted on a truck chassis. If special authority is required to haul a truck chassis with a bus body then special authority should be required to transport all specialized vehicles equipped with special bodies such as fire engines and garbage trucks. The Commission insisted that a bus was a bus and, therefore, that separate authority was required for its transportation. Kenosha Auto Transport, Inc., Union City Extension, 54 MCC 689, (1952). For further evidence on the view of the Commission in such cases, see also: Kenosha Auto Transport Corporation Extension--Twenty-One States, 61 MCC 41, (1954); Kenosha Auto Transport Corporation Extension--Denver, 67 MCC 233, (1956); Dealers Transit, Inc. Extension--Fresno, Calif., 79 MCC 26, 28, (1959); Leonard Bros. Transfer & Storage Co., Inc., Extension--Trailers, 82 MCC 623, (1960).

⁷National Automobile Transporters Association et al. v. Rowe Transfer & Storage Company, Inc., 64 MCC 229, (1955); L. C. Jones Trucking Co., Extension--the Dakotas, 62 MCC 539, (1954); Convoy Company Extension--Snowmobiles, 79 MCC 187, (1959); See also United Transports v. Gulf Southwestern Transportation Company, 81 MCC 1, (1959).

⁸United Transports v. Gulf Southwestern Transportation Company, 81 MCC 1, (1959) may be cited as an example of the Commission's approach in these disputes. The controversy raged around the nature of the authority required for the transportation of a deactivated vehicle which was loaded by a crane. Heavy goods haulers argued that since flat-bed equipment and cranes were employed, their authority was adequate. The Commission's decision hinged upon whether deactivation was "attributable to, and required, by the vehicles themselves, or was caused merely by the desire of the carrier to utilize flat-bed equipment." p. 6. In this particular case, wheels were removed from busses in order to reduce the overall height of the shipment. Division 1 reasoned that if the wheels had not been removed, clearance requirements would have dictated the use of special lowboy trailers. The use of cranes for loading, Division 1 concluded, resulted from the excessive height of the vehicles so that transportation of these vehicles was within the authority of heavy haulers. p. 6.

⁹Dallas & Mavis Forwarding Co., Inc., Ext.--Galion, Ohio, 72 MCC 653, (1957); Dallas & Mavis Forwarding Co., Inc., Ext.--Galion, Ohio, 79 MCC 285, (1959); W. J. Dillner Transfer Company--Investigation of Operation, 79 MCC 335, (1959).

¹⁰Automobile Shippers, Incorporated, Extension--Show Cars and Displays, 67 MCC 201, (1956).

¹¹In one instance, for example, the authority granted to the carrier had provided for the transportation of "new trucks, new tractors, new chassis, and parts thereof." Kappel Extension of Operations--LaPorte, Ind., 32 MCC 521, (1942). The Commission interpreted the phrase, "parts thereof" to be "limited to such parts as are necessary to complete the particular shipment," and added a gratuitous comment to the effect that truckaway equipment is not suitable for the transportation of automobile parts such as the radiators applicant sought to transport. In a subsequent case, a carrier's certificate permitted transportation of "new automobiles, new trucks and automobile parts in initial and secondary movements, in truckaway and driveaway service..." Convoy Company, Interpretation of Certificate, 52 MCC 191, (1950). Two of the three members of Division 5 chose not to read the certificate

literally and they prohibited the transportation of automobile parts except to the extent necessary to complete a particular shipment.

¹²See for example: Case Driveaway, Inc., Extension--Lumber, 51 MCC 659, (1950). In this instance, Case Driveaway, in an effort to balance an otherwise empty backhaul, sought out a group of lumber mill operators in the South who, because of rail deficiencies, were delighted with the proposed service. Case, likewise, secured customers one of whom, located in Michigan, had experienced difficulty in securing the green lumber necessary for his operation. Rails were impractical in his situation since lumber bought in carload lots tended to dry out before it was completely used and the cost of less-than-carload lots was prohibitive. The Commission concluded that the use of the service by the lumber mill operators was problematical and speculative; that the receiver at Base Line had never ordered lumber from the South; and, that despite his testimony to the contrary, his Michigan supply was adequate. Division 5 went on to say:

Applicant has had no experience in the transportation of lumber with its present motor-transport equipment or any other type of equipment. The evidence is convincing that it is principally interested in obtaining the considered traffic in order to balance its automobile movements....
p. 663.

After observing that there were motor carriers with authority to perform the transportation, (although they had evidenced no interest in developing the traffic) the Commission denied the application.

¹³McDowall Transport, Inc., Extension--Fruits and Vegetables, 47 MCC 957, (1947).

¹⁴Convoy Co., Extension--Board, 71 MCC 57, (1957).

¹⁵Arco Auto Carriers, Inc., Extension--DeKalb, Ill., 72 MCC 379, (1957).

¹⁶Western Auto Transports, Inc., Extension--Lumber, 72 MCC 345, 346, (1957).

¹⁷Case Driveaway, Inc., Extension--Lumber, 51 MCC 659, 663, (1950).

¹⁸Western Auto Transports, Inc., Extension--Lumber, 72 MCC 346, (1957).

¹⁹Case Driveaway, Inc., Extension--Lumber, 51 MCC 659, 663, (1950).

²⁰Western Auto Transports, Inc., Extension--Lumber,
72 MCC 345, 346, (1957).

²¹Warren H. Wagner, A Legislative History of the
Motor Carrier Act, 1935 (Denton: Rue Publishing Company,
1935), p. 50. See also: Carolina Freight Carriers Corp.
v. U. S., 38 F. Supp. 549, (1941).

²²U. S. Congress, Senate, Select Committee on Small
Business, Hearings, ICC Administration of the Motor Carrier
Act, 84th Cong., 1st Sess., (1955), especially pp. 5-12.

²³See for example: Fred H. Nixon--Common Carrier
Application, 26 MCC 325, 327, (1940). See also: Howard
Gramlich--Common Carrier Application, 26 MCC 431, (1940).

²⁴Blain's Drive-A-Way System--Common Carrier Appli-
cation, 16 MCC 583, 585, (1939); Joseph Wielgopolski--
Common Carrier Application, 21 MCC 217, 219, (1939).

²⁵See: Bernice Eaton Common Carrier Application,
22 MCC 791, (1940); F. W. Myers--Common Carrier Appli-
cation, 23 MCC 451, 469, (1940).

²⁶F. W. Myers--Common Carrier Application, 23 MCC
451, 469, (1940). It is interesting to note here that,
as will be pointed out later, the desire of a shipper is
not of itself sufficient to secure operating rights for
the favored carrier but apparently, the decision by a
shipper to make use of the service of another carrier did
result in the loss of "grandfather" operating rights.

²⁷See: Bernice Eaton Common Carrier Application,
22 MCC 791, (1940).

²⁸Hulbert Forwarding Company, Inc., Common Carrier
Application, 28 MCC 769, 770, (1941).

²⁹Associated Transports, Inc., Common Carrier Appli-
cation, 26 MCC 789, 792, (1940).

³⁰Kenosha Auto Transport Corporation, Common Carrier
Application, 22 MCC 753, 757, (1940).

³¹Motor Convoy, Incorporated--Contract Carrier Appli-
cation, 2 MCC 197, (1937).

³²Ibid.

³³In Contracts of Contract Carriers, 1 MCC 628, 629,
(1937), the Commission observed that the states had placed
restrictions on contract carriers in order to protect com-
mon carriers. The limitations which the Motor Carrier Act
imposed on contract carriers were motivated by the same

set of considerations according to the Commission. "The patent object," the Commission stated in speaking of these restrictions, "is to protect the common carrier from cut-throat competition." p. 629.

³⁴These rules, which refined the definition of contract carriage, provided that: All contract carriers shall transport under contracts or agreements which shall be in writing, which shall provide transportation for a particular shipper or shippers, which shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, which shall cover a series of shipments during a stated period of time in contrast to contracts or carriage governing individual shipments, and copies of which shall be preserved by the carriers parties thereto so long as the contracts or agreements are in force and for at least one year thereafter.... The contracts need not cover long periods of time or fixed amounts of traffic. Contracts of Contract Carriers, 1 MCC 628, 629, (1937), pp. 632, 633.

³⁵This in itself was not sufficient to determine status. See: Kenosha Auto Transport Corporation, Common Carrier Application, 24 MCC 753; J. A. McDowall, Common Carrier Application, 17 MCC 642, (1939).

³⁶See: Associated Transports, Inc., Common Carrier Application, 26 MCC 789m (1940).

³⁷They may not even do this by indirection by interlining with other carriers. Commercial Carriers, Inc., et al., v. Auto Carriers, Inc., et al., 66 MCC 247, 249, (1955).

³⁸Commissioner Lee objected to the imposition of the restraints imposed on contract carriers on three grounds: (1) The Commission was without authority to impose such conditions. (2) Historically, contract carriers have transported commodities without written agreements; these contracts covered single shipments; and the contracts were "not mutually enforceable as executory agreements." (3) There is nothing in the context of the Act to suggest that Congress intended that the term contract carriers should be given a meaning which differed from the historical meaning. See: Contracts of Contract Carriers, 1 MCC 628, 635, (1937).

³⁹J-T Transport Company v. United States, 185 F. Supp. 838, 843. (1960).

⁴⁰U. S. v. Contract Steel Carriers, 350 U. S. 409 (1956).

⁴¹J-T Transport Company v. United States, 185 F. Supp. 838, 843, 844. (1960).

⁴²See: Reddish v. United States, 188 F. Supp. 160, 165, (1960).

⁴³J-T Transport Company, Inc., Extension--Columbus, Ohio, 70 MCC 695, (1959).

⁴⁴Ibid., p. 705. The idea that the loss of "potential traffic" adversely affects a carrier while it was also adopted in the PMT case (see below) has not been universally employed by the Commission. Most frequently, the Commission has ruled that since carriers were not participating in the traffic, no injury could be presumed. See for example: Speedway Transports, Inc., Extension--Secondary Authority, 76 MCC 275, (1958).

⁴⁵Ibid., p. 708.

⁴⁶J-T Transport v. United States, 185 F. Supp. 838, 846. (1960).

⁴⁷Ibid., p. 848.

⁴⁸Ibid., pp. 848, 849. The decision in the J-T case was cited with approval in a subsequent case, the Reddish case already alluded to and was affirmed by the Supreme Court on December 4, 1961 in Interstate Commerce Commission v. J-T Transport Co., et al., 368 U. S. 81. (1961). Despite the adverse rulings of the courts, the Commission has still found it possible to deny contract carrier service. In the Moyer Case (Carlton M. Moyer--Contract Carrier Application, MC-117957 Sub. No. 1, March 1962) the Commission denied a request for contract carrier authority on the grounds that the proposed service was not "specialized in nature." The Commission considered the willingness of common carriers to spot trailers at the shipper's plant to be equivalent to the exclusive assignment of vehicles and equipment offered by the contract carrier. p. 14. The Commission comes perilously close to repeating here that authorization of contract carriers is to be dependent upon the availability and the willingness of common carriers to perform deserved service.

⁴⁹Interview with Mr. Earl Wiseman, Assistant Traffic Manager, Studebaker-Packard Corporation, June 22, (1960).

⁵⁰U. S. Statutes at Large, XLIX, 551, 552, 553.

⁵¹Pacific Motor Trucking Company Extension--Oregon, 71 MCC 561, 565, (1957).

⁵²Edward S. Barrett Contract Carrier Application, 19 MCC 761, (1939). (Emphasis supplied) The ICC indeed seemed prepared to go a pretty long way to coerce shippers into accepting a type of service they did not desire. In one case, a contract carrier sought a permit in order to transport Packard automobiles. Because of the height of the vehicles, he had designed a special trailer not furnished by existing carriers. The Commission admitted that shippers wanted the service and would benefit from the service, but it nevertheless denied the authority sought on the grounds that existing carriers, despite past failures, would render better service in the future. Charles E. Turner Contract Carrier Application, 8 MCC 732, (1938).

⁵³Arco Auto Carriers, Inc., Extension--Milwaukee, 49 MCC 731, 769, (1949), p. 770.

