Cornell Law Review

Volume 21
Issue 2 *February 1936*

Article 2

Federal Motor Carrier Act of 1935

John J. George

THE FEDERAL MOTOR CARRIER ACT OF 1935

JOHN J. GEORGE

I. THE BACKGROUND FOR THE LEGISLATION

During the last decade a multitude of unconnected local motor carrier enterprises have been transformed into a co-ordinated nation-wide system of transportation intrastate and interstate. Systematic transportation service has reached 45,000 inland communities, and created competition with established rail carriers serving communities already articulated. Passenger miles operated by steam railroads *declined* 40% from 30 billion in 1930 to 18 billion in 1934; but common carrier busses *increased* their operation 10% from 10 to 11 billion. Electric railway operation *decreased* by more than 30% in the 5-year period. While steam and electric railways experienced a serious *decline* in passengers, those transported by public carrier busses *increased* 25% from 1.7 billions in 1931 to 2.2 billions in 1934. In the same period revenue realized from operation of electric railway cars declined 25% from 695 million dollars to 531 million. Class I steam railroads fared even worse, their revenue falling 37% from 555 million dollars to 346 million. But total revenue of public busses dropped only 8% in 1933 as over 1931, and 1934 found all the loss erased and a slight improvement over the 1931 figure of 310 million dollars.[1] Locomotives and freight cars in operation have decreased 25 and 16% respectively from 1925 to 1934; railway originating tonnage, carloadings, and passengers declined 45, 40, and 50% respectively in the same period. Revenue passenger miles were cut in half, average freight revenue per ton mile fell 16% and average revenue per passenger mile decreased by 33%. Railroad l.c.l. freight declined 57% from 1920 to 1931 and the rate of return earned by railroads declined from 4.99% in 1926 to 2% in 1931, and to 1.79 in 1934.[2]

---

[1] BUS FACTS FOR 1935, 4, 5, 6.

[2] YEARBOOK OF RAILROAD INFORMATION (1932) 30, 34, 40; *Id.* (1934) 51. The following table based on figures in *Id.* (1935) 20–34, presents graphically the operation of Class I railroads for the years 1925, 1930 and 1934, and motor truck and automobile registration for the same years:

	1925	*1930*	*1934*
Locomotives in operation	63,000	56,000	48,000
Freight cars in operation	2,357,000	2,276,000	1,938,000
Miles of main track abandoned	606	694	1,995
Originating tonnage (millions)	1,247	1,153	765
Carloadings (millions)	51	45	30
Passengers transported (millions)	888	703	449
Revenue passenger miles (billions)	35	26	18

While there is no means of determining the degree of railroad loss attributable to interstate motor carriers, even the casual observer would reckon it at no insignificant figure. The revival of motor production in 1935 and the extensive improvement being made in highways lead to the inevitable conclusion that bus and truck competition with rail transportation will not abate but rather will be sharply accentuated. Railroads disclaim all desire to "limit the proper development of commercial motor transportation," but admit that highway competition "has presented a number of difficult problems which must be solved in the public interest."[3]

For twenty years state efforts at regulating intrastate operation have proved increasingly satisfactory,[4] and for the first half of this period practically no distinction was made as to interstate operation. State regulation even in that field went unchallenged. But in 1925 the *Buck* and *Bush* decisions denied state power to refuse a certificate for interstate motor transportation on the ground that existing service is adequate.[5] Subsequent Supreme Court decisions checked state efforts

Average freight revenue per ton mile (cents)	1.097	1.063	0.978
Average revenue per passenger mile (cents)	2.938	2.717	1.918
Motor trucks registered (millions)	2.4	3.4	3.4
Passenger motor cars registered (millions)	17.4	23	21.5

Commercial transportation of goods by truck possesses decided advantages over railroad freight service: elimination of crating, door-call and delivery, adaptability of time of departure and arrival, accessibility to inland communities, and flexibility in the arrangement of load and route combinations. In many areas, particularly metropolitan regions, these advantages account for increasing resort to motor freight service, the distance range of which is being constantly extended. Legal distinctions, sometimes painfully drawn, have marked this motor freight service into two classifications: common carriers, who operate on regular routes between fixed points and on a definite schedule, and offer service indiscriminately to the public, and contract carriers, who solicit and accept business from only particular customers under private agreement, offer no service to the public indiscriminately, and who until very recently enjoyed practically unrestricted freedom in routing and time schedule. For the legal and administrative development of the differentiation see two articles by the writer: *Who is a Motor Common Carrier?* (1929) 8 BUS TRANSPORTATION 247; and *Public Control of Contract Motor Carriers* (1933) 9 JOURNAL OF LAND AND PUBLIC UTILITY ECONOMICS 236.

[3]YEARBOOK OF RAILROAD INFORMATION (1934) 32.

[4]For a systematic treatment of all state efforts at regulation through 1928 see the writer's MOTOR CARRIER REGULATION IN THE UNITED STATES (1929).

[5]*Id.* 217–220; Buck v. Kuykendall, 267 U. S. 307, 45 Sup. Ct. 324, 69 L. ed. 623 (1925). George W. Bush & Sons v. Maloy, 267 U. S. 317, 45 Sup. Ct. 326, 69 L. ed. 627 (1925).

at controlling contract carriers *as common* carriers,[6] and at applying liability insurance requirements to interstate carriers of passengers as to intrastate.[7] While the states have a wide discretion in taxing the users of the highways and interstate carriers cannot escape a reasonable contribution for the facilities furnished,[8] the states cannot impose a tax on the privilege of engaging in interstate motor transportation.[9] Accepting the view that state power can be validly applied to many phases of motor carrier operation which are local in character, the Court has been decidedly liberal in permitting the application of state measures to interstate motor commerce because of absence of Federal regulation thereon.[10] Despite the lengths to which state power over interstate operation has been validly applied, the pronouncements checking state power have been sufficiently numerous and restrictive to indicate the inability of states adequately to deal with the problem and to point to Federal regulation as inevitable.

Thus the last decade has witnessed a combination of forces leading to Congressional action. Those forces include the magnitude of interstate motor transportation, inability of the states to control it adequately, the resulting injurious effects of unregulated interstate motor activity on regulated intrastate operation, on railroads, their employees, and shippers, on highway taxpayer-users, and on the increasing urgency of problems of public safety on the highways. The move for Federal regulation has been manifest in every session of Congress since 1926, the most serious effort being the abortive Parker bill of 1930.[11] Supporting the move for the last three years can be listed the Coordinator of Transportation, the Interstate Commerce Commission, state utility commissions, the bus industry, some of the shippers, and part of the trucking concerns. All carriers see the need for some type of regulation, more adequate than that under the N.R.A. codes. Railroads view motor carrier regulation as a weapon in their own defense.

The Emergency Railroad Transportation Act of 1933 imposed on the Coordinator the duty of studying means for improving transporta-

[6]Frost v. Railroad Commission of California, 271 U. S. 583, 46 Sup. Ct. 605, 70 L. ed. 1101 (1926).

[7]Sprout v. South Bend, 277 U. S. 163, 48 Sup. Ct. 502, 72 L. ed. 833 (1928).

[8]Clark v. Poor, 274 U. S. 554, 47 Sup. Ct. 702, 71 L. ed. 1199 (1927); Interstate Busses v. Blodgett, 276 U. S. 245, 48 Sup. Ct. 215, 72 L. ed. 551 (1928).