⁵⁴Arco Auto Carriers, Inc., Extension--North Tarrytown, N. Y., 74 MCC 717, (1958), pp. 720, 721.

⁵⁵Associated Transports, Inc., Extension--Kansas City, Mo., 71 MCC 367, (1957).

⁵⁶Ibid., p. 369.

⁵⁷In the Matter of Filing Contracts by Contract Carriers By Motor Vehicles, Ex parte No. MC-9, 2 MCC 55, (1937).

⁵⁸Ibid., 41 MCC 527, 528, (1942).

⁵⁹Auto Transports, Inc., Suspension of Permit, 51 MCC 600, (1950).

⁶⁰"Question: What do the terms 'Initial Movements,' 'Secondary or Subsequent Movements,' and 'Movements or Transportation for Fleet Users' mean, when used in certificates and permits issued to carriers of automobiles?"

"Answer: The term 'Initial Movements' means transportation of new motor vehicles from a place of manufacture or assembly, specifically authorized to be served as a point of origin by the originating carrier's certificate, or permit, to any point or place upon the authorized route or within its defined territory for delivery to consignee or to a connecting carrier. The term 'Secondary or Subsequent Movements' means transportation of Motor Vehicles, except transportation of new motor vehicles from a place of manufacture or assembly, by a carrier to, from, and between all points and places upon its authorized route or routes or within its authorized territory for delivery to consignee or connecting carriers. Such movements also include cross movements, back hauls and movements to and from body and

specialty plants upon the route or routes or within the authorized territory of the Carrier. Automobile Carriers--Initial Movements--Secondary or Subsequent Movements--or Transportation For Fleet Users--Ruling No. 75, July 15, (1938), Sections 206 (a); 207 (a); 209 (b).

⁶¹Movement from one municipality to another--even a contiguous one--does destroy the initial character of subsequent movements however. See: Howard Sober, Inc., Extension--California, 49 MCC 615, (1949). See also: Howard Sober, Inc., Extension--United States, 64 MCC 545, (1955). Since a vehicle may have only one initial movement, some interesting questions have come before the Commission which involved the movement of trailers. If a new tractor is brought in from some plant outside the commercial zone to which a trailer is attached for delivery to a buyer, the carrier must possess secondary authority for the tractor and initial authority for the trailer. Arco Auto Carriers, Inc., Extension of Operations--Milwaukee, 47 MCC 95, (1947). A change in method of manufacture which required the import of dollies upon which trailerized tanks were mounted cast doubts upon the validity of the rights under which a carrier had previously transported these trailers. The Commission decided that a dolly is not a vehicle and that the carrier's secondary authority was inappropriate. Dealers' Transport Co., Extension of Operations--Cincinnati, Ohio, 48 MCC 471, (1948).

⁶²Dealers Transport Company, Extension--Delaware, Ohio, 49 MCC 207, (1949).

⁶³Cited in: Brief of Petitioner in Advance of the Examiner's Report and Recommended Order, MC-C-3024, Sept. 30, 1960, p. 10.

⁶⁴Dixie Transport Company, Extension Several States, MC 88300 (Sub. No. 24), Report and Recommended Order of Examiner Reece Harrison, April 8, 1960.

⁶⁵Ibid.

⁶⁶Ibid.

⁶⁷Petition For Declaratory Order Under Section Five (d) of the Administrative Act, Docket No. MC-C-3024, July 27, 1960, Transcript of Oral Hearing.

⁶⁸Cited in: Brief as Requested by the Trial Examiner, for Kenosha Auto Transport Corp., MC-C-3024, October 24, 1960.

⁶⁹National Automobile Transporters Association, Petition For a Declaratory Order, MC-C-3024, Report and Order Recommended by William R. Tyers, July 20, 1961. pp. 2, 3.

⁷⁰Brief of Petitioner in Advance of the Examiner's Report of General Motors Corporation, MC-C-3024, October 21, 1960.

⁷¹These were the Louisville and Nashville Railroad and the Atlantic Coast Line Railroad. In addition, Great Northern, Northern Pacific, Chicago and Northwestern, Chicago, Burlington and Quincy, Colorado and Southern, and Fort Worth and Denver railroad companies supported the petition insofar as it related to Plan I TOFC operations. See: Petition For Declaratory Order Under Section Five (d) of the Administrative Act, MC-C-3024, Transcript of Oral Hearings, pp. 332, 403. The only other railroad represented at the hearing, the Frisco, expressed opposition to Plan I service but did not object to a ruling which would recognize the authority of a carrier with initial rights to participate in TOFC without securing additional authority for a substituted service between the rail interchange points. Ibid., p. 383.

⁷²The Atlantic Coast Line and The Louisville and Nashville estimated their loss to be about \$6000 a month. Brief on Behalf of Atlantic Coast Line and Louisville and Nashville Railroad Companies, MC-C-3024, October 21, 1960, p. 6.

⁷³In its Brief, The Clark Transport Company declared: "In effect, what petitioners are seeking to do is to remove initial authority restrictions placed in their outstanding certificates. Such restrictions were placed in their grandfather certificates, as that is the type of service they were conducting as of the critical date. On subsequent certificates that they have received from this Commission, these carriers themselves sought authority containing the initial service restriction. How can they sincerely present to this Commission, after twenty-two years of regulation, a request that these restrictions be removed without an iota of proof of public need therefore, merely for the reasons that the rails are, for the first time in years, starting to provide competition for these petitioners. Brief of Clark Transport Company, Intervenor in Opposition, MC-C-3024, October 24, 1960, p. 16.

⁷⁴National Automobile Transporters Association, Petition for Declaratory Order, MC-C-3024, Report and Order Recommended by William R. Tyers, July 20, 1961, p. 8.

⁷⁵Ibid., p. 10.

⁷⁶Some shipper representatives have confided in interviews that they have had to do business with motor carrier firms with whom they did not want to deal. Shipper objections result from a variety of factors. Sometimes

these carriers haul primarily for other firms; sometimes they supply less attractive service; sometimes their attitude or cooperativeness is found objectionable by the shipper. Subsequent to this writing, Division 1 served a tentative report (National Automobile Transporters Association, Petition For a Declaratory Order, MC-C-3024, March 7, 1962.) in which it proposed substantial modifications in the report of its examiner. The Division abandoned the narrow, legalistic approach to consider the economic impact of its decision. "Due to the changes in the physical movement which have occurred, however," the Division stated, "it is clear that a fresh approach concerning the underlying rationale of grants of initial and secondary authorities is necessary in the interest of establishing a degree of stability in the automobile hauling industry." p. 23. Division 1 ruled that a carrier holding initial rights could participate in Plans I and III without securing additional rights. p. 27. The Division also decided that, under certain circumstances, acting as agents for shippers, contract carriers could participate in TOFC movements. p. 30. The Division further proposed a simplified procedure by which additional rights could be secured "so that the initial carrier can continue to be in a position to participate in traffic in those instances where initial authority, as here interpreted, does not cover the movement." p. 32.

⁷⁷The purpose of requiring a certificate was explained in the New State Ice Co. case. "The introduction in the United States of the certificate of public convenience and necessity marked the growing conviction that under certain circumstances free competition might be harmful to the community and that, when it was so, absolute freedom to enter the business of one's choice should be denied." New State Ice Co. v. Liebmann, 285 U. S. 262, 282 (1932).

⁷⁸See: 11 Am. Jur., Commerce p. 242.

⁷⁹Ibid., p. 240.

⁸⁰Empire Trails, Inc. v. U. S., 53 F. Supp. 373, (1942); Inland Motor Freight v. U. S., 60 F. Supp. 520 (1945).

⁸¹See for example: North East Transport Co. v. U. S., 54 F. Supp. 448, (1944); A. B. C. Motor Transp. Co., Inc., v. U. S., 69 F. Supp. 166, (1946); Capital Transit Co. v. U. S., 97 F. Supp. 614, (1951).

⁸²Texas and N. O. Ry. Co. v. Northside Belt Ry. Co., 276 U. S. 475, (1928).

⁸³Ibid., p. 479

⁸⁴Studebaker, for many years sought a duplication of authority for its carriers in the belief that competition would provide improved service. Moreover, a Studebaker traffic official claimed that the temporary authority which the Commission issued to meet emergencies was too slow in addition to being inadequate. Interview with Mr. Earl Wiseman, Assistant Traffic Manager, Studebaker-Packard Corporation, June 22, 1960.

⁸⁵Howard Sober, Inc., Extension--California, 49 MCC 615, (1949).

⁸⁶Ibid., p. 618.

⁸⁷Howard Sober, Inc., Extension--California, 53 MCC 296, (1950).

⁸⁸Dallas and Mavis Forwarding Company, Common Carrier Application, 22 MCC 655, 661, (1940).

⁸⁹Western Auto Transports, Inc., Extension--St. Louis Co., Mo., 81 MCC 291, 300, (1959). (Mimeographed)

⁹⁰Ibid., p. 307.

⁹¹Arco Auto Carriers Inc., Extension--Milwaukee, 49 MCC 731, (1949).

⁹²Ibid., p. 769.

⁹³Kenosha Auto Transport, Inc., 5 MCC 664, 667. (1938).

⁹⁴Pacific Motor Trucking Company, Extension--Oregon, 77 MCC 605, (1958). Pacific Motor Trucking is a wholly owned contract carrier subsidiary of the Southern Pacific Company, a rail common carrier.

⁹⁵Ibid., p. 620.

⁹⁶Ibid.

⁹⁷Ibid., p. 614.

⁹⁸Ibid.

⁹⁹The Commission reconciled its decision in this instance in the following language: "With one exception the existing motor carriers Sub No. 36 have handled only a very negligible amount of the freight involved. Such carriers will, therefore, suffer no loss of traffic as

a result of the expanded service by applicant. A different result, however, will obtain in the instance of the rail-carrier connections of the Southern Pacific Company. The connecting rail carriers and protestant Transport Storage & Distributing Co. have shown that they will suffer a loss of traffic and the corresponding revenues therefrom to the detriment of their services." Ibid., p. 626.

¹⁰⁰J-T Transport Company, Inc., Extension--Columbus, Ohio, 70 MCC 695, (1959).

¹⁰¹Dealers Transit, Inc., Extension--Vina Vista, Calif., 71 MCC 657, (1957).

¹⁰²Ibid., p. 661.

¹⁰³Complete Auto Transit, Inc., Extension--Willow Run, 71 MCC 383, 385, (1957).

¹⁰⁴Speedway Transports, Inc., Extension--Secondary Authority, 76 MCC 275, 277, (1958).

¹⁰⁵Lewis Brothers, Extension of Operations--Amarillo, Texas, 8 MCC 605, 608, (1938).

¹⁰⁶Kenosha Auto Transport Corporation Extension--Kenosha, Wis., 72 MCC 289, 291, (1952). For a similar ruling see: Dallas & Mavis Extension--Montana, 64 MCC 511, (1955).

¹⁰⁷Cassens Transport Company Extension--Three States, 67 MCC 410, 413, (1956).

¹⁰⁸Kenosha Auto Transport Corporation Extension--Kenosha, Wis., 68 MCC 237, 243, (1956). Commissioner Tuggle in dissenting commented, "The need for filling the present void is shown not only by operational inequities on applicant's side but also by a reasonable shipper testimony describing dates and places of past inadequacies in present service. In addition, the picture is clear that applicant's main competitors enjoy single-line service to the states involved and that this is considered in the involved industry as a significant advantage. In fact the competitive advantage of single-line service in the initial movement of new automobiles has long been recognized by this Commission. And, as I see it, the instant automobile manufacturer and applicant are standing, almost alone, the victims of an unrealistically strict view." p. 244. For another denial of single-line service in the face of existing interline service see: Dallas & Mavis Forwarding Co., Inc., Extension--Toledo, Ohio to Nebraska and Extension--Milwaukee, 49 MCC 731, (1949).

¹⁰⁹Kenosha Auto Transport Corporation Extension--Kenosha, Wis., 72 MCC 289, 291, (1957).

¹¹⁰Ibid., p. 292.

¹¹¹Cassens Transport Company Extension--Three States, 71 MCC 411, 413, (1957).

¹¹²Central Truckaway System, Inc., Extension of Operations, 47 MCC 552, (1947).

¹¹³F. J. Boutell Driveaway Company, Inc., Extension--Pontiac, 75 MCC 587, 591, (1958).

¹¹⁴Howard Sober, Inc., Extension--Utah, MC 8989 (Sub 161), (1957). (Mimeographed.)

¹¹⁵There are not enough cases involving motor carriers to establish whether or not particular shippers or carriers have been favored.

¹¹⁶Frank Sober, Contract Carrier Application, 3 MCC 213, 216, (1937).

¹¹⁷Cassens Transport Company, Extension of Operations, 18 MCC 273, (1939).

¹¹⁸Clark Transport Company, Extension--Duluth, Minn., 53 MCC 237, 244, (1951).

¹¹⁹Western Auto Transports, Inc., Extension--St. Louis County, Mo., 81 MCC 291, 305, (1959).

¹²⁰Ibid., pp. 306, 307.

¹²¹George Fairall, Extension of Operations, 1 MCC 769, (1937).

¹²²Ibid., p. 770.

¹²³T. A. Darnall, Contract Carrier Application, 3 MCC 415, (1937).

¹²⁴Ibid., p. 418.

¹²⁵Ibid.

¹²⁶Brooks-Gillespie Motors, Inc., Common Carrier Application, 10 MCC 151, (1938).

¹²⁷Ibid., p. 154. (Emphasis mine.)

¹²⁸John G. Reeser, Extension--Camden and Trenton,

Atlantic City, 16 MCC 663, 666, (1939). (Emphasis mine.) It must be noted that there was a temporary setback here. In the initial decision in this case, Division 5 had decided against a grant, and among the reasons for its finding is the conclusion that, "The evidence of record justifies a finding that the territory sought to be served is adequately served by existing rail carriers and that no necessity exists for the institution of the proposed operation." John G. Reeser Extension--Camden, N. J.-New Jersey Points, 9 MCC 528, 530, (1938).

¹²⁹Edmond O. Rainville, Contract Carrier Application, 20 MCC 307, 309, (1939). (Emphasis mine.)

¹³⁰Kenosha Auto Transport Corp., Extension--Gadsden, Ala., 52 MCC 123, 126, (1950).

¹³¹International Transport, Inc., Extension--Tractors and Farm Machinery, 66 MCC 241, (1955).

¹³²Ibid., p. 243.

¹³³Ibid. The Commission explained its new policy more completely in a case which did not involve the transportation of new motor vehicles. The Commission declared, "We do not conceive, that every shipper is entitled to have made available to it every mode of transportation without regard to the volume of the available traffic or the adequacy of whatever transportation may be available.... Usually it is desirable from the viewpoint of the shipper and in the public interest that competition within reason be encouraged... but if sound economic conditions in transportation are to be fostered, the advantages of competition must in some instances yield to the need of the existing carrier or carriers, depending upon the amount of the available traffic and the comparative adequacy of the existing services." A. J. Metler, Extension--Crude Sulphur, 62 MCC 143, 148, (1953). It is interesting to note that in this case, the Commission ruled against a grant of authority to the motor carrier and sustained that verdict on reconsideration. When the applicant filed a complaint in a District Court, the Commission reversed itself after an expression of doubt from the Justice Department that it could successfully defend the Commission's order. Commissioner Knutson in his dissent complained with obvious justification, "Thus we have marched up the hill and down again in the same marching shoes and over the same highway, as far as the evidence of record is concerned." Ibid., p. 150.

¹³⁴Commercial Carriers, Inc., Extension of Operations, Evansville, Indiana, 12 MCC 479, 484, (1939). See also: Clark Transport Co., Extension--Oklahoma City, 64 MCC 203,

(1955); Andrew Clark, Extension of Operations, 16 MCC 535, (1939). In this latter case, a similar plea by water carriers was rejected.

¹³⁵Kenosha Auto Transport Corp., Extension--Gadsden, Ala., 52 MCC 123, 125, 126, (1950).

¹³⁶Ibid., p. 127.

¹³⁷The Commission's evaluation of its power to protect carriers has been overestimated. If a shipper is denied **common** or contract motor service he may well turn to private carriage. The automobile manufacturers are in a better position than most shippers so far as private carriage is concerned. One of the principal handicaps most private carriers encounter is the expense which results from their not being able to get the backhaul available to common carriers. But, motor carriers of automobiles **typically** have no backhaul. Several shippers have admitted considering private carriage. However, as one shipper pointed out, it would be difficult for a single manufacturer to undertake private carriage unless he were willing to sacrifice tractor sales. Motor carriers could be expected to boycott the tractors of a manufacturer who undertook private transportation.

¹³⁸We shall return to this point in a subsequent chapter.

¹³⁹International Transport Inc., Extension--Tractors and Farm Machinery, 66 MCC 241, 244, (1955).

¹⁴⁰A. J. Metler, Extension--Crude Sulfur, 62 MCC 143, 147, (1953).

¹⁴¹Kenosha Auto Transport Corp., Extension--Gadsden, Ala., 52 MCC 123, 126, (1950).

¹⁴²International Transport, Inc., Extension--Tractors and Farm Machinery, 66 MCC 241, 244, (1955).

¹⁴³Kenosha Auto Transport Corp., Extension--Springfield, Ohio, 68 MCC 525, (1956).

¹⁴⁴International Transport, Inc., Extension--Tractors and Farm Machinery, 66 MCC 241, 244, (1955).

¹⁴⁵Western Auto Shippers, Extension of Operations, 3 MCC 173, (1937).

¹⁴⁶Kenosha Auto Transport Corp., Extension--Gadsden, Ala., 52 MCC 123, 126, (1950).

¹⁴⁷Ibid.

¹⁴⁸See for example: George E. Hardy, Contract Carrier Application, 7 MCC 233, (1938).

¹⁴⁹Dallas and Mavis Forwarding Co., Inc., Extension--Sweepers, 67 MCC 351, 355, 356, (1956). A recent decision by a U. S. District Court would require that the ICC consider relative rates in judging adequacy. The Court explained, "Our holding is that where the lower rates result from economies and advantages inherent to contract carrier operation...and there is a showing that efficient business operations require the proposed tailored service--including the lower rates...the Commission may not disregard this evidence in its evaluation of the effect of a denial of the permit upon the applicant's supporting shippers." Elvin R. Reddish v. United States, 188 F. Supp. 160, 167 (1960).

CHAPTER V

¹The magnitude of the gross revenue figures and perhaps also the relative shares of the various railroads have been changed as a result of TOFC and multilevel service, but the data necessary to examine the shifts is not yet available.

²In economic literature a distinction is made between joint and common costs, the former describing costs in which production of one good necessarily gives rise to creation of another (e.g. wool and mutton) while the latter refers to expenditures incurred in behalf of several goods or services. See: Joel Dean, Managerial Economics (New York: Prentice-Hall, 1956), p. 270.

³John R. Meyer et al., The Economics of Competition in the Transportation Industries ("Harvard Economic Studies," Vol. CVII; Cambridge, Mass.: Harvard University Press, 1959), pp. 274-76.

⁴For a discussion of rail cost characteristics see: Interstate Commerce Commission, Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs, Statement No. 4-54 (Washington: U. S. Government Printing Office, 1954).

⁵R. L. Banks et al., "Study of Cost Structures and Cost Finding Procedures In the Regulated Transportation Industries", (Unpublished study prepared for the U. S. Department of Commerce, November, 1959), chap. iii, p. 2.

⁶Motor Vehicles- Kansas City to Ark., La., & Tex., I & S 7269, (1961). (Mimeographed.)

⁷Motor Vehicles- Cleveland, Detroit, Lorain to New England and Trunk Line, I & S 33392, (1961). p. 11. (Mimeographed.)

⁸New Automobiles in Interstate Commerce, 259 ICC 475, 502, (1945).

⁹Meyer et al., op. cit., chap. iv.

¹⁰New Automobiles in Interstate Commerce, 259 ICC 475, 574, (1945). These were estimated from Appendix 9.

¹¹Meyer et al., op. cit., p. 210.

¹²There isn't much evidence of rate competition between railroads for new automobile traffic. Only rarely is the rate of one railroad attacked by another rail carrier. A notable exception occurred when the Frisco protested the rate of the Kansas City Southern in I & S 7269. This protest was later withdrawn. See: NATA, Brief of the National Automobile Transporters Association, I & S 7269, October 3, 1960, p. 15.

¹³The rate reductions in the late 1930's which precipitated the NATA protest and the subsequent general investigation support this interpretation. It will be remembered that at this time, the rails sought to remain competitive by deducting from established truck rates an amount just sufficient to reflect rail disabilities. These truck rates were in turn based on rail monopoly rates which had existed prior to 1930. Instead of filing rates based on the cost of providing service, rails attempted minor modification of rates which had been constructed on value-of-service principles.

¹⁴Ernest W. Williams, Jr., The Regulation of Rail-Motor Rate Competition (New York: Harper & Brothers, 1958), p. 221.

¹⁵Passenger Automobiles in Southern Territory, 288 ICC 85, (1953).

¹⁶Chrysler Corp. v. Akron C & Y R Co., 279 ICC 377, (1950).

¹⁷This view is shared by NATA attorneys. A letter reproduced in NATA Bulletin 1624 from the law firm of Matheson, Dixon and Brady to R. E. Beiser of the NATA stated: "In several instances the Commission report intimates that perhaps the rail carriers have not gone far

enough to meet their competition from the northern origins and that their insistence on maintaining rates from these origins at the maximum level of 75 per cent is the key to the railroad difficulty."

¹⁸Interstate Commerce Commission, Bureau of Accounts, Distribution of the Rail Revenue Contribution by Commodity Groups--1958, Statement No. 4-60 (Washington: U. S. Government Printing Office, 1960), pp. 34-69.

¹⁹For example, see the views of Mr. A. W. Richardson, chap. ii, p. 24.

²⁰American Trucking Associations, Financial & Operating Statistics, Class I and II Motor Carriers of Property, (Washington: American Trucking Associations, Inc., 1960).

²¹This is true, for example, in the case of Kenosha Auto Transport which maintains a large terminal from which other American Motors motor carriers are served from the Kenosha plant. Kenosha Auto Transport also originates a considerable volume of TOFC traffic under Plan I so that part of the total revenue earned by it is turned over to railroads for their share of the haul.

²²American Trucking Associations, op. cit., pp. 1-26.

²³These averages were computed from the American Trucking Associations' Financial and Operating Statistics, Class I & II Motor Carriers of Property. The operating ratio is not a sure index to profitability. See: Laurence S. Knappen, "Transit Operating Ratio--Another View," Public Utilities Fortnightly, Vol. 51, Part 2, (1953). Nevertheless, the reported operating ratios along with information provided by the Commission in the New Automobile case suggest that the transportation of new automobiles has been a highly profitable venture.

²⁴The following letter, dated October 27, 1961, was received from Mr. Walter N. Bieneman, attorney for the NATA, in response to an inquiry about the possibility that motor carriers would introduce cost data in I & S 7702. A personal reference has been omitted.

"We have not previously put motor carrier costs into the proceedings before the Commission because we felt that our rates were not on trial. Furthermore, it is virtually impossible to make a fair comparison between our costs and those of the rail carrier. With respect to motor carriers of automobiles, this is our only traffic and it must bear the fully distributed cost, including a reasonable profit. For this reason, you will usually find that

our published rates quite closely reflect our cost....

On the other hand, nobody has yet found out how to accurately compute the rail cost for the transportation of a given commodity such as automobiles and there are a great many assumptions involved which are of doubtful validity. Furthermore, the railroads always want to use out-of-pocket costs while we feel that this is highly improper for a high-grade commodity which is bulky, and has such a high value of \$1.00 or more per pound. Under the Commission's formula, even when computing so-called fully distributed costs, the overhead burden is assigned on a ton-mile basis. This, of course, gives no recognition to the fact that we have a high-valued commodity and that commodities of this character have traditionally carried most of the overhead burden since the low-grade commodities are able to carry little more than out-of-pocket cost. Thus, even fully distributed cost is not a fair measure on automobile traffic and should not be compared with motor carrier cost of a specialized automobile hauler. Furthermore, the rail cost is on a ramp-to-ramp movement while motor carrier cost includes pick-up and delivery. For all of these reasons, comparisons are difficult and likely to be misinterpreted by those who don't understand the problem.