[9]Interstate Transit Co. v. Lindsey, 283 U. S. 183, 51 Sup. Ct. 380, 75 L. ed. 953 (1931); Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 48 Sup. Ct. 553, 72 L. ed. 927 (1928).

[10]Justice Brandeis in *Buck* opinion, *supra* note 5; Chief Justice Hughes in Sproles v. Binford, 286 U. S. 374, 52 Sup. Ct. 581, 76 L. ed. 1167 (1932).

[11]The substance, career, and fate of this measure are presented in the writer's *Interstate Motor Carrier Regulation in 1930* (1931) 10 BUS TRANSPORTATION 575.

tion beyond those means set forth in the act.[11a] Coordinator Eastman has conducted elaborate surveys, and has made three reports to Congress. That of March 10, 1934 recommended regulation of motor carriers similar to that embodied in Senate bill 1629,[12] and as a "result of additional study, experience, exchange of ideas between the Coordinator, the shippers and the motor-carrier industry," S. 1629 was proposed in the Coordinator's annual report for 1934.[13]

In his message to Congress, January 1935, the President urged motor carrier regulation along the lines of the Eastman recommendations. On February 4 Senator Wheeler introduced Senate bill 1629, and a similar bill appeared simultaneously in the House. Hearings were held over several weeks, those of the Senate being recorded in 607 pages of testimony.

Reported out on April 12 the bill was discussed at length in the Senate three days later. Without a record vote it was passed the next day, 80 of the 87 amendments being added without debate. Sent to the House April 17, the bill experienced a slower progress. After more extensive hearings than had been necessary in the Senate the bill caused noticeable disagreement in the House committee, whose subcommittee at one stage proposed unsuccessfully a substitute bill. Not till the last of July was the measure reported to the House. Debate on the bill occupied the Committee of the Whole the entire day of July 31, in the course of which sixty members participated. Amended by the House in some twenty-five particulars, the bill passed the next day by a vote of 193 to 18, was signed by the Vice-president and Speaker August 7, presented to the President the next day and received his approval August 9.[14]

II. An Analysis of the Provisions of the Statute

An analysis of the Motor Carrier Act of 1935,[15] incorporated into the Interstate Commerce Act as Part II thereof, establishes the measure as a comprehensive and significant initial enactment.

Purpose and Scope. Section 202 (a) sets forth the Congressional policy as being to regulate motor carrier transportation so as to recognize and preserve its inherent advantages, foster sound economic conditions in this transportation in the public interest, promote ample,

[11a] 48 Stat. 216, 49 U. S. C. A. § 263 (1933).

[12] Sen. Doc. 152, cited in Sen. Rep. 482, 74th Cong., 1st Sess., (1935) 2.

[13] H. R. Doc. 89, cited as in note 12, *supra.*

[14] The career of S. 1629 is chronicled in 79 Cong. Rec. 1420, 5485, 5649, 5735, 5737, 5912, 11813, 12196–12200, 12204–12237, 12278, 12279, 12459, 12617, 12709, 12712, 12863.

[15] Public Act 255, 74th Cong. 1st Sess.

efficient and economical motor transportation service at reasonable charges "without unjust discriminations, undue preferences or advantages, and unfair or destructive practices," coordinate motor carrier service with other forms of transportation and improve the relations between motor and other carriers, expand and maintain a system of highway transportation sufficient to the needs of commerce and national defense, and cooperate with the states and their agents and with motor carrier organizations in the application of the act.

In scope the measure includes interstate and foreign motor transportation by common and contract carriers, brokers engaged in this transportation business, and if the Interstate Commerce Commission after investigation deems necessary, private carriers of property by motor vehicle insofar as qualifications and maximum hours for employees, equipment, and safety of operation are concerned.

Motor operations exempted from regulation are indeed numerous: school busses for pupils and teachers, taxicabs, hotel busses, busses in national reservations, trolley busses, "motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof or in transportation of supplies to his farm," "motor vehicles controlled by a cooperative association," as set forth in the Agricultural Marketing Act of 1929; vehicles carrying exclusively livestock, fish, or agricultural commodities, or used exclusively in the distribution of newspapers.

The most involved exemption is that extended to motor vehicles engaged in interstate or foreign commerce and transporting passengers or property within a single municipality, or between municipalities contiguous, or "within a zone adjacent to or commercially a part or any such municipality or municipalities," except when such transportation is done under a common control, management or arrangement for continuous transportation to or from the municipality or zone, and "provided the motor carrier engaged in such transportation of passengers over regular or irregular route in interstate commerce" is authorized by laws of the states having jurisdiction to offer intrastate transportation of passengers over the whole length of the interstate route concerned. To such transportation only the maximum hours, equipment standards, and safety requirements as generally prescribed by the Interstate Commerce Commission shall apply, unless the Commission by investigation from time to time finds the application of full regulatory program is necessary to realize the Congressional declaration of policy.[16]

[16] § 203. By the same section casual, occasional, and reciprocal transportation of passengers or goods in interstate or foreign commerce for pay by any one not

The Duties of the Interstate Commerce Commission Under the Act: (a) Safety Measures, etc. The duties of the Commission as set forth by Section 204 include the establishment of reasonable requirements as to uniform accounting, records and their preservation, qualifications and maximum hours for employees, and safety of operation and equipment for common and contract carriers, and reasonable requirements relative to continuous and adequate service and handling of baggage and express for common carriers. Private carriers of property may be subjected, if Commission decides there is need, to Commission requirements on safety, maximum hours, and standards of equipment.

Licensing of motor transportation brokers, their financial responsibility, and their accounting, records, reporting, operations, and practices constitute matters on which the Commission is to establish proper rules. Power to investigate on its own motion or on complaint the organization and activity of motor carriers subject to the act, to recommend to Congress needed legislation, the handling of complaints, and reconsideration thereof and "to administer, execute and enforce all other provisions" of the measure is conferred on the Commission, at whose disposal are put all Federal research agencies having special knowledge of motor carrier operation, to the end that investigation may proceed in a scientific manner.

Section 205 provides that wherever the actual or proposed operation of motor carriers or of brokers involves not more than three states the Commission must, and where more than three states the Commission may, refer to joint boards[17] the following specific administrative mat-

engaged in motor vehicle transportation "as a regular occupation or business" is likewise exempted.

[17]Joint boards are to consist of one member from each state involved, nominated by the utility board of the state (or by the governor if the commission fails to act) and appointed by the Interstate Commerce Commission. If neither the state utility board nor the governor names a member for the joint board, the latter will proceed without any representation from the failing state, provided as many as two states do designate members. Joint board decisions are by majority vote. If the joint board fails to act or fails to agree on a matter referred to it within 45 days, then the Commission shall decide the matter as if no resort had been made to a joint board. Expenses of the joint board when handling referred matters are allowed by the Commission, and existence of the joint board may be terminated by the Commission at any time. Substitution of members of the joint board can be made as in the case of original appointments. Joint boards when acting under the statute have the same power of subpoena, production of papers and records, administration of oaths, testimony of witnesses, and by deposition as the Commission itself has in the application of Part I to the railroads. The Commission may hold joint meetings with state agencies on motor carrier questions, and space in Federal buildings in Washington is to be assigned for use by the national

ters: applications for the various forms of authorization to operate, suspension, modification, or revocation of such authorization, applications for permission to consolidate, merge, or acquire control, complaints of violations by motor carriers or brokers of the provisions set forth in Section 204 (a), complaints against motor carrier rates, or practices, and any investigation and suspension proceeding, or other matter not expressly specified in the above list.