We have not yet decided whether we will put any motor carrier costs into the record in I & S 7702. For your general information, it is my opinion that motor carrier costs on automobile traffic will range from about 60 cents a loaded truck mile to 80 cents depending upon the length of the haul, whether the traffic is of consistent high volume and other such factors.

I sincerely hope this will answer your question.

Yours very truly,

MATHESON, DIXON & BIENEMAN

/s/ Walter N. Bieneman

²⁵Interstate Commerce Commission, Bureau of Accounts, Cost Finding and Valuation, Explanation of Motor Carrier Costs with Statements as to Their Meaning and Significance, Statement No. 4-59 (Washington: U. S. Government Printing Office, 1959), p. 26.

²⁶New Automobiles in Interstate Commerce, 259 ICC 475, 506, (1945).

²⁷The trend equation is estimated from Appendix 11 of New Automobiles in Interstate Commerce, 259 ICC 475, (1945).

(1945), p. 578.

²⁸Ibid., testimony of Mr. H. L. Zenzius at p. 185 of the Transcript of Oral Hearings.

²⁹Ibid.

³⁰Ibid., p. 316.

³¹Ibid. (Emphasis mine.)

³²Interview with Mr. Paul Skipworth, October 3, 1961.

³³See Meyer et al., op. cit., p. 213.

³⁴Interview with Mr. Paul Skipworth, October 3, 1961.

³⁵One shipper tells a story, corroborated by a motor carrier, of calling in truckers who shared traffic to a particular point to ask that each submit competitive bids. It was made clear that the bids should not be identical, and that the traffic, henceforth, would go to the low bidder.

³⁶It must be recognized that we are here dealing with averages. On particular hauls, as a result terrain, volume, and the character of available roadbeds and highways, relative costs may be substantially altered.

³⁷See for example: Pacific Intermountain Exp. Co.-Control and Purchase, 57 MCC 341, 358, 377, 379, (1950); Meyer et al., op. cit., chap. vi; R. L. Banks et al., op. cit., pp. 76-79.

³⁸When asked about relative cost advantages, manufacturers stated that trucks were low cost for distances from 350-400 miles and they also added that they considered rails to be competitive beyond these distances. The large discrepancy between the results here obtained and those observed in the New Automobiles case is a reflection of the fact that auto firms put a price on rail service disabilities which are then added to other rail costs. This procedure was not followed by the Commission in the New Automobiles case.

³⁹Interview with Mr. E. S. Knutson and Mr. Henry Crawford, September 1, 1961.

⁴⁰Examiner George A. Dahan recently stated, "Automobiles have a relatively inelastic demand." Motor Vehicles -Kansas City to Ark., La., and Tex., I & S 7269, Report and Order Recommended by George A. Dahan, Hearing Examiner, June 15, 1961, p. 16.

⁴¹Motor carrier attorneys who frequently argue that automobile traffic is "high-value traffic" capable of bearing high rates offer convincing evidence to the contrary. In a recent petition, NATA attorneys cited the testimony of traffic officials at various automobile plants to the effect that the publishing of lower rail rates produced "an almost complete diversion of the automobile traffic from motor to rail." NATA, Petition for Suspension, September 30, 1961, p. 15. This "complete diversion" would certainly not have taken place if demand curves were inelastic.

⁴²Meyer et al., op. cit., p. 212.

⁴³Interview with Mr. Henry Crawford, September 1, 1961.

⁴⁴New Automobiles in Interstate Commerce, 259 ICC 475, 491, 507, (1945).

⁴⁵Interview with Mr. Richard J. Mollica, August 31, 1961.

⁴⁶New Automobiles in Interstate Commerce, 259 ICC 475, (1945), testimony of Mr. Hugh M. O'Neil at pp. 4134, 4135 of the Transcript of Oral Hearings.

⁴⁷For a discussion of how this policy affects collective bargaining in firms which supply the automobile industry see: Kenneth Alexander, "Market Practices and Collective Bargaining in Automotive Parts," Journal of Political Economy, Vol. 69, No. 1, (1961), pp. 15-29.

⁴⁸Interview with Mr. Henry Crawford, September 1, 1961.

⁴⁹Ibid.

⁵⁰Interview with a shipper representative who desires his identity be withheld.

⁵¹Ibid.

⁵²Interview with Mr. Henry Crawford, September 1, 1961.

⁵³Interview with Mr. Earl Wiseman, June 22, 1960.

⁵⁴Interview with Mr. Rudy Fick and Mr. Earl Wiseman, June 29, 1961.

CHAPTER VI

¹Interstate Commerce Commission, First Annual Report of the Interstate Commerce Commission, (Washington: U. S. Government Printing Office, 1887), p. 30.

²Ibid.

³Professor Cohn is cited in: F. W. Taussig, "A Contribution to the Theory of Railway Rates," Quarterly Journal of Economics, Vol. 5, July, (1891), p. 438.

⁴Ibid., p. 458.

⁵Interstate Commerce Commission, First Annual Report of the Interstate Commerce Commission, p. 31.

⁶Haddock v. Delaware, Lackawanna, and Western RR. Co., 3 ICR 302, (1890). The Commission here declared, "The cost of transportation of any one article of commerce... can never be arrived at with anything like accuracy.... If the carrier desired to make cost of any particular traffic appear large or appear small, it would not be difficult to swell it or lessen it by such figures as would appear equally plausible in each case...." p. 311.

⁷Interstate Commerce Commission, First Annual Report of the Interstate Commerce Commission, p. 36.

⁸Ibid.

⁹Ibid. It should not, however, be concluded that, despite the recurring depreciation of cost standards, the Commission paid no attention to cost. Almost from the outset, parties to controversies before the Commission introduced cost evidence which, in most instances, the Commission made use of. On this point see: M. B. Hammond, "Railway Rate Theories of the Interstate Commerce Commission," Quarterly Journal of Economics, Vol. 25, November, (1911), p. 41.

¹⁰So far as automobile traffic is concerned, relative rail-motor costs certainly did not justify a motor carrier share of 90 per cent of the traffic.

¹¹See especially: Ernest Williams, Jr. op. cit.; Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Inter-Agency Rate Adjustments, Rail and Motor, Statement No. 567 (Washington: U. S. Government Printing Office, 1956); Jervis Langdon, "The Regulation of Competitive Business Forces: The Obstacle Race in Transportation," Cornell Law Quarterly, Vol. 41, No. 1, (1955),

pp. 57-92.

¹²Merrill J. Roberts, "The Regulation of Transport Price Competition," Law and Contemporary Problems, Vol. 24, No. 4, (1959), p. 562.

¹³Professor Ernest W. Williams, Jr. states, "It is difficult to avoid the conclusion that regulation has consistently, over the twenty years since the Motor Carrier Act, deprived the low-cost carrier of its low cost advantage, a result often tantamount to depriving it of all opportunity to compete for traffic." Ernest W. Williams, Jr., op. cit., p. 212. On this point see also: Presidential Advisory Committee on Transport Policy and Organization, Revision of Federal Transportation Policy, a Report to the President, (Washington: U. S. Government Printing Office, 1955), p. 10; Ernest W. Williams and David W. Bluestone, Rationale of Federal Transportation Policy, U. S. Department of Commerce (Washington: U. S. Government Printing Office, 1960), p. 26.

¹⁴The Commission has denied that allocating traffic is an objective in its rate determinations but as Professor Merrill Roberts pointed out, "The Commission prescribes price relationships producing a specific traffic allocation just as effectively as if it assigned percentages and tried to establish rates that would validate them." Merrill Roberts, op.cit., p. 562.

¹⁵See: chap. v, pp. 131-132.

¹⁶Ford K. Edwards, "Application of Market Pricing in the Division of Traffic According to Principles of Economy and Fitness," American Economic Review, Papers and Proceedings, Vol. 45, No. 2, (1955), p. 630.

¹⁷For a defense of long run marginal cost as an appropriate standard see: R. L. Banks, op.cit., Part iv; Meyer et al., op.cit., p. 182

¹⁸Exactly what shares each agency would secure would, of course, vary in individual circumstances. However, given the current technological state and the present preferences of shippers, the rails could expect to transport about one-third and the truckers about two-thirds of the total new automobile traffic. The water carrier share probably would not exceed 3 or 4 per cent.

¹⁹NATA, Petition For Suspension, September 30, 1961. These are the rail multilevel automobile rates from Detroit to Pittsburgh subsequently suspended in docket I & S 7702.

²⁰For the various definitions offered by the

Commission see: Eleanor Heyman, "The Value of Service; Its Various Meanings and Uses," Land Economics, Vol. 9, No. 3, (1933), pp. 252-265.

²¹"Concept 3" Shinn explains, "refers to situations where a particular shipper is in a position to ship the raw material or component parts of a given commodity to the destination market (or nearby point) and there manufacture or assemble the given article." Glenn L. Shinn, "Value of Service in Rate Making," Traffic World, October 7, 1961, p. 62. See also: Glenn L. Shinn, Reasonable Freight Rates, (Washington: The Traffic Service Corporation, 1952), chap. vi.

²²Glenn L. Shinn, "Value of Service in Rate Making," Traffic World, October 7, 1961, pp. 62-67.

²³Motor Vehicles-Kansas City to Ark., La., & Tex., I & S 7269, (1961), p. 16. (Mimeographed.) The NATA petition, in this case, refers to automobiles as "light, bulky, and luxury commodities which have traditionally carried rates at 75 per cent of first class or higher." NATA, Petition for Suspension, October 12, 1961, p. 12.

²⁴Examiner Dahan argued in I & S 7269, "high-rated traffic must be called upon to bear its full burden so that the public may not be denied the railroad facilities for deficit traffic...." p. 17.

²⁵Ibid., p. 16.

²⁶Motor Vehicles-Kansas City to Ark., La., & Tex., I & S 7269, (1961). (Mimeographed.), Motor Vehicles-Cleveland, Detroit, Lorain to New England and Trunk Line, I & S 33392, (1961). (Mimeographed.)

²⁷Truman C. Bigham and Merrill Roberts, Transportation, Principles, and Problems (New York: McGraw-Hill Book Company, Inc., 1952), pp. 354-357.

²⁸This point is made forcefully in a study of private carriage recently concluded in Canada. See: Canadian Industrial Traffic League, Private Motor Trucking, Issue No. 4026, August 4, 1961, pp. 1, 2.

²⁹Glenn L. Shinn, "Value of Service in Rate Making," Traffic World, October 7, 1961, p. 62.

³⁰Ibid., p. 65.

³¹See for example: Tibor Scitovsky, Welfare and Competition (Chicago: Richard D. Irwin, Inc., 1951), pp. 173-177. The condition there given for optimal product

combination is that: $MCa/MCb = pa/pb$.

³²The Commission has, from its inception, singled out goods such as soap, flour, salt and fertilizers as necessities entitled to lower rates.

³³Meyer et al., op. cit., p. 184.

³⁴Ibid., p. 188.

³⁵On this point see the criticism of Marver Bernstein, Regulating Business by Independent Commission (Princeton: Princeton University Press, 1955). Professor Bernstein charges that Commissions become subservient to the desires of those they regulate.

³⁶Motor Vehicles- Kansas City to Ark., La., & Tex., I & S 7269, (1961), p. 17. (Mimeographed.)

³⁷Motor Vehicles- Cleveland, Detroit, Lorain to New England and Trunk Line, I & S 33392, (1961), p. 21. (Mimeographed.)

³⁸See: Meyer et al., op. cit., p. 182.

³⁹Lucile S. Keyes, "The Protective Function of Commission Regulation," American Economic Review, Papers and Proceedings, Vol. 48, No. 2, 1948, p. 550.

⁴⁰Ibid.

⁴¹George W. Wilson, "The Effects of Value of Service Pricing Upon Motor Common Carriers," Journal of Political Economy, Vol. 63, No. 4, 1955, pp. 337-344.