Court review of Commission final orders issued under Part II remain substantially as set forth in Part I (applicable to non-motor carriers) of the Interstate Commerce Act.[18]

(b) Authorization to Operate: Certificates, Permits, and Licenses. The forms of authorization to engage in the motor carrier business are sufficiently different to warrant separate treatment. Common carriers of passengers or of goods in interstate or foreign commerce[19] must have a certificate of public convenience and necessity. Those operating on intrastate routes but transporting passengers or goods which cross state boundaries need not apply to the Commission if they have a certificate from a state agency, or if there exists in the state an agency empowered to grant the certificates. Others must apply to the Commission.

Bona fide operators as of June 1, 1935 must apply for their certificates within 120 days after October 1, 1935 (the effective date of the Motor Carrier Act). If the applicant or his predecessor in interest were in bona fide operation on June 1, 1935, he gets the certificate of public convenience as a matter of right without having to prove public convenience and necessity for the proposed service; being registered as a member of a code of fair competition on the above date establishes his character as a bona fide operator.

Applicants for certificates who were not bona fide operators on June 1, 1935 must prove fitness, willingness, and ability to offer the proposed service, to conform to the statutory requirements and Commission rules, and in addition must prove that either the present or future public convenience and necessity demands the establishment of the proposed service.

Finding the application in proper form and the supporting evidence

organization of state utility boards and their representatives and for use by the joint boards.

[18]An exception provides that where a negative order is issued by the Commission solely because of a supposed lack of power, any party in interest can file a complaint with the district court assembled under the act of October 22, 1913; and if the court decides the Commission has the asserted power, it may "enforce by mandatory injunction the Commission's taking of jurisdiction."

[19]Or in United States reservations or parks.

adequate, the Commission issues the certificate subject to reasonable terms, conditions and limitations as public convenience and necessity requires,[20] and the Commission may attach such terms, conditions, and limitations from time to time thereafter.

Conditions attached to a certificate cannot restrict the right of a carrier to add to equipment and facilities over the routes, between the termini, or within the area set forth in the certificate, as the demands of the public and expansion of the business shall require. Occasional deviations from the certificated route may be permitted by the Commission under its special rules, and the certificate may authorize the transportation of express or mail either in the same vehicle with passengers, or in separate vehicles.

By special rules of its own making the Commission may authorize motor carriers of passengers to engage in special or charter service, i.e., operation other than on regular route or between fixed termini.

Of particular importance is the declaration in Section 207 (b) that no certificate issued confers any proprietory or property rights in the use of the highways.

To operate motor contract carrier service requires a permit. As in the case of certificates for common carriers, applications for permits must be verified under oath, contain proper information, and be accompanied by proof of service upon such parties in interest as the Commission may require. If the application and hearing thereon establish the fitness, ability and willingness properly to perform the service proposed, and to conform to the statutory provisions and Commission rules, and that the service to the degree to be authorized by the permit will be consistent with the public interest and the public policy set forth in the act itself, the Commission is directed to issue the permit.

The permit must specify the activity of the contract carrier to whom it is issued and the scope of that activity; there may be attached at the time of issuance or at any time thereafter such reasonable terms and conditions compatible with the character of contract carrier service as are necessary to effectuate the regulatory service set forth by the statute and Commission regulations pursuant thereto.

The formalities attendant upon obtaining a permit are waived in cases of applicants who, or whose predecessors in interest, were engaged in bona fide operation July 1, 1935; and, as in case of common

[20]State courts have repeatedly held that the term "public convenience and necessity" constitutes a single and indivisible unit; hence my use of the singular verb form. See the writer's *Motor Carrier Regulation in Missouri* (1928) 29 Mo. BAR BULL. No. 48, p. 22.

carriers, being registered in a code of fair competition on that date constitutes adequate proof of bona fide operation.

The statute forbids after January 1, 1936 a common carrier to hold a permit for contract carriage of goods over the same route or in the same territory unless the Commission for good cause shown concludes that the holding of both certificate and permit is consistent with the public interest and with the statutory declaration of policy.

For anyone selling or offering to sell common carrier or contract carrier transportation a broker's license is necessary. Such brokerage is so defined as to cover the making of a contract, agreement or arrangement to obtain, provide, or supply such transportation, or holding out oneself by advertisement, solicitation or otherwise as an agency for such service.

To prevent licensed brokers as such from performing actual transportation, both certificates and permits specify the particular type of transportation authorized. Holders of certificates or permits need no license to solicit business if the transportation is to be furnished entirely by themselves or "jointly with other motor carriers holding like certificates or permits or with a common carrier by railroad, express or water."

To obtain a broker's license the applicant must prove fitness, willingness, and ability properly to perform the proposed service, and to conform to the Commission regulations relative thereto, and prove that it will be consistent with public interest and the declared policy to authorize the proposed service.[21]

The period of certificates, permits, and licenses is indeterminate. They may be suspended, changed, revoked or transferred, on application of the holder, on complaint, or on the initiative of the Commission; notice and hearing are necessary, and changing, suspending or revoking can be done only for wilful failure to comply with the act and regulations thereunder, or with the term or condition attached to the certificate, permit, or license.[22]

(c) Merger, Consolidation and Acquisition of Control: Power of

[21]Brokers have 120 days after October 1 to apply for the license, and making application entitles them to operate until ordered otherwise by the Commission. A bond acceptable to the Commission as guaranteeing financial responsibility and the furnishing of the service agreed upon is exacted of a broker as protection of motor carrier travelers and shippers. To the same degree as are carriers themselves, brokers are subject to Commission jurisdiction as to accounts, records, reports, inspection, and investigation.

[22]Grace of 90 days is allowed before authorization of a holder who wilfully fails to comply can be revoked, and a longer period may be fixed if the Commission deems such extension reasonable.

the Commission. A lengthy section[23] provides for merger, consolidation, and acquisition of control as between motor carriers not operating rail service, between such a motor carrier and a railroad, express or water transportation line, or the purchase, lease, or contract to operate any motor carrier property. Such transactions involve (1) application to the Commission, which thereupon notifies the governor of each state in which any part of the equipment or operation is located, the carriers, the applicant, and other known parties known to have a substantial interest in the proceeding, of the time and place of a public hearing on the matter; (2) satisfied that the proposed consolidation, merger, sale or acquisition of control will be in the public interest, and that the provisions of the statute have been met, the Commission approves the transaction on such terms and with such modifications as it deems reasonable. No consolidation, etc., will be allowed as between a motor carrier and non-motor carrier unless the Commission finds that the public interest will be promoted by allowing the non-motor carrier operations, and will not unduly restrain competition.[24]

Except as above set forth it is unlawful to attempt or effectuate, directly or indirectly, control or management of two or more non-railroad motor carriers by common directors, officers, stockholders, holding or investment company or trust, "or in any other manner whatsoever." And the continuance of any such control or management after enactment of the statute is unlawful. Control or management means power to exercise either control or management. On complaint or its own motion the Commission may after notice and hearing investigate to determine whether unlawful control is being exercised; finding positively, the Commission is directed to act, consistently with the statute, to prevent further violation.

If no non-motor carrier is involved in a consolidation, etc., and no more than 20 vehicles are involved no application or Commission approval is necessary.