⁴²Interstate Commerce Commission, Cost Finding Section, Explanation of the Development of Motor Carrier Costs with Statements as to their Meaning and Significance, Statement No. 4-59 (Washington: U. S. Government Printing Office, 1959) p. 23.

⁴³New Automobiles in Interstate Commerce, 259 ICC 475, 506, (1945).

⁴⁴Ralph L. Dewey, "Criteria For the Establishment of an Optimum Transportation System," American Economic Review, Papers and Proceedings, Vol. 42, No. 2, pp. 644. For similar expressions of this point of view, see: Harold Hotelling, "The General Welfare in Relation to Problems of Taxation and of Railway Utility Rates," Econometrica, Vol. 6, No. 3, (1938) pp. 242-269; Donald Wallace, "Kinds of Public Control to Replace or Supplement Antitrust Laws," American Economic Review, Vol. 30, No. 1, (1940), pp. 194-218;

T. N. E. C., Standards of Government Price Control, Monograph No. 32, Senate Committee Print, 76th Cong., 3rd Sess., (1941), pp. 414-415.

⁴⁵See: Emery Troxel, "Incremental Cost Determination of Utility Prices," Journal of Public Utility and Land Economics, Vol. 18, No. 4, (1942), pp. 458-467; Emery Troxel, "Limitations of the Incremental Cost Patterns of Pricing," Journal of Public Utility and Land Economics, Vol. 19, No. 1, (1943), pp. 28-39; George W. Wilson, "Current Criticisms of the Interstate Commerce Commission," Current Economic Comment, Vol. 21, No. 31, (1959), pp. 3-16

⁴⁶Lloyd Wilson and J. R. Rose, "Out-of-Pocket Costs in Railroad Freight Rates," Quarter Journal of Economics, Vol. 60, August, 1946, p. 549.

⁴⁷On this point, see: R. L. Banks, op. cit., chap. ii, pp. 8-9.

⁴⁸Meyer et al., op cit., p. 182.

⁴⁹Robert W. Harbeson, "A Critique of Marginal Cost Pricing," Land Economics, Vol. 31, No. 1, (1955), pp. 54-74. See also the statement of Donald P. Kipp on Senate Bill 1197 as reported in Transport Topics, August 21, 1961.

⁵⁰Tibor Scitovsky, op. cit., p. 365.

⁵¹U. S., Department of Commerce, Unified and Coordinated Program for Transportation, Report to the President from the Secretary of Commerce (Washington: U. S. Government Printing Office, 1949), p. 30. The Commission has also on numerous occasions referred to the necessity that rates cover fully distributed costs.

⁵²Merrill J. Roberts, "The Regulation of Transport Price Competition," p. 570.

⁵³See for example: Delos W. Rentzel, "Statement of National Automobile Transporters Association Before the Senate Committee on Interstate and Foreign Commerce in Support of Senate Bill 1197," May, 1961. (Mimeographed.)

⁵⁴This view is shared by others. See for example: the address by Senator Mike Monroney to the American Trucking Associations as reported in Traffic World, October 14, 1961, p. 21. For a dissenting view on the ability of the railroads to subsidize rate wars by raising rates on "captive" commodities see: Fred V. Stone, "Changing Patterns of Competition--Discussion," American Economic Review, Papers and Proceedings, Vol. 46, No. 2, (1956), p. 547.

⁵⁵James C. Nelson, "Revision of National Transport Regulatory Policy," American Economic Review, Vol. 45, No. 5, (1955), p. 912.

⁵⁶Merrill J. Roberts, "The Regulation of Transport Price Competition," p. 570.

⁵⁷A similar competitive situation involving a railroad and a specialized motor carrier is discussed in Hunter Morrison, "Economic Justification for Regulating Competitive Truck and Rail Rates," The Journal of Land and Public Utility Economics, Vol. 14, No. 1, (1938), pp. 66-71. The California Commission in November 1936 ordered rail rates raised to protect motor carriers from destruction, p. 66. Commissioner Carr in his dissenting opinion commented on the probability of rails driving truckers out of business:

This is a pure bogey man and entitled to no serious consideration. Under existing rail rate trucks are now hauling 70% of the competitive business. Should rail rates become burdensome, highway carriers will be on hand. Proprietary truck haulage is always available as a check on high rates. The feared result might have been possible years ago. Today there is not the slightest chance of its coming to pass. pp. 68, 69.

⁵⁸Motor Vehicles- Kansas City to Ark., La., & Tex., I & S 7269, (1961), p. 15. (Mimeographed.)

CHAPTER VII

¹That the Commission still envisages a transportation system based upon monopolistically determined rates seems clear from the following exchange between Senator Smathers and Commissioner Howard Freas:

Senator Smathers: Do you mean... that it is your viewpoint that the Commission should give some protection to one type of transportation as distinguished from another, so that the type of transportation which might be hurt by a recommended rate change could continue to operate?

Mr. Freas: No, I mean by that that the low-cost form of transportation should be considered the ratemaking form. It should establish rates the way it normally would in the absence of competition and then to the extent that the high cost form--

U. S. Congress, Subcommittee on Surface Transportation of the Committee on Interstate and Foreign Commerce Hearings, Problems of the Railroads, 85th Cong., 2nd Sess., Part 3, 1958, p. 1901. (Emphasis mine.)

²The Gadsen case (Kenosha Auto Transport Co. Extension, Gadsen, Ala., 52 MCC 123, 1950) is perhaps the most notable example. See: chap. iv, p.112.

³See: chap. iv, pp. 109-110.

⁴Pacific Motor Trucking Company, Extension--Oregon, 77 MCC 605, (1958).

⁵See, for example: Eastern Railroads Presidents Conference et al., Petitioners v. Noerr Motor Freight, Inc., et al., 273 F. 2d 218, (1959); 365 U. S. 127, (1960).

⁶This does not mean that motor carriers have not suffered severe losses as a result of the new rail competition. It is unfortunate that through the neglect or the misguided policy of the railroads, of shippers, and of the Commission, this overextension of the trucking firms ever occurred. But it is obviously profitable to society to increase the efficiency of transportation.

⁷The indeterminacy results from the fact that relative rail-motor advantages are a function of a variety of factors such as, volume, speed of delivery, and topographical characteristics, all of which vary from any single shipping point to surrounding destination areas.

⁸NATA, Petition for Suspension, October 12, 1961.

⁹Senator Monroney's address is cited in Traffic World, October 14, 1961, p. 21.

¹⁰This last suggestion is offered by Professor Merrill J. Roberts in Evaluation of Rate Regulation (Washington: U. S. Department of Commerce, 1959), p. 101.

¹¹For a defense of transport integration see: Lee Melton, Jr., "An Integrated Approach to the Transportation Problem," Southern Economic Journal, Vol. 23, No. 4, (1957) pp. 398-410.

¹²See, for example: Commodities, Pan-Atlantic Steamship Corp., I & S-M-10415 (1961); Piggyback Rates-Between East and Texas, I & S 6834, January 14, 1961, p. 73.

¹³At one time, barges transported a substantial number of vehicles by river but this traffic was lost to the water carrier because of slow transit times.

Interview with Mr. Paul Skipworth, October 13, 1961. In a letter to the writer dated January 11, 1962, Mr. Ray Van Beckum, former president of Commercial Barge Lines, Inc., stated, "It is further a fact that since the spring of 1961, no automobiles have been transported via barge on America's vast inland waterways. While this has always been considered a most economical method of transport for vehicles generally, the many changes in merchandising have necessitated more prompt dispatch than was afforded via water. This coupled with the necessity in many instances of moving vehicles via highway to and from the inland waterway system has contributed to the diversion of this traffic to other methods."

¹⁴See: chap. ii, footnote 116.

¹⁵Interview with Mr. Henry C. Crawford, September 1, 1961. Ford, for example, which had abandoned water movements, plans to ship about 2 per cent of its Detroit traffic via the Great Lakes. The most important movements are from the River Rouge plant to Buffalo and from Muskegon to Milwaukee.

¹⁶The idea that the low cost mode should act as a price leader has long been supported by the Commission. It is disturbing to note that the courts have interpreted the amended Sec. 15 (a) (3) to permit such practices. Although the United States District Court rejected an ICC order requiring the railroads to "maintain rates no lower than 6 per cent above ... sea land rates" it went on to say that if the Commission found the water carrier to be the low cost mode and if it further found "that value of service considerations demand water carrier rates ... more than their fully distributed costs," it could under certain conditions require "that TOFC rates be set high enough to protect water carrier traffic." This decision was issued in civil action No. 8679, New York, New Haven & Hartford Railroad Co. v. United States of America and Interstate Commerce Commission (Sea-Land Service, Inc., and Seatrain Lines, Inc., Defendants-Intervenors), and is reported in Traffic World, November 15, 1961, pp. 97-99.

¹⁷Merrill J. Roberts, Evaluation of Rate Regulation, p. 123.

¹⁸On this point see: Walter Adams, "The Role of Competition in the Regulated Industries," American Economic Review, Papers and Proceedings, Vol. 48, No. 2, (1958), especially p. 543.

¹⁹U. S. Congress, Senate Select Committee on Small Business, Hearings on Trucking Mergers and Concentration, 85th Cong., 1st Sess., 1957, p. 221.

²⁰Actually the case being made for such regulation seems unconvincing. Exempt haulers seem able to avoid the dire perils forecast for a liberated motor carrier industry while providing a satisfactory and a profitable service. Many of the objections to deregulation seem only to emphasize that organization of the economic process is a task of staggering complexity. One might compile as impressive a list of difficulties for almost any industry as Smykay has for motor carriers. See: Edward W. Smykay, "An Appraisal of the Economies of Scale in the Motor Carrier Industry," Land Economics, Vol. 34, No. 2, (1958), p. 148.

²¹See for example: Hunter Morrison, op. cit., p. 68; J. B. Eastman, "The Adjustment of Rates Between Competing Forms of Transportation," American Economic Review, Papers and Proceedings, Vol. 30, No. 1, (1940), p. 125; Edward W. Smykay, op. cit., pp. 143-148; Charles S. Morgan, "Comment" American Economic Review, Papers and Proceedings, Vol. 48, (1958), p. 562; American Trucking Associations v. United States, 344 U. S. 298, 312, (1953).

²²See for example: Edward W. Smykay, op. cit., p. 144.

²³See for example: Meyer et al., op. cit., p. 10; James C. Nelson, "Patterns of Competition and Monopoly in Present Day Transport and Implications for Public Policy," Land Economics, Vol. 26, No. 3, (1950), p. 243.

²⁴See: chap. 11, pp. 18, 19.

²⁵Hunter Morrison describes the process as follows: "Itinerant operators were irresponsible and often had only sufficient capital to make a down payment on a truck which would be repossessed after a short time because of their inability to meet payments to a finance company which would immediately resell the trucks to other uninitiated individuals who in turn would become bankrupt. This process would go on continually with service furnished at less than total cost. Such demoralizing conditions would affect adversely the more dependable operators and railroads alike." Hunter Morrison, op. cit., p. 69.

²⁶Western Auto Transports, Inc., Extension--St. Louis County, Mo., 81 MCC 291, 299, (1959).

²⁷Kenneth Alexander, op. cit., p. 19.

²⁸U. S. Congress, Subcommittee on Surface Transportation of the Committee on Interstate and Foreign Commerce, Hearings, Problems of the Railroads, 85th Cong., 2nd. Sess., Part 3, 1958, p. 1901.

²⁹Ibid.

³⁰See: chap. iv, p. 96.

³¹Unless the railroads are prevented from exercising the advantages resulting from technological change, it appears likely that some motor carriers are bound to fail anyway. Not even the ICC can assure the continued survival of all motor carriers under present circumstances. Unfortunately, the Commission's policy of protecting carriers by adhering to the limitations which are embodied in operating rights distributes the burden in an indiscriminate and inefficient manner. For example, a carrier who hauled automobiles under initial rights to points presently served by rail multilevel cars may be cut off entirely because he lacks the secondary authority necessary for distribution from the railhead. The carrier with secondary authority, even though he may be less efficient and in spite of the fact that he may never previously have shared in this traffic reaps a windfall. Results of Commission decisions in cases such as these bring to mind a verse from Gilbert and Sullivan's "The Mikado":

See how the fates their gifts allot
For A is happy -- B is not
Yet B is worthy, I dare say,
Of more prosperity than A!