In complying with germane orders of the Commission concerning consolidations, etc., carriers and others affected by the section relating thereto are exempt from all state and Federal anti-trust acts.

Security issues by common or contract carriers, persons acquiring control, or corporations engaged in such transportation, in excess of $500,000 must meet the requirements of the Interstate Commerce Act,

[23] § 213.

[24] Any person thus entering upon motor carrier service by Commission approval becomes subject to Commission administration of accounts, records, reports, and inspection of facilities as are the motor carriers themselves.

and the exemption set forth in Section 3(a) (6) of the 1933 securities act applies to such issuance.

(d) Protection of the Public Against Operative Risks: the Commission's Power. Section 215 seeks to protect the public in judgments against motor carriers for injuries to or death of any person or damage to property resulting from negligent operation, maintenance, or use of such vehicles authorized in such service by requiring holders of certificates and permits to furnish insurance, bonds, other securities, or qualifications as self-insurers demanded by the Commission as reasonable. Discretion exists as to the amount the Commission may require "conditioned on such carrier making compensation to shippers or consignees of property which comes into the care of the carrier's transportation service."

(e) Rates, Rebates, and Discriminations as Controlled by the Commission. The question of rates receives detailed consideration in the statute.[25] Common carriers of passengers must establish and enforce "just and reasonable individual or joint rates" and just and reasonable practices and regulations relating thereto, and to the issuance, substance and form of tickets, baggage, and all other matters relating to such transportation. The common carriers of property are obligated to include in their regnlations specifications for packing, presenting, marking, and delivering property entrusted to them. Both types must provide safe and adequate service, equipment, and facilities for the transportation offered, and they are obligated to make an equitable division of joint rates so as to avoid undue prejudice to the interest of any participating carrier.

The evils of rebates, discriminations and other favoritism are envisaged by the provisions safeguarding against a common carrier's resorting to undue advantage, or preference, unjust or unreasonable rate, unjust discrimination, or undue prejudice in its dealing with "any person, port, gateway, locality, or class of traffic." These prohibitions apply to common carriers only.

Provision is made for Commission acceptance, investigation, decision, and disposition of complaints as to any of the above-stated evils when filed in writing by any person, state board, organization, or body politic. Wide powers are conferred on the Commission in handling and settling the complaints. Further, when a new schedule of individual or joint rates, charges, or classification of traffic or practice pertaining thereto is filed with the Commission, that body on its own motion or on complaint of any party in interest may on reasonable notice, stage a hearing on the lawfulness of the rate, charge, practice or classification,

[25] §§ 216, 217 and 218.

and pending such hearing the Commission can suspend that to which objection has been made, notice to that effect being delivered to the complainee. The period of suspension is limited normally to 90 days, but if Commission finds itself unable to dispose of the matter in that time the suspension can be extended another 90 days. The suspension power does not apply to an initial schedule, or to those filed by any common carrier in bona fide operation on effective date.

Into the justness or reasonableness of the rate, fare, or charge of any motor common carrier, good will, earning power, or the carrier's certificate shall not enter. Just and reasonable rates for common carriers shall admit as elements the inherent advantages of such transportation, the effect of the rate on the movement of motor common carrier traffic, public interest need of adequate and efficient service at lowest cost consistent with furnishing the service, and the needs of sufficient revenues to enable the motor common carriers through "honest, efficient and economical management to provide such service."

Every motor common carrier is to file with the Commission and post for public inspection tariffs of all charges in connection with service offered over its own routes, and if it is a party to a joint rate, then also the joint rates to which it is a party. The statute forbids charging a higher or lower rate than that published. Refunds and rebates, directly or indirectly are prohibited, with the proviso that Sections 1(7) and 22(1) of Part I (applicable to non-motor carriers) apply to motor common carriers subject to Part II.

Proposed changes in tariffs are registered with the Commission, and cannot go into effect for 30 days after notice of proposed change has been filed with the Commission. But the Commission is empowered to change the 30-day notice, and the requirements relative to filing and posting tariffs by either general order, or by special order applicable to the particular case.

Contract carriers are subjected to less comprehensive regulation as to rates. They must file and keep open for public inspection their schedules, or if the Commission prefers, copies of their contracts showing minimum charges for transportation they offer, and also any rule, regulation or practice affecting such transportation. Direct or indirect change in the rates or charges, or in any practice affecting such charge can be made only after 30 days' notice filed with the Commission.[26]

Contract carriers are forbidden to charge less than the rates filed, either directly or through special services, facilities or privileges. But

[26]But the Commission may as in the case of common carriers, reduce the 30 days of notice. Proposed changes must be (as is true relative to common carriers) plainly stated as to substance and effective date.

the Commission on receipt of request from any contract carrier or class thereof may grant relief from the filing requirements to the extent and for such time as the Commission deems warranted.

After hearing on a complaint or on its own motion, if it finds the rates, charges, practices or regulations of contract carriers contravene public policy as set forth in the act, the Commission may prescribe the minimum rate, rule or practice desirable in the public interest and to promote the public policy. But in fixing the minimum rate, rule or practice for contract carriers, the Commission is admonished to give no advantage or preference to a contract carrier competing with a motor common carrier, which advantage or preference the Commission finds to be undue or inconsistent with the public interest. In prescribing the minimum rate, rule or practice the Commission must give consideration to (1) cost of service rendered by contract carriers, and (2) the effect of such minimum rate, rule, or practice on movement of traffic of contract carriers. Only minimum rates can be fixed for contract carrier, but Commission can prescribe minimum or maximum, or minimum and maximum rates for motor common carriers.[27]

Except as the Commission may permit by rules and regulations, a carrier must collect all charges for transportation of goods before the goods are delivered. But the Commission cannot so require the payment of charges on goods consigned to the government of the United States, of a state, or political subdivision thereof.

(f) Bills of Lading, Accounts and Reports. Section 219 subjects motor common carriers to the bills of lading requirement imposed by Part I on non-motor carriers of property. Thus common carriers by motor have the same liability for losses and damages as have railroads.

Extensive power over accounts, reports and records of all common and contract carriers, and brokers is vested in the Commission. The authority extends to requiring a copy of any agreement with any other carrier or any non-carrier person relative to a motor vehicle traffic in interstate or foreign commerce. The period for which the records are to be kept can be specified by the Commission. To exercise this administrative power over reports, etc., the examination and inspection of the Commission or its agents extends to records, etc., accumulated before enactment of the statute as well as after.

(g) Designated Agency to Receive Service of Process: Commission's Power to Require. To expedite the service of process, orders, and notice, every common and contract carrier must file with the Com-

[27]Power to suspend proposed changes in rates, charges, practices or rules of contract carriers can be made by the Commission on the same conditions and to the same degree as in case of motor common carriers.

mission the name and address of a designated proper person to receive such service. Adequate process consists of either personal service, or registered mail, and date of mailing is date of service. The Commission enjoys wide discretion as to the effective date and the duration of its orders.

The Penalties and Enforcement Provisions set up by the Act. For wilfully or knowingly violating the Motor Carrier Act, any rule or regulation or order of the Commission, or any term, condition, or limitation attached by it to an authorization to operate, a person convicted is subject to a fine of $500 for the first offense, and each day of violation constitutes a separate offense.

Knowingly offering, accepting, or soliciting a rebate or concession, or through falsification or misrepresentation by any means or device wilfully permitting or assisting any person to get passengers or property transported for less than the applieable rate, or wilfully or knowingly resorting to fraudulent evasion or defeat of a regulation set forth in the act constitutes a misdemeanor and subjects the offender, whether connected with motor vehicle transportation or not, to a fine of $500, and $2,000 for each subsequent offense. Any agent or examiner who divulges any information or fact discovered in the course of his duties, except as directed by the Commission or proper Federal court, is subject to a fine of $5,000 and two years imprisonment.

For wilful failure or refusal to make reports or keep accounts and records as directed by the Commission, or for wilful falsification, mutilation or destruction of such records, accounts, or reports, any motor carrier or its agent may be fined from $100 to $500.

Either the Commission or its agent may apply to a Federal district court for injunction or other process to compel obedience to the statute, or the orders, rules, or regulations of the Commission.

Future Regulation and Effective Date. With an eye to future improvement of hours of service, safety of operation, and more effective utilization of highways, Section 225 authorizes the Commission to investigate qualifications of employees, proper hours, size and weight of equipment and to make to Congress recommendations for legislation thereon.

Effective date of the act is fixed at October 1, 1935; but under authority conferred by the act the Commission has postponed the effective date of parts of the act as follows: (1) Sections dealing with filing of application for certificates, permits and licenses and issuance of these from October 1 to October 15, 1935; (2) Provisions relating "to filing and observance of tariff schedules," etc., from October 1 to December 1, later to January 15 in some respects, and in others to

February 14, 1936, and still further postponed to March 2 and April 1, 1936, the maximum postponement limit allowed by the act.[27a]

III. An Evaluation of the Motor Carrier Act of 1935

Any attempt at evaluation of the Motor Carrier Act of 1935 must recognize its controlling substantive kinship to the state regulatory developments since 1915. The distinction between common and contract carriers has been validly drawn in the states after considerable trial and error.[28] Federal provisions relative to certification, requirements as to safety of operation and liability insurance, rates, service, financial affairs, and more definitely routine matters like accounts, records, and reports all stem from state regulation of intrastate transportation.

The Provisions on the Subject of Authorization to Operate. The inevitable vagueness of meaning attaching to the provisions on Federal certification will be clarified as interpretation proceeds; the present stated conditions are less restrictive than the conditions surrounding state certification.[29] In conditioning issuance of certificates on proof that either present or future public convenience and necessity warrants the proposed common carrier service, the Federal act makes a distinct advance by admitting futurity as a proper basic element.

"Public convenience and necessity" as a condition of certification aroused some objection, but the Senate committee retained the term in the bill because most of the state statutes used it, and numerous Commission and court opinions have interpreted it.[30] The stability and progress of motor common carrier transportation depend on requiring

---

[27a]I. C. C., Bureau of Motor Carriers, orders dated Sept. 19, Sept. 30, and Nov. 8, 1935, and Jan. 2, 1936. The importance of Feb. 14 as the filing limit was stressed by Director John L. Rogers at the Bus Conference at New York on Jan. 11. N. Y. Times, Jan. 12, 1936, at 34 L.

[28]Particularly California—Frost v. Railroad Commission of California, 271 U. S. 583, 46 Sup. Ct. 605, 70 L. ed. 1101 (1926); Michigan—Michigan Public Utility Commission v. Duke, 266 U. S. 570, 45 Sup. Ct. 191, 69 L. ed. 445 (1925); Ohio—Hissem v. Guran, 146 N. E. 808 (1925); Florida—Smith v. Cahoon, 283 U. S. 553, 51 Sup. Ct. 582, 75 L. ed. 1264 (1931). Valid distinction appears in Continental Baking Co. v. Woodring, 286 U. S. 352, 52 Sup. Ct. 595, 76 L. ed. 1155 (1932); Sproles v. Binford, 286 U. S. 374, 52 Sup. Ct. 581, 76 L. ed. 1167 (1932); Stephenson v. Binford, 287 U. S. 251, 53 Sup. Ct. 281, 77 L. ed. 288 (1932); and Hicklin v. Coney, 290 U. S. 169, 54 Sup. Ct. 142, 78 L. ed. 247 (1933).

[29]See the writer's *Factors in Granting Motor Carrier Certificates of Public Convenience and Necessity* (1930) 5 Ind. L. J. 243.

[30]79 Cong. Rec. 5653 (1935).

public convenience and necessity as the basis of authorization to operate.[31]

The statutory view that bona fide operators on June 1, 1935 possess vested rights sufficient for certification on that ground alone follows the practice current in most of the states during the "formative period" of establishing state regulation. While not requiring the bona fide operator on the effective date to prove public convenience and necessity as a basis for the certificate Ohio did not allow him to continue operation without obtaining a certificate. The highest court in that state ruled that the bona fide operator could not be legally excused from the certificate requirement.[32] That such a requirement does not deny him equal protection of the law; and that so granting the bona fide operator a certificate "as a matter of right" while denying it thus to others constitutes no violation of the Fourteenth Amendment, we hear from the same tribunal in a subsequent case.[33] The California Supreme Court has upheld the Commission declaration that complaints against a carrier certificated on a bona fide operation basis are to be handled as if he had proved public convenience and necessity.[34]

Choosing as the controlling date for bona fide operators a date prior to the time of statutory enactment or effectiveness has no doubt served to discourage many adventurous persons from racing to beat the deadline beyond which certificates would issue only on proved public convenience and necessity.

To facilitate the certifieation process, several provisions have been inserted: registration under a code of fair competition as adequate proof of bona fide operation; the 120 days of grace allowed for applying for authorization; and the waiving of Federal certification in the case of those interstate carriers whose vehicular operation is confined to the limits of a particular state.

Requiring brokers to get a license finds no expression in state regulation, and therefore constitutes a regulatory novelty.

Permits are a new regulatory device for recoguizing the difference between common and contract carriers.[35] The former are full-fledged

[31] *Id.* 12206.

[32] McClain v. Public Utilities Commission of Ohio, 110 Ohio St. 1, 143 N. E. 381 (1924). Oregon early waived the "formality" of certificating bona fide operators. Laws 1925, c. 380, § 19.

[33] Cincinnati Traction Co. v. Public Utilities Commission of Ohio, 111 Ohio St. 681, 146 N. E. 84 (1924).

[34] Motor Transit Co. v. Railroad Commission of California, 189 Cal. 573, 209 Pac. 586 (1922).

[35] The intricate but fascinating problems of contract motor carriers have been treated exhaustively in the writer's *Public Control of Contract Motor Carriers* (1933) 9 JOURNAL OF LAND AND PUBLIC UTILITY ECONOMICS 233–246.

public utilities; contract carriers are yet viewed largely as private enterprise. But because of their relation to common carriers and their use of public highways, involving necessarily public safety and public efficiency in the use of the highways the public utility character of contract carriers, recognized to a noticeable degree by the Supreme Court in *Stephenson v. Binford*[35a] and in *Hicklin v. Coney*[35b] is being developed rapidly. Significant possibilities for developing this public utility character lie in the Federal provision that a non-bona fide operator applicant for a permit prove that permitting his proposed service will be consistent with public interest. (Section 209 b.) Clearly, to require contract carriers to prove public convenience and necessity as a basis for the permit would transform them into common carriers and therefore public utilities against their will. Such proof from contract carriers was undertaken by Florida in 1931, but the Supreme Court declared the requirement invalid.[36] However, the same tribunal a year later in a Texas case[37] recognized a decided public interest in contract carriers and approved the permit requirement.