³²Merrill J. Roberts, "Some Aspects of Motor Carrier Costs; Size, Efficiency and Financial Health," Land Economics, Vol. 32, No. 3, (1956). See also: Robert A. Nelson, New England Governors' Committee on Public Transportation, Motor Freight Transport for New England; A Report to the New England Governors' Conference, Report No. 5, October, 1956. An analysis of the relationship between average cost per vehicle mile and firm size as measured by total assets for carriers of motor vehicles produced correlation coefficients so small as to be insignificant so that there is no reason to believe that Professor Roberts' conclusions do not apply in this instance.

³³This differentiates this situation from that which exists among the retail gasoline dealers described in: Kenneth Boulding, Economic Analysis (2d ed. rev.; New York: Harper & Brothers, 1948), p. 590.

³⁴The reasons for the emergence of these quasi-agreements and their consequences are explained in: William Fellner, Competition Among the Few (New York: Alfred C. Knopf, 1949), p. 183.

³⁵Ibid, p. 185.

³⁶Any excessive price competition would probably not be tolerated by shippers. For one thing, we have already emphasized that automobile manufacturers place a great deal of emphasis on having reliable, efficient, and healthy carriers. Shippers have a pretty good idea of what motor carrier costs are. As a matter of fact, some shippers appear to have better cost estimates than the carriers themselves. It is no secret that shippers have brought considerable pressure to bear on motor carriers for lower rates in the past several years but these were aimed at scaling down past excesses. One shipper aims at providing a return on investment of 11 per cent for its motor vehicle transporters. What would happen if rates drifted to a level producing lower returns? The guess here is that shippers would do with their motor carriers what Ford did with its water carriers -- it would raise the rates to insure continued efficient and satisfactory service.

³⁷The present Commission policy of giving preference to carriers presently enjoying particular traffic deadens the incentive to innovate. If, for example, a carrier pioneers some improvement which proves attractive to shippers, he cannot expect to take traffic away from truckers presently serving a particular shipper since these latter are to be given the opportunity to make whatever improvements may be necessary in their own service. See: J-T Transport Company, Inc., Extension- Columbus, Ohio, 79 MCC 695, 708, (1959).

³⁸George W. Wilson, "Current Criticisms of the Interstate Commerce Commission," Current Economic Comment, Vol. 21, No. 31, (1959), p. 4.

³⁹Motor Vehicles- Kansas City to Ark., La., & Tex., I & S 7269, (1961), p. 15. (Mimeographed.)

⁴⁰At times the Commission seems unsure that shippers can make accurate appraisals of their own best interests. In a speech reported in Railway Digest, Vol. 14, No. 6, June 1959, p. 8, Commissioner Charles A. Webb charged that shippers who resort to private carriage might not be acting in concert with their long run economic interests.

⁴¹Interview with Mr. Henry Crawford and Mr. E. S. Knutson, September 1, 1961.

⁴²Interview with Mr. Paul Fritzching, August 31, 1961; Interview with Mr. Rudy T. Fick and Mr. Earl Wiseman, June 29, 1961.

⁴³Interview with Mr. Richard Mollica, August 31, 1961.

⁴⁴It would also be recalled that the Commission's Bureau of Transport Economics and Statistics indicated at that time that it thought these figures understated true profit levels.

⁴⁵Both shippers and motor carriers have stated, however, that operating rights have not been as restrictive as they might seem at first blush. Through various devices, shippers and carriers have, to some extent, been able to circumvent many of the provisions of these grants of authority.

⁴⁶For example, some companies prefer to have available the services of several suppliers of particular goods or services as a hedge against interruption by strike or by an unforeseen emergency. See: Kenneth Alexander, op. cit., p. 20. The Commission required these firms to make an exception to this general policy in the case of transportation services.

⁴⁷George Stigler, "The Economist Plays with Blocs," American Economic Review, Vol. 44, No. 2, (1954), p. 13.

BIBLIOGRAPHY

Table of Cases Cited

- A. B. C. Motor Transp. Co., Inc., v U. S. 69 F. Supp.
166, 1946.
- A. J. Metler, Extension--Crude Sulphur. 62 MCC 143, 1953.
- Alkire-Smith Auto Company et al., v Atchison, Topeka & the
Santa Fe Railway Company et al. 52 ICC 507, 1919.
- American Trucking Associations v United States. 344 U. S.
298, 1953.
- Andrew Clark, Extension of Operations. 16 MCC 535, 1939.
- Arco Auto Carriers, Inc., Extension--Dekalb, Ill. 72 MCC
379, 1957.
- Arco Auto Carriers, Inc., Extension--Milwaukee. 49 MCC
731, 1949.
- Arco Auto Carriers, Inc., Extension--North Tarrytown, N. Y.
74 MCC 717, 1958.
- Arco Auto Carriers, Inc., Extension of Operations--
Milwaukee. 47 MCC 95, 1947.
- Associated Transports, Inc., Common Carrier Application.
26 MCC 789, 1940.
- Associated Transports, Inc., Extension--Kansas City, Mo.
71 MCC 367, 1957.
- Auburn Automobile Company v Pennsylvania Railroad Company
et al. 151 ICC 120, 1929.
- Automobiles and Chassis to Chicago, Ill. 227 ICC 223, 1938.
- Automobiles and Parts to Southern Territory. 215 ICC 488,
1936.
- Automobiles-Duluth, Minn. to Washington. 308 ICC 523, 1960.

- Automobiles From Buffalo, N. Y. 223 ICC 471, 1937.
- Automobiles From Cincinnati, Ohio. 219 ICC 381, 1936.
- Automobiles From Dallas, Texas. 226 ICC 705, 1938.
- Automobiles From Detroit to the East. 288 ICC 167, 1954.
- Automobiles in the Southwest. 278 ICC 437, 1955.
- Automobiles to Boone and Des Moines, Iowa. 235 ICC 24, 1939.
- Automobiles to Iowa, Minnesota and South Dakota. 235 ICC 21, 1939.
- Automobiles to Oklahoma City--Ada--Atoka Railway Points. 219 ICC 314, 1936.
- Automobile Shippers, Incorporated, Extension--Show Cars and Displays. 67 MCC 201, 1956.
- Auto Transports, Inc., Suspension of Permit. 51 MCC 600, 1950.
- Bernice Eaton Common Carrier Application, 22 MCC 791, 1940.
- Birmingham Traffic Bureau v Director General, Alabama Great Southern Railway Company, et al. 115 ICC 33, 1927.
- Blain's Drive-A-Way System--Common Carrier Application. 16 MCC 583, 1939.
- B & M Motor Company et al., v Abilene & Southern Railway Company et al. 201 ICC 35, 1934.
- Brooks-Gillespie Motors, Inc., Common Carrier Application. 10 MCC 151, 1938.
- Capital Transit Co. v U. S. 97 F. Supp. 614, 1951.
- Carolina Freight Carriers Corp. v U. S. 38 F. Supp. 549, 1941.
- Case Driveaway, Inc., Extension--Lumber. 51 MCC 659, 1950.
- Cassens Transport Company, Extension of Operations. 18 MCC 273, 1939.
- Cassens Transport Company Extension--Three States. 67 MCC 410, 1956.
- Central Truckaway System, Inc., Extension of Operations. 47 MCC 552, 1947.

Charles E. Turner Contract Carrier Application. 8 MCC 732, 1938.

Chrysler Corporation et al., v Akron, Canton & Youngstown Railroad Company et al. 279 ICC 377, 1950.

Clark Transport Company, Extension--Duluth, Minn. 53 MCC 237, 1951.

Classification of Motor Carriers of Property in the Matter of the Classification Brokers and Motor Carriers of Property, Ex Parte No. MC-10. 2 MCC 703, 1937.

Commercial Carriers, Inc., et al., v Auto Carriers, Inc., et al. 66 MCC 247, 1955.

Commercial Carriers, Inc., Extension of Operations, Evansville, Indiana. 12 MCC 479, 1939.

Commodities, Pan-Atlantic Steamship Corp. I & S-M-10415, 1961.

Complete Auto Transit, Inc., Extension--Willow Run. 71 MCC 383, 1957.

Consolidated Southwestern Cases. 173 ICC 263, 1931.

Contracts of Contract Carriers. 1 MCC 628, 1937.

Convoy Co., Extension--Board. 71 MCC 57, 1957.

Convoy Company Extension--Snowmobiles. 79 MCC 187, 1959.

Convoy Company, Interpretation of Certificate. 52 MCC 191, 1950.

Coordination of Motor Transportation. 182 ICC 263, 1932.

C. G. Gleason et al., v Ann Arbor Railroad Company et al. 140 ICC 461, 1928.

Covey Ballard Motor Company v Chicago, Milwaukee & St. Paul Railway Company et al. 177 ICC 309, 1931.

Dallas Freight Bureau v Missouri Kansas & Texas Railway Company et al. 12 ICC 427, 1907.

Dallas & Mavis Forwarding Company, Common Carrier Application. 22 MCC 655, 1940.

Dallas & Mavis Forwarding Co., Inc., Ext.--Galion, Ohio. 72 MCC 653, 1957.

- Dallas & Mavis Forwarding Co., Inc., Ext.--Galion, Ohio.
70 MCC 285, 1959.
- Dallas & Mavis Forwarding Co., Inc., Extension--Sweepers.
67 MCC 351, 1956.
- Dallas & Mavis Forwarding Co. Inc., Extension--Toledo,
Ohio to Nebraska and Extension--Milwaukee. 49 MCC
731, 1949.
- Dealers Transport Company, Extension--Delaware, Ohio.
49 MCC 207, 1949.
- Dealers Transport Co., Extension of Operations--Cincinnati,
Ohio. 48 MCC 471, 1948.
- Dealers Transit, Inc. Extension--Fresno, Calif. 79 MCC
26, 1959.
- Dealers Transit, Inc., Extension--Vina Vista, Calif. 71
MCC 657, 1957.
- Dixie Transport Company, Extension, Several States. MC
88300 Sub No. 24. Report and Order Recommended by
Reece Harrison, April 8, 1961.
- Eastern Central Motor Carriers Association, Inc. v Balti-
more & Ohio Railroad Company et al. No. 32533,
1961. (Mimeographed.)
- Eastern Railroads Presidents Conference et al., Petitioners
v Noerr Motor Freight, Inc., et al. 273 F 2d 218,
1959; 365 U. S. 127, 1960.
- Edmond O. Rainville, Contract Carrier Application. 20 MCC
307, 1939.
- Edward S. Barrett Contract Carrier Application. 19 MCC
761, 1939.
- Empire Trails, Inc. v U. S. 53 F. Supp. 373, 1942.
- F. B. Alexander v Southern Pacific Company et al. 24 ICC
306, 1912.
- Fifteen Percent Case. 1937, 1938, 226 ICC 41, 1938.
- F. J. Boutell Driveaway Company, Inc., Extension--Pontiac.
75 MCC 587, 1958.
- Frank Sober, Contract Carrier Application. 3 MCC 213, 1937.

Fred H. Nixon--Common Carrier Application. 26 MCC 325, 1940.

F. W. Myers--Common Carrier Application. 23 MCC 451, 1940.

General Increases 1937. 223 ICC 657, 1937.

George Fairall, Extension of Operations. 1 MCC 769, 1937.

George E. Hardy, Contract Carrier Application. 7 MCC 233, 1938.

Haddock v Delaware, Lackawanna, and Western RR. Co. 3 ICR 302, 1890.

H. L. Keats Auto Company v Oregon-Washington Railroad and Navigation Company et al. 28 ICC 412, 1913.

Hammond Motor Company et al., v Alabama Great Southern Railroad Company et al. 151 ICC 288, 1929.

Howard Gramlich--Common Carrier Application. 26 MCC 431, 1940.

Howard Sober, Inc., Extension--California. 49 MCC 615, 1949.

Howard Sober, Inc., Extension--California. 53 MCC 296, 1950.

Howard Sober, Inc., Extension--United States. 64 MCC 545, 1955.

Howard Sober, Inc., Extension--Utah. MC 8989 (Sub 161), 1957. (Mimeographed.)

Hulbert Forwarding Company, Inc., Common Carrier Application. 28 MCC 769, 1941.

Inland Motor Freight v U. S. 60 F. Supp. 520, 1945.

International Transport, Inc., Extension--Tractors and Farm Machinery. 66 MCC 241, 1955.

Interstate Commerce Commission v J-T Transport Co., et al. 368 U. S. 81, 1961.

In the Matter of Filing Contracts by Contract Carriers by Motor Vehicles, Ex Parte No. MC-9. 2 MCC 55, 1937.

J. A. McDowall, Common Carrier Application. 17 MCC 642, 1939.

J. A. Whitcomb v Chicago & Northwestern Railway Company

et al. 16 MCC 27, 1909.

John G. Reeser, Extension--Camden and Trenton, Atlantic City. 16 MCC 663, 1939.

Joseph Wielgopolski--Common Carrier Application. 21 MCC 217, 1939.

J-T Transport Company, Inc., Extension--Columbus, Ohio. 70 MCC 695, 1959.

J-T Transport Company v United States. 185 F. Supp. 838, 1960.

Kappel Extension of Operations--Laporte, Ind. 32 MCC 521, 1942.

Kenosha Auto Transport Corporation, Common Carrier Application. 22 MCC 753, 1940.

Kenosha Auto Transport Corporation Extension--Denver. 67 MCC 233, 1956.

Kenosha Auto Transport Corp., Extension--Gadsden, Ala. 52 MCC 123, 1950.

Kenosha Auto Transport Corporation Extension--Twenty-One States. 61 MCC 41, 1954.

Kenosha Auto Transport, Inc., Union City Extension. 54 MCC 689, 1952.

L. C. Jones Trucking Co., Extension--The Dakotas. 62 MCC 539, 1954.

Leonard Bros. Transfer & Storage Co., Inc., Extension--Trailers. 82 MCC 623, 1960.

Lewis Brothers, Extension of Operations--Amarillo, Texas. 8 MCC 605, 1938.

Martin-Nash Motor Company v Chicago, Milwaukee & St. Paul Railway Company et al. 152 ICC 179, 1929.

McDowall Transport, Inc., Extension--Fruits and Vegetables. 47 MCC 957, 1947.

Motor Convoy, Incorporated--Contract Carrier Application. 2 MCC 197, 1937.

Motor Vehicles--Cleveland, Detroit, Lorain to New England and Trunk Line. I & S 33392, 1961. Report and Order Recommended by T. Russell Roper, Hearing Examiner. (Mimeographed.)

Motor Vehicles--Kansas City to Ark., La. & Tex. I & S
7269, 1961. Report and Order Recommended by George
A. Dahan, Hearing Examiner. (Mimeographed.)

National Automobile Transporters Association, Petition For
a Declaratory Order, MC-C-3024, March 7, 1961.
Tentative Report of Division 1. (Mimeographed.)

National Automobile Transporters Association, Petition For
a Declaratory Order, MC-C-3024, Report and Order
Recommended by William R. Tyers, July 20, 1961.
(Mimeographed.)

National Automobile Transporters Association et al. v
Rowe Transfer & Storage Company, Inc. 64 MCC
229, 1955.

New Automobiles in Interstate Commerce. 259 ICC 475, 1945.

New Automobiles in Interstate Commerce. 2 USMC 359, 1940.

New State Ice Co. v Liebmann. 285 U. S. 262, 1932.

North East Transport Co. v U. S. 54 F. Supp. 448, 1944.

Pacific Intermountain Exp. Co.--Control and Purchase.
57 MCC 341, 1950.

Pacific Motor Trucking Company Extension--Oregon. 71 MCC
561, 1957.

Passenger Automobiles in Southern Territory. 288 ICC 85,
1953.

Piggyback Rates--Between East and Texas. I & S 6834, 1961.

Pope Manufacturing Company v Baltimore & Ohio Railroad et al.
17 ICC 400, 1910.

Reddish v United States. 188 F. Supp. 160, 1960.

Shippers' Union of Phoenix v The Atchison, Topeka & Santa
Fe Railway Company et al. 9 ICC 250, 1902.

Speedway Transports, Inc., Extension--Secondary Authority.
76 MCC 275, 1958.

T. A. Darnall, Contract Carrier Application. 3 MCC 415, 1937.

Texas and N. O. Ry. Co. v Northside Belt Ry. Co. 276 U. S.
475, 1928.

Transcontinental Westbound Automobile Rates. 209 ICC 549, 1935.

United Transports v Gulf Southwestern Transportation Company. 81 MCC 1, 1959.

U. S. v Contract Steel Carriers. 350 U. S. 409, 1956.

Van Dyke Motor Company v Missouri Pacific Railroad et al. 122 ICC 411, 1927.

W. A. Patterson Company v Pere Marquette Railway Company et al. 87 ICC 357, 1924.

W. J. Dillner Transfer Company--Investigation of Operations. 79 MCC 335, 1959.

Western Auto Transports, Inc., Extension--Lumber. 72 MCC 345, 1957.

Western Auto Transports, Inc., Extension--St. Louis Co. Mo. 81 MCC 291, 1959.

Periodicals

Adams, Walter. "The Regulatory Commissions and Small Business," Law and Contemporary Problems. Vol. 24, Winter, 1959, 147-168.

_____. "The Role of Competition in the Regulated Industries," American Economic Review, Papers and Proceedings, Vol. 48, No. 2, 1958, 527-543.

Alexander, Kenneth. "Market Practices and Collective Bargaining in Automotive Parts," Journal of Political Economy, Vol. 69, No. 1, 1961, 15-29.

Ashton, Herbert. "Railroad Costs in Relation to the Volume of Traffic," American Economic Review, Vol. 30, No. 2, 1940, 324-332.

Beardsley, Peter T. "Restrictions Against Entry Into Other Transportation Fields," Law and Contemporary Problems, Autumn, 1959, 643-652.

Bernard, Robert J. "The Truck in Perspective," ICC Practitioners' Journal, Vol. 28, No. 4, 1961, 445-460.

Bunke, Harvey C. "A Critical Analysis of Some Aspects of Interstate Commerce Commission Rate Policy," Land Economics, Vol. 32, No. 2, 1956, 134-143.

- _____. "The Status of Rate-Making," Land Economics, Vol. 36, No. 2, 1960, 128-141.
- Canadian Industrial Traffic League. Private Motor Trucking, Issue No. 4026, August 4, 1961.
- Dewey, Ralph L. "Criteria For the Establishment of an Optimum Transportation System," American Economic Review, Papers and Proceedings, Vol. 42, No. 2, 1952, 644-653.
- Eastman, J. B. "The Adjustment of Rates Between Competing Forms of Transportation," American Economic Review, Papers and Proceedings, Vol. 30, No. 1, 1940, 124-129.
- Edwards, Ford K. "Cost Analysis in Transportation," American Economic Review, Papers and Proceedings, Vol. 37, No. 2, 441-461.
- _____. "Application of Market Pricing in the Division of Traffic According to Principles of Economy and Fitness," American Economic Review, Papers and Proceedings, Vol. 45, No. 2, 1955, 621-632.
- George, John J. and Boldt, Joseph R. "Certification of Motor Common Carriers by the Interstate Commerce Commission," Journal of Land and Public Utility Economics, Vol. 17, No. 1, 1941, 82-91.
- Hammond, M. B. "Railway Rate Theories of the Interstate Commerce Commission," Quarterly Journal of Economics, Vol. 25, November, 1911, 1-66.
- Harbeson, Robert W. "A Critique of Marginal Cost Pricing," Land Economics, Vol. 31, No. 1, 1955, 54-74.
- _____. "The Transportation Act of 1958," Land Economics, Vol. 35, No. 2, 1959, 156-171.
- Heyman, Eleanor. "The Value of Service; Its Various Meanings and Uses," Land Economics, Vol. 9, No. 3, 1933, 252-263.
- Hotelling Harold. "The General Welfare in Relation to Problems of Taxation and of Railway Utility Rates," Econometrica, Vol. 6, No. 3, 1940, 194-218.
- Keyes, Lucile. "The Protective Function of Commission Regulation," American Economic Review, Papers and Proceedings, Vol. 48, No. 2, 1948, 544-552.
- Knappen, Laurence S. "Transit Operating Ratio--Another

View," Public Utilities Fortnightly, Vol. 51, Part 2, 1953, 485-497.

Langdon, Jervis. "The Regulation of Competitive Business Forces: The Obstacle Race in Transportation," Cornell Law Quarterly, Vol. 41, No. 1, 1955, 57, 92.

Locklin, D. Philip. "The Attack Upon Section 15a of the Interstate Commerce Act," Journal of Political Economy, Vol. 33, No. 4, 1925, 432-454.

_____. "Reorganization of the Railroad Rate Structure," American Economic Review, Papers and Proceedings, Vol. 36, No. 2, 1946, 466-478.

Lorenz, M. O. "Cost and Value of Service in Railroad Rate-Making," Quarterly Journal of Economics, Vol. 30, February, 1916, 205-232.

Maxwell, W. David. "The Regulation of Motor Carrier Rates by the Interstate Commerce Commission," Land Economics, Vol. 36, No. 1, 1960, 79-91.

Melton, Lee, Jr. "An Integrated Approach to the Transportation Problem," Southern Economic Journal, Vol. 23, No. 4, 1957, 398-410.

Morgan, Charles S. "Comment," American Economic Review, Papers and Proceedings, Vol. 48, No. 2, 1958, 562-564.

Morrison, Hunter, "Economic Justification for Regulating Competitive Truck and Rail Rates," Journal of Land and Public Utility Economics, Vol. 14, No. 1, 1938, 66-71.

Nelson, James C. "Coordination of Transportation by Regulation," Land Economics, Vol. 14, No. 2, 1938, 167-181.

_____. "Patterns of Competition and Monopoly in Present Day Transport and Implications for Public Policy," Land Economics, Vol. 26, No. 3, 1950, 232-248.

_____. "Revision of National Transport Regulatory Policy," American Economic Review, Vol. 45, No. 5, 1955, 910-918.

_____. "Effect of Public Regulation on Railroad Performance," American Economic Review, Papers and Proceedings, Vol. 50, No. 2, 1960, 495-505.

- Nicholson, Howard W. "Motor Carrier Costs and Minimum Rate Regulation," Quarterly Journal of Economics, Vol. 72, No. 1, 1958, 139-152.
- Payne, James P. "Regulation and Management Functions," ICC Practitioners' Journal, Vol. 28, No. 1, 1960, 27-44.
- Pegrum, Dudley F. "The Economic Basis of Public Policy for Motor Transport," Land Economics, Vol. 28, No. 3, 1952, 244-263.
- Peterson, G. Shorey. "Motor-Carrier Regulation and Its Economic Bases," Quarterly Journal of Economics, Vol. 43, August, 1929, 604-647.
- Railway Age. 1960-1961.
- Railway Digest. 1959-1960.
- Roberts, Merrill J. "Some Aspects of Motor Carrier Costs; Size, Efficiency and Financial Health," Land Economics, Vol. 32, No. 3, 1956, 228-238.
- _____. "Transport Regulation and the Railroad Problem," Southern Economic Journal, Vol. 23, No. 3, 1957, 256-271.
- _____. "Maximum Freight Rate Regulation and Railroad Earnings Control," Land Economics, Vol. 35, No. 2, 1959, 125-138.
- _____. "The Regulation of Transport Price Competition," Law and Contemporary Problems, Vol. 24, Autumn, 1959, 557-585.
- Shinn, Glenn L. "Value of Service in Rate Making," Traffic World, October 7, 1961, 62-67.
- Smykay, Edward W. "An Appraisal of the Economies of Scale in the Motor Carrier Industry," Land Economics, Vol. 34, No. 2, 1958, 143-148.
- Spurr, William. "The Case for the Common Carrier in Trucking," Land Economics, Vol. 24, No. 3, 1948, 253-263.
- Stigler, George. "The Economist Plays with Blocs," American Economic Review, Vol. 44, No. 2, 1954, 7-14.
- Stone, Fred V. "Changing Patterns of Competition--Discussion," American Economic Review, Papers and Proceedings, Vol. 46, No. 2, 1956, 545-548.