Cannot future construction interpret public "interest" as substantially equivalent to "public convenience and necessity" required for common carrier operation, and thereby actually erase the differentiation which is recognized today?

Safety and Hours for Employees. Extensive House debate on the provisions for safety of operation and the hours of service for employees attests their vital interrelationship.[38] Temporary regulations are to be set up by the Commission (Section 204) but the authorization to that body to investigate size and weight of vehicles and the qualifications and maximum hours of employees and to report to Congress thereon anticipates specific Congressional legislation on the subject.

Practically unanimous is the view that regulation must seek safety of highway travel, and a more humane treatment of employees than now obtains in working them 18 to 20 hours a day, and even 100–120 hours with only 2 or 3 hours rest.[39] "Drivers' drowsiness" appears a potent cause of highway accidents and the contention is ably made that such a cause inevitably results from the lengthy hours to which truck and bus drivers are subjected.

To the bill as reported by the House committee, Representative

[35a]287 U. S. 251, 53 Sup. Ct. 181, 77 L. ed. 288 (1932).

[35b]290 U. S. 169, 54 Sup. Ct. 142, 78 L. ed. 247 (1933).

[36]Smith v. Cahoon, 283 U. S. 553, 51 Sup. Ct. 582, 75 L. ed. 1265 (1931).

[37]Stephenson v. Binford, 287 U. S. 251, 53 Sup. Ct. 181, 77 L. ed. 288 (1932).

[38]Discussion of safety and hours of service of employees is interspersed throughout pages 12209–37 of 79 CONG. REC. (1935).

[39]Rep. Monaghan, citing National Safety Council reports.

Monaghan offered an amendment whereby the Commission would prohibit an employer from working an employee in interstate or foreign motor commerce longer than 8 hours in 24 with less than 12 hours free before resuming operation of the vehicle. In behalf of this proposal argument was projected thus:[40] impairment of employees' efficiency and health results from present excessive hours; wide disparity exists between hours of interstate motor transportation employees and those of railway workers; the serious endangering of life on the highways results from operation of vehicles by exhausted employees; and Congress has already made provision for an 8-hour day for railroad workers.

Arguments against the Monaghan amendment included: particular demands of truck and bus operation preclude a rigid schedule of hours; drivers of carrier trucks and busses are not the cause of highway accidents;[41] inadequate are the data available on which to base a definite hours schedule; uncertainty exists as to what safety regulations to make or what standards of equipment to set; adoption of the amendment would drive motor carrier traffic to the railroads; and the fact that the House committee had rejected the Monaghan amendment while it had the bill under consideration.[42]

Despite William Green's support of the 8-hour provision and Representative Monaghan's willingness to accept an "emergency driving" amendment to his amendment, the proposal was beaten on a division, 36–34.[43]

This 8-hour amendment, the arguments thereon, and its narrow defcat merely strengthen the general conviction that hours of service for employees, and congestion of highway traffic resulting from operation of motor carriers constitute a paramount problem the solution of which depends to an unusual degree upon the wise exercise of discretion posed in the Commission. Vital significance attaches to the scope, manner, and spirit of investigation to be staged and to the soundness of recommendations made to Congress, and the adequacy of regulations set up by the Commission meantime or instituted later by specific enactment of Congress.

---

[40]Rep. Monaghan received vigorous support from Rep. Cooper, a former railroad engineer, who related his experience with drowsiness from 36-hour shifts in the "good old days" of railroading in Ohio 25 years ago; and from Rep. Crawford, operator of extensive truck fleets in Michigan.

[41]Rep. Rankin paid truck drivers a compliment in which the writer joins; Rep. Truax considered the chief characteristic of truck drivers to be plain hoggishness.

[42]Reps. Pettingill and Terry of the House committee on interstate and foreign commerce led the opposition.

[43]79 CONG. REC. 12230 (1935). House proceeding as Committee of the Whole.

Rate Fixing. Only potential and ultimate control over rates is created by the act. No power to fix any rates *ab initio* is conferred on the Commission. Only common carriers are obligated to establish just and reasonable rates. Exemption of contract carriers from the "just and reasonable" rate requirement rests on their having no definite route or fixed termini and the varying conditions of contract service; these facts reveal the private enterprise character of contract carrier service. A practical reason for withholding Commission power to fix initial rates for common carriers is lack of data as to cost of service.

To the provisions of the original bill that compulsory through routes and joint rates be established between any type of motor carrier and rail, express, or water carriers, well-nigh unanimous objection from small carriers voiced the fear that railroads would thereby obtain a marked preference;[44] hence the permissive power granted over through routes and joint rates. To protect the carriers is the primary purpose of the provision for Commission review of joint rates and for the correction of division of joint rates.

Power to suspend proposed rates, after complaint, constitutes an indispensable weapon to prevent destructive competition among railroads, busses and trucks, according to Senator Wheeler; truck operators see in suspension protection against destructive competition among themselves, and fear that in absence of suspension power relative to motor carrier rates, the railroads will seek exemption from the power of suspension when they lower their rates to meet motor carrier competition.[45]

The early proposal to suspend proposed rates only if they come below the cost of service was soon abandoned because of the virtual impossibility of determining the cost of service; suspension can apply to the lower or higher rate proposed by the carrier. If the suspension is applied to a proposed rate, the published rate of the carrier continues. Unless the Commission decides the rate is unreasonable within the maximum 180 days, the proposed rate goes into effect. But the value of this suspension power is impaired by the prohibition of applying it to initial rates filed by any common carrier.

Contract carriers merely file and publish their rates. Commission authority to fix the *minimum* charge after complaint emphasizes primarily Congressional concern with protecting directly the competing carriers and indirectly the shippers. The safeguards erected against reduction of rates bespeak a fear of irresponsible rate-cutting by contract earriers, an exercise which in recent years has characterized if not

[44] 79 CONG. REC. 5655 (1935).
[45] *Ibid.*

produced truck "wars," which have resulted in no lasting benefit to the public.

Representative Martin discovers serious if not insurmountable obstacles to getting relief from unreasonable rates through complaints.[46] The complainant will have to prove the rate "unduly preferential," "unjustly discriminatory" or "unduly prejudicial," and from experience of shippers with railroad rates against which they complained under an act containing none of the terms quoted above, Martin is convinced the complaint method will prove futile. For this reason he insists vigorously that the act sets up no regulation of rates.

As regards this point the position seems well taken if "regulation" means only positive, actual fixing of rates by the statute. But "regulation" can proceed indirectly and ultimately as well as by direct and immediate declaration.

Because of inevitable variations in rates for substantially the same service, similar charges for noticeably different service, the future creation of new classifications of service, the rivalry between contract and common carriers, and that between motor carriers, who are not operating on *publicly fixed* rate schedules, and the railroads whose rates are so fixed, the public fixing of motor carrier rates can be expected in less time than public fixing of railroad rates was realized; i.e. the 30 years between 1887 and 1906.[47] That fixing will proceed by recognizing as valid the fabric of rates already established[48] and of those now being established. If necessary the statutory prohibition against Commission consideration of railroad rates as a yardstick in regulating motor carrier rates will be modified or repealed.

Competition or Monopoly? Which is Provided by the Act? Does the Motor Carrier Act foster competition or promote monopoly in motor transportation? Regulatory experience of the states and the provisions of the act itself can be examined with profit.

The *Annual Digest of Public Utility Reports* for 1915 is silent on competition between motor carriers and railroads and between motor carriers themselves, but the 1920 issue shows the contest is on in earnest. Thereafter the record is replete with evidence that the purpose and policy of state regulation are to restrict competition in the interest of both efficient service and highway safety. Public interest has long demanded that the number of authorized vehicles be kept at a minimum

[46] 79 CONG. REC. 12216 (1935).

[47] 24 STAT. 384 (1887) and 34 STAT. 589 (1906); 49 U. S. C. A. 402 (1929).

[48] See the writer's *Motor Carrier Service and Rates* (1929) 3 U. OF CIN. L. REV. 269-89.

so as to facilitate a more efficient use of highways by motorists.[49] State efforts have revealed a determination to restrict the number of vehicles authorized after the effective date, but to allow competition among those operating on the effective date and thereby entitled to certifieation without proving public convenience and necessity. Protection for established carriers has received particularly strong emphasis in Ohio, Illinois, Massachusetts and California.

To this background of regulatory experience, the provisions of the Federal statute impart a firm tone of adaptation and continuance in the Federal field. Authorization to operate will be successfully invoked in only occasional cases in the near future, for there is seldom discovered a dearth of vehicles already in operation. The provisions relating to consolidation and merging anticipate a limiting of competition among present bona fide and soon-to-be Federally authorized carriers. Public convenience and necessity will be interpreted in the direction of monopoly.

That the drift will be definitely toward monopoly is manifest in the debates on the measure during passage. Representatives Christianson and Mitchell see the creation of a monopoly in highway transport and Representative Holmes' assurance that anyone will have a right to enter the trucking business "provided he has a sound and sufficient reason" merely substantiates the monopoly conclusion.[50]

How will railroads fare in the trends toward monopoly in interstate motor transportation? Experience shows that some ten states have legislated to permit railroads to enter the bus business; in other states they may so engage through interpretation of regulatory measures. In self-defense railroads have established bus subsidiaries operating in interstate commerce, and several jurisdictions have held that railroads are both entitled and obligated to provide additional motor transportation deemed necessary by the regulatory commission.[51]

Representative Crawford reports that railroads are acquiring numerous trucking lines. He expects the statute to check such acquisition and

---

[49]The strength of these various factors is attested by some 50 cases cited in footnotes 3–29 in the writer's *Principles of Motor Carrier Regulation* (1929) 63 AM. L. REV. 72. More recent evidence appears in the writer's *Bus v. Rail Case* (1931) 11 BUS TRANSPORTATION 625–26.

[50]79 CONG. REC. 12214 (1935).

[51]Massachusetts in *Re* New Haven Railroad, P. U. R. 1926B, 338, 341 (1925); New Jersey in *Re* Choate and Tumulty v. Board of Public Utility Commissioners, P. U. R. 1928A, 98 (1927); District of Columbia in *Re* Washington Railway and Electric Co., 1922C, 754 (1922); Missouri in *Re* Kansas City, etc., Stage Lines Co. (1930). 5 PUBLIC UTILITIES FORTNIGHTLY 704.

maintain competition between the motor truck and the railroad by eliminating broker's loot and rebate loot.[52]

In the relation of motor carriers and rail carriers the regulation of the rates of the former constitutes a vital factor. Such a conclusion is substantiated by the Huddleston substitute bill omitting all provisions on rates, and the views of Representatives Wadsworth (supporting the substitute), Snell, Fulmer, Pierce and Truax.[53]

Hardly less significant than rate control is the ability of railroads on entering the motor transportation field to offer financial responsibility for damages and losses arising in course of operation in lieu of the very expensive insurance policies or bonds required of less fortunate carriers.

Inescapable is the conclusion that experience in state control, operating economies, the provisions of the statute admitting railroads to the acquisition of motor carriers, and the fact that the railroads supported the bill insures increased railway participation in motor transportation of passengers and freight.

The Public Interest Motivation in the Act. Pervading if not including all phases of regulation encompassed by the statute we find the ubiquitous concepts "public interest" and "public convenience and necessity." These principles are as incapable of comprehensive definition as the terms police power, due process, and equal protection.

The motives actuating these regulatory principles as applied to interstate motor carriers can be stated as (1) to preserve the highways; (2) to obtain adequate and proper service at fair cost; (3) to restrict competition between motor carriers and between motor carriers and railroads; and (4) to promote safety of operation.

What is the meaning of *public?* "Not all the people all the time" said the Colorado Supreme Court, which stated further that a service affecting a sufficient part of the public as is affected by any other service known as public is to be dealt with as a public service.[54] Under this involved definition what determines the choice of that with which a comparison is to be made, and what is the degree of similarity necessary to exist in order to establish a satisfactory resemblance? Consider the vagueness bound up in the rangy effort of the Oklahoma Supreme Court: "Public pertains to the people of a nation, state, or community at large, the general body, indefinitely, or as a whole or entirety."[55]

---

[52]79 CONG. REC. 12223 (1935).

[53]*Id.*, (in order stated) at 12233–34; 12215; 12211; 12217; and 12224.

[54]Davis v. Colorado, 79 Colo. 642, 247 Pac. 801 (1926).

[55]Chicago Rock Island and Pacific Railroad v. Oklahoma, 123 Okla. 190, 252 Pac. 849 (1926).

Equal doubt, uncertainty, and potentiality attach to "interest" and "convenience and necessity." Is "convenient" "handy," or merely "accessible"? Does "necessity" mean "indispensable", and if so, absolutely indispensable, or reasonably indispensable?

These reflections convince one that mere technical training in law or administration is not sufficient qualification for interpreting and applying the Motor Carrier Act. Proper performance of the task requires substantial grounding in economics and social behavior, broad sympathies, and an intelligent and penetrating philosophy of government.

Concessions to the States. Utilization of joint boards whose members are designated by the states and approved by the Commission to handle problems involving motor carriers whose operation extends to not more than three states gives the states a stake in the administration of the act. And as a conscious concession to "states rights" the device facilitated the enactment of the bill.[56]

Justification for resort to this joint board plan lies in the economic facts (1) that only a small percentage of motor carriers and of the motor transportation business is interstate, thereby denying the feasibility of an expensive separate Federal administrative machinery; (2) that most of the motor transportation is short haul and therefore local in character, thereby comporting with utilization of state agencies encouragingly experienced in motor carrier control; (3) of expense and inconvenience to the numerous small carriers of traveling to Washington for regulatory business, or the alternative expense of setting up numerous local branches of Federal administrative machinery; and (4) that the Interstate Commerce Commission can easily forego further addition to its present burdens.[57]

Convinced that Federal regulation was inevitable, the National Association of Railroad and Utility Commissioners, long opposed to extension of Federal control, supported the utilization of state commissioners rather than see separate Federal administration instituted.[58]

Precedent for this Federal use of state administrative agencies is abundant, and while the United States cannot compel state officials to administer Federal law, they may choose to cooperate unless state law prohibits; and state law may compel them to so act.[59]

---

[56]See statements by Representatives Crawford (Mich.) and Truax (Ohio) 79 CONG. REC. 12224 (1935).

[57]Paul G. Kauper, *Utilization of State Commissioners*, etc. (1935) 34 MICH. L. REV. 37, 40–45.

[58]*Id.* at 46.

[59]*Id.* at 46–49 and 75–77, citing lengthy authority.