Taussig, F. W. "A Contribution to the Theory of Railway Rates," Quarterly Journal of Economics, Vol. 5, July, 1891, 438-465.

Traffic World. 1958-1961.

Transport Topics. 1955-1961.

Troxel, Emery. "Incremental Cost Determination of Utility Prices," Journal of Public Utility and Land Economics, Vol. 18, No. 4, 1942, 458-467.

———. "Limitations of the Incremental Cost Patterns of Pricing," Journal of Public Utility and Land Economics, Vol. 19, No. 1, 1943, 28-39.

Wallace, Donald. "Kinds of Public Control to Replace or Supplement Antitrust Laws," American Economic Review, Vol. 30, No. 1, 1940, 194-218.

Williams, Ernest W. "Railroad Rate Levels and Earning Power in an Era of Competitive Transport," Land Economics, Vol. 25, No. 4, 1949, 405-413.

Wilson, George W. "The Effects of Value of Service Pricing Upon Motor Common Carriers," Journal of Political Economy, Vol. 63, No. 4, 1955, 337-344.

———. "Current Criticisms of the Interstate Commerce Commission," Current Economic Comment, Vol. 21, No. 31, 1959, 3-16.

Wilson, Lloyd and Rose, J. R. "Out-of-Pocket Costs in Railroad Freight Rates," Quarterly Journal of Economics, Vol. 60, August, 1946, 546-560.

Books

American Trucking Associations, Inc. Financial & Operating Statistics, Class I and II Motor Carriers of Property. Washington: American Trucking Associations, Inc., 1960.

Automobile Manufacturers Association. Motor Truck Facts. Detroit: Automobile Manufacturers Association, 1960.

Bernstein, Marver. Regulating Business By Independent Commission. Princeton: Princeton University Press, 1955.

Bigham, Truman C. and Roberts Merrill J. Transportation,

Principles, and Problems. New York: McGraw-Hill Book Company, Inc., 1952.

Boulding, Kenneth. Economic Analysis. 2d ed. rev. New York: Harper & Brothers, 1948.

Dean, Joel. Managerial Economics. New York: Prentice-Hall, 1956.

Fellner, William. Competition Among the Few. New York: Alfred C. Knopf, 1949.

Locklin, Philip. Economics of Transportation. rev. ed. Chicago: Business Publications, 1938.

Meyer, John R., et al. The Economics of Competition in the Transportation Industries. Harvard Economic Studies, Vol. 107; Cambridge, Mass: Harvard University Press, 1959.

Scitovsky, Tibor. Welfare and Competition. Chicago: Richard D. Irwin, Inc., 1951.

Shinn, Glenn L. Reasonable Freight Rates. Washington: The Traffic Service Corporation, 1952.

Taff, Charles A. Operating Rights of Motor Carriers. Dubuque: Wm. C. Brown Company, 1953.

Wagner, Warren H. A Legislative History of the Motor Carrier Act, 1935. Denton: Rue Publishing Company, 1935.

Williams, Ernest W. The Regulation of Rail-Motor Rate Competition. New York: Harper & Brothers, 1958.

Public Documents

Banks, R. L., et al. "Study of Cost Structures and Cost Finding Procedures In the Regulated Transportation Industries." Study prepared for the U. S. Department of Commerce, 1959.

Interstate Commerce Commission. First Annual Report of the Interstate Commerce Commission. Washington: U. S. Government Printing Office, 1887.

Interstate Commerce Commission. Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs, Statement No. 4-54. Washington: U. S. Government Printing Office, 1954.

- Interstate Commerce Commission, Bureau of Transport Economics and Statistics. Inter-Agency Rate Adjustments, Rail and Motor, Statement No. 567. Washington: U. S. Government Printing Office, 1956.
- Interstate Commerce Commission, Bureau of Accounts, Cost Finding and Valuation. Explanation of Motor Carrier Costs with Statements as to their Meaning and Significance, Statement No. 4-59. Washington: U. S. Government Printing Office, 1959.
- Interstate Commerce Commission, Bureau of Accounts. Distribution of the Rail Revenue Contribution by Commodity Groups--1958, Statement No. 4-60. Washington: U. S. Government Printing Office, 1960.
- Nelson, Robert A. New England Governors' Committee on Public Transportation, Motor Freight Transport for New England; A Report to the New England Governors' Conference, Report No. 5. October, 1956.
- Presidential Advisory Committee on Transport Policy and Organization. Revision of Federal Transportation Policy, a Report to the President. Washington: U. S. Government Printing Office, 1955.
- Roberts, Merill J. "Evaluation of Rate Regulation." Study prepared for the U. S. Department of Commerce, 1959.
- T. N. E. C. Standards of Government Price Control, Monograph No. 32, Senate Committee Print, 76th Cong., 3rd Sess., 1941.
- U. S., Department of Commerce. Unified and Coordinated Program for Transportation, Report to the President from the Secretary of Commerce. Washington: U. S. Government Printing Office, 1949.
- U. S. President, 1961, (Kennedy). The Transportation System of Our Nation; Message from the President of the United States Relative to the Transportation System of Our Nation, April 5, 1962. 87th Cong., 2d Sess., 1962, House Doc. No. 384.
- U. S. Congress, Senate. Committee on Small Business. Hearings, ICC Administration of the Motor Carrier Act. 84th Cong., 1st Sess., 1955.
- U. S. Congress, Senate. Select Committee on Small Business. Hearings on Trucking Mergers and Concentration. 85th Cong., 1st Sess., 1957.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Hearings, Rate-Making Rule--ICC Act. 85th Cong., 2d Sess., 1958.

U. S. Congress, Senate. Subcommittee on Surface Transportation of the Committee on Interstate and Foreign Commerce. Hearings, Problems of the Railroads, Parts 1, 2, 3, 85th Cong., 2d Sess., 1958.

U. S. Statutes At Large. Vols. 54, 82.

Williams, Ernest W. and Bluestone, David W. Rationale of Federal Transportation Policy. Washington: U. S. Government Printing Office, 1960.

Briefs Filed With the Interstate

Commerce Commission

Answer in Behalf of Southern Carriers to the Petition of the National Transporters Association For Expedited Action and For Other Reliefs. September 13, 1941.

Atlantic Coast Line and Louisville and Nashville Railroad Companies. Brief on Behalf of Atlantic Coast Line and Louisville and Nashville Railroad Companies, MC-C-3024, October 21, 1960.

Automobile Transport, Inc. of Delaware, et al. Brief in Advance of Examiner's Report and Recommended Order Filed on Behalf of Protestants Automobile Transport, Inc. of Delaware, Baker Driveaway Company, Fleet Carrier Corporation, E & L Transport Company, and Robert R. Walker, Inc. MC-93890 (Sub No. 16) et al., July 21, 1960.

Chrysler Corporation et al. Reply of Complainants to the Petition of Certain Defendants for Postponement of Hearing. April 3, 1948.

_____. Complainants Exceptions to Report Proposed by Paul O. Carter and Henry C. Laughton, Examiners. January 16, 1950.

Clark Transport Company. Brief of Clark Transport Company, Intervenor in Opposition, MC-C-3024, October 24, 1960.

Freight Forwarders Institute et al. Brief of The Freight

Forwarders Institute; Acme Fast Freight Inc; Republic Carloading & Distributing Co., Inc.; and Universal Carloading & Distributing Co., Inc., MC-C-3024, October 24, 1960.

General Motors Corporation. Brief of Petitioner in Advance of the Examiner's Report. MC-C-3024, October 21, 1960.

Howard Sober, Inc. Reply of Protestant Howard Sober, Inc. To Petition Of National Automobile Transporters Association for Leave to Intervene, etc. MC-88300 (Sub No. 24), October 13, 1960.

Kenosha Auto Transport Corp. Brief as Requested by the Trial Examiner, MC-C-3024, October 24, 1960.

NATA. Protest and Request For Suspension and Investigation of Certain Tariffs and for an Order Instituting a General Investigation Into the Subject of Rates on New Automobiles. December 21, 1938.

. Petition on Behalf of NATA for Subpoena Duces Tecum. October 21, 1941.

. Brief in Behalf of the National Transporters Association, Inc. November 16, 1942.

. Brief of Petitioner in Advance of the Examiner's Report and Recommended Order, MC-C-3024, September 30, 1960.

. Brief of the National Automobile Transporters Association, I & S 7269, October 3, 1960.

. Petition For Declaratory Order Under Section Five (d) of the Administrative Act. No. MC-C-3024, July 27, 1960.

. Petition For Suspension. October 12, 1961.

. National Automobile Transporters Association, Petition For a Declaratory Order. March 7, 1962.

McDowall Transport, Inc. Initial Brief to Examiner Abraham J. Essrick, on Behalf of McDowall Transport Inc., Applicant, in MC-93890 Sub. No. 16, July 20, 1960.

Motor Convoy, Inc. Initial Brief to Abraham Essrick, Examiner on Behalf of the Motor Convoy, Inc. Protestant, MC-93890 (Sub No. 16) et al., July 22, 1960.

Transport Storage & Distributing Co. Brief of Transport Storage & Distributing Co. Intervenor in Opposition to The Petition, MC-C-3024, October 24, 1960.

United Transports, Inc., and Auto Convoy. Initial Brief to Abraham J. Essrick, Examiner, on Behalf of (1) United Transports, Inc., and (2) Auto Convoy Co., Protestants, MC-93890 (Sub No. 16) et al. June 22, 1960.

Statements Before Congressional Committees

Beardsley, Peter T. "Statement Before the Senate Committee on Commerce on S. 1107," May 11, 1961. (Mimeographed.)

Freund, Frederick G. "Statement Before the Senate Committee on Commerce on Bill 1197." May 11, 1961. (Mimeographed.)

Gilliland, J. E. "Statement Before the Surface Transportation Sub-committee of the United States Senate Committee on Interstate and Foreign Commerce." April 10, 1961. (Mimeographed.)

Langdon, Jervis. "Statement Before the Senate Committee on Commerce." June 15, 1961. (Mimeographed.)

Rentzel, Delos. "Statement Before the Senate Committee on Commerce in Support of Senate Bill 1197." May, 1961. (Mimeographed.)

Zagri, Sidney. "Statement Before the Committee on Interstate and Foreign Commerce of the United States on S. 1197." May 17, 1961.

Interviews

Interviews with Mr. Paul Skipworth of George F. Burnett Company. 1959-1960.

Interview with Mr. J. H. Stark, Jr. Vice-President, Howard Sober, Inc. November 11, 1960.

Interview with Mr. Earl Wiseman of the Studebaker-Packard Corporation, June 22, 1960.

Interview with Mr. R. T. Fick and Mr. Earl Wiseman of the Studebaker-Packard Corporation, June 29, 1961.

Interview with Mr. George F. Burnett, President, George F. Burnett Company, July 18, 1961.

Interview with Mr. Richard Mollica, Chevrolet Division, General Motors Corporation. August 31, 1961.

Interview with Mr. Paul Fritzching, Director, Corporate Traffic, The Chrysler Corporation. August 31, 1961.

Interview with Mr. E. S. Knutson and Mr. Henry Crawford of the Ford Motor Company. September 1, 1961.

Interview with Mr. Charles Pieroni, General Manager, Dallas & Mavis Forwarding Co., January 3, 1962.

Letters

Automobile Manufacturers Association. Letter from C. E. Brown, General Traffic Manager. February 15, 1962.

Bieneman, Walter N. Letter. October 27, 1961.

Chrysler Corporation. Letter from Mr. Paul Fritzching, Director, Corporate Traffic Office. February 9, 1962.

Paxton, H. G. Director of Departmental Operations, American Motors Corporation. Letter, February 8, 1962.

Van Beckum, Ray. Chairman of the Board, Commercial Carrier, Inc. Letter, January 11, 1962.

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