Similarly a concession to the states is the provision that any interstate carrier whose route is confined to one state but who transports in interstate commerce need not seek Federal certification if he already holds a state certificate or if there is a certificate issuing agency in the state.

To the same effect is the Commission discretion to exempt from Federal control (except as to hours of employees, standards of equipment, and safety of operation) all carriers operating across state lines in municipal and metropolitan areas so long as the Commission finds the state laws sufficiently regulatory to achieve the purposes of the Federal act.

But in barring the "Shreveport doctrine" from the Commission power over rates, the statute makes the most signal concession to the states. As introduced into the Senate, the bill denied all intention to interfere with the "exclusive" exercise by each state of power to regulate intrastate commerce. Many of the bus and truck witnesses before the Senate committee hearings favored incorporation of the Shreveport doctrine, and a majority of the committee members, not including Chairman Wheeler, struck out the "exclusive" from the original bill, and reported out the measure with this provision:

> "Nothing in this part shall be construed to affect the powers of taxation of the several states or authorize a motor carrier to do intrastate business on the highways of any state or to interfere with the exercise of each state of the power of regulation of intrastate commerce by motor carriers on the highways thereof, except where and to the extent that such causes undue or unreasonable disadvantages, or prejudice to persons or localities in interstate commerce."

To bar the Shreveport doctrine from the measure, Senator Duffy offered from the floor an amendment which Chairman Wheeler characterized as not only eliminating the Shreveport doctrine but also as forbidding Commission regulation of rates of trucks which leaving a point within the state go outside and thence promptly back into the state (claiming they thereby constitute themselves interstate carriers),[60] and hindering the Commission in the regulation of hours of employees and the safety of operation. Advising the Senate to go slowly relative to including the Shreveport doctrine, Senator Gore obtained the deletion of the "except" clause of the provision reported by the committee.[61]

[60]On this resort to subterfuge see the writer's *Interstate Motor Carrier Regulation in 1930* (1931) 10 BUS TRANSPORTATION 575, and particularly the opinion of the Supreme Court in the Grubb case in his *Motor Carrier Litigation in the Supreme Court since 1929* (1934) 22 KY. L. J. 199, 200–201.

[61]For these developments in the Senate see 79 CONG. REC. 5736, 5737 (1935).

Sensing the importance of the controversy over the Shreveport doctrine, the House committee reported the bill with an amendment prohibiting Federal regulation of intrastate motor transportation as Federal regulation of railroad intrastate commerce had been exercised under the Shreveport doctrine.[62] And the final measure provides:

> "That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate fare, or charges for intrastate transportation, or for any service therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose."[63]

Whether outlawing the Shreveport doctrine can be adjudged advisable on merit, such a step constitutes a decidedly reactionary move; but it facilitated the passage of the measure and can be counted on to enlist a hearty state cooperation in the application of the statute.

The Constitutionality of the New Act. Of course the principle of Congressional regulation of interstate motor transportation is beyond cavil. But particular provisions of the 1935 act may be subjected to judicial scrutiny before regulation has advanced very far.

Bringing contract carriers within the regulatory scope rests on the Supreme Court pronouncements in *Stephenson v. Binford.*[64] But the potential minimum of Federal regulation intended for private motor carriers in interstate commerce presents a novelty in public control of motor carriers.

Operative rights resulting from establishment of service prior to June 1, 1935 are taken care of by the "bona fide operation" condition sufficing for formal authorization under the act. Little doubt could be entertained that brokers' activity is not directly and vitally related to interstate motor transportation if not actually a part of it.

Closely parallel to established law and practice in regard to railroads are the provisions dealing with motor carrier rates, hours of service for employees, and safety.[65] From the opinion by Justice Brandeis in

---

[62]Committee on Interstate and Foreign Commerce, *Report* (to accompany S. 1629), July 24, 1935.

[63]§216 (e) of Public Act 255, 74th Cong. 1st Sess.

[64]287 U. S. 251, 53 Sup. Ct. 181, 77 L. ed. 288 (1932). More recently stressed in Hicklin v. Coney, 290 U. S. 169, 54 Sup. Ct. 142, 78 L. ed. 247 (1933).

[65]Validity of these provisions is ventured on the basis of B. & O. v. I. C. C., 221 U. S. 612, 31 Sup. Ct. 621, 55 L. ed. 878 (1911); So. Ry. v. U. S., 222 U. S. 20, 32 Sup. Ct. 2, 56 L. ed. 72 (1911); Hendrick v. Md., 235 U. S. 610, 35 Sup. Ct. 140, 59 L. ed. 585 (1915); Kane v. N. J., 242 U. S. 160, 37 Sup. Ct. 36, 61 L. ed. 222 (1916); Morris v. Duby, 274 U. S. 135, 47 Sup. Ct. 548, 71 L. ed. 966 (1927); Buck v. Kuykendall, 267 U. S. 307, 48 Sup. Ct. 324, 69 L. ed. 623 (1928); Sproles v. Binford, 286 U. S. 374, 52 Sup. Ct. 581, 76 L. ed. 1167 (1932); and Stephenson v. Binford, 287 U. S. 251, 53 Sup. Ct. 181, 77 L. ed. 288 (1932).

Sprout v. South Bend,[66] the insurance requirements set forth by the statute seem beyond question.

No doubt can be entertained that constituting state officials Federal agencies for administration of Federal law is valid, for "the Supreme Court considers the question well settled in favor of the constitutionality of the practice."[67]

Whatever attacks are made on the act bid fair to center on the Congressional delegation of power to the Commission. Despite the fact that the Supreme Court is especially sensitive just now as to delegation of power, the conferring of broad discretion on the Commission is expected to be sustained.

Administrative Problems. While the statute has encompassed all essential phases of interstate motor carrier activity, the actual extent to which and rapidity with which the administrative process shall move toward the legislative objective are matters left largely to the discretion of the Commission. This constitutes the general and inclusive problem.

One specific problem is that of interpretation. Such terms as "casual, occasional, and reciprocal operation," "public interest," "public convenience and necessity," "unjust discrimination," "undue prejudice," "undue advantage," "adequate service" and "just and reasonable rates" must depend for their meaning and application primarily on Commission philosophy and judgment. These various phrases present as baffling a task in construction as that begun by Marshall relative to the necessary and proper clause in *McCulloch v. Maryland*.[68]

The formulation of rules and regulations constitutes a second administrative problem. The initial encounter with this problem will come in regard to hours of service, standards of equipment, and safety of operation, and caution will characterize Commission contact. Formulation of just and reasonable rate standards for a multitude of types and classifications of motor transportation will soon challenge and tax Commission ingenuity.

Enforcement of established regulations upon 250,000 motor transportation enterprises throughout the United States presents a humiliating task to the boldest of agencies. To perform that task at all satisfactorily will require the cleverest tact and the utmost in patience.

But in tackling these herculean administrative problems the Commission can rely upon a vast body of regulatory precedent and the fact that the measure received in its enactment more than substantial sup-

[66]277 U. S. 162, 48 Sup. Ct. 502, 72 L. ed. 833 (1928).
[67]Kauper, *supra* note 57, at 71–73, citing ample authority.
[68]17 U. S. 316, 4 L. ed. 579 (1819).

port from the various interests affected. Further, it can count on the wholehearted cooperation of the President and Congress. If the Commission can command intelligence and tact throughout its administrative personnel and fair consideration of its rulings is obtained in the courts, its success in administering the Motor Carrier Act in the public interest is assured.