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A SYMPOSIUM ON MOTOR CARRIERS

SOME ASPECTS OF THE PROBLEM OF INTERCARRIER COMPETITION

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The past decade has been marked by numerous examinations of the transportation scene, and particularly of government policy toward transportation, which have borne partial fruit in the Transportation Act of 1958. More than anything else, the rapid weakening of the railroad system after World War II and the conviction of railroad managements that the worsening state of their industry was the result of "unfair" govenmental policies led to the almost continuous attention which has been devoted to the subject by agencies of the Congress and of the executive branch alike. And all such studies demonstrate, before they are done, that the railroad "problem" cannot be viewed apart from the transportation situation as a whole.

Changes in the Demand for and Supply of Transportation

Since the first World War, and at an increasing pace since the second war, great changes have been underway in the transportation scene. Their nature and extent are difficult to grasp, particularly since the scope of data collection has not kept pace, with the result that we know less statistically about transportation than we did forty years ago. Nevertheless, some of the main trends are visible enough even though they are not capable of accurate measurement with the available data. And it is evident that motor transportation, coinciding in time of development with changes in manufacture and distribution, has made the largest contribution to the alteration of the scene.

The period referred to has been marked by an expansion in the product mix of American industry which can almost be described as explosive. It extends from breakfast foods to the whole range of consumer and industrial durable goods. It involves no mere multiplication of brand names, but also the birth of entire new industries and the development of new lines, as in chemicals and fabrics, which are competitive with the old. On the side of distribution the tendency

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toward expanding the coverage of outlets, particularly at the retail level, has enormously increased the range of goods carried in the high-volume stores. The old limited range of unchanging staples has given way to an almost infinite variety of items, great numbers of which are under continuing development by their manufacturers so that the rate of product obsolescence is high. Especially in the durable goods, moreover, unit values tend to be high. Yet every brand and every model or variety of product must be continually accessible in accustomed outlets if the market standing of the product is to be maintained.

These conditions necessitate close inventory control, the carrying of minimum inventories and the availability of immediate and reliable replenishment from factory or warehouse outlets in small quantities or in mixtures rather than in lots which correspond with the unit of movement in line-hand service. The problem at the warehouse level or at final assembly in the manufacturing process is not greatly different. At all levels the tendency is to push the job and the costs of inventory maintenance back to the more elementary levels of production where unit values and perishability (characteristically obsolescence) are both lower. This is accomplished by the purchase of a vastly improved transportation service which is certainly more costly to render than that which seemed adequate under more primitive economic conditions. Only at the level of raw materials, staples and heavy industry do the transportation requirements resemble those of the past. But there is good reason to suspect that a steadily larger portion of our transportation output, measured in ton miles, is devoted to manufactured goods as the years go by. Moreover there is a strong tendency for the density (weight per unit of space occupied) to decline, partly as a result of the increasing use of light weight materials and partly as a result of changed product design.

In this period of sharp alteration on the demand side, motor transportation has experienced its rapid growth and has come of age. Its great fiexibility represented by (1) ability to serve directly any premises on the highway system, (2) freedom from the necessity to mesh the movement of one vehicle with those of others (in contrast with the train or tow), (3) consequent ability to commence line-haul movement at any hour immediately after a vehicle is loaded, and (4) possession of line-haul vehicles of smaller average size than those of other methods of transport and capable of a considerable range of adjustment in size and in other characteristics, furnished it with an ability more easily to meet the newer demand conditions than older forms of transport. As a young industry, born in considerable part out of the failure of other forms of transport to adjust to the exaggerated trends toward small shipments and minimum inventories of the

depression years, it was also characterized by a welcome spirit of enterprise.

But perhaps the most important change worked by the perfection of the freight-carrying motor vehicle and the improvement of the highway system was to present the shipper with an opportunity to provide some, or even much, of the transportation he required through his own organization in vehicles or by contract with a relatively small firm which could provide an operation specialized to meet the shipper's requirements. Hitherto, only a few of the largest basic industries could provide some of their transportation through private or contract carriage, and then primarily for their large bulk raw material flows. The ability of shippers to transport for themselves effects a marked change in the condition which for-hire carriers must face in the marketing of their services and an equally marked change in the approach required of regulation. For although very few shippers are capable of performing all of their transportation service without great inefficiency and most must rely on for-hire carriers to meet a large portion of their requirements, highly strategic pressure can be asserted which tends to affect both the service and rates of for-hire carriers.

Impact of the Motor Carrier Act, 1935

Regulation of interstate motor transportation came early in the history of the industry, and with nearly fifty years of federal regulation of railroads to provide a background was introduced in comprehensive form. The great growth of motor transportation has occurred since regulation and has been shaped in important respects by the concepts of the statute as applied by the Interstate Commerce Commission.[1] As I have elsewhere suggested, support for the Motor Carrier Act was widespread, and the immediate objectives were of a quite practical sort.[2] It is difficult now to recapture a sense of the prevailing opinion in the thirties which credited the nation with a supply of transportation facilities permanently in excess of its requirements, hence, in need of restraint if not curtailment. Railroads, the larger motor common carriers and the organized shippers sought to limit entry into motor transportation, to encourage a reduction of the number of firms in the business, to secure the publication of rates and adherence thereto and to insure a greater stability in rates and particularly in rate relationships. Shippers, in particular, sought to insure financial responsibility and the settlement of claims. Although there was some recognition that the development of motor and air transportation and

1. Intercity motor transportation of freight probably did not exceed 35 billion ton miles per annum in the middle thirties. By 1956 it exceeded 227 billion ton miles. See *Report of the Federal Coordinator of Transportation, 1934*, H. R. Doc. No. 89, 74th Cong., 1st Sess. 15 (1935).

2. WILLIAMS, THE REGULATION OF RAIL-MOTOR RATE COMPETITION 202 (1958).

the revival of inland waterway transport were providing the nation with a variety of partly alternative services of differing capabilities and that the proper use of each in relation to the others was an appropriate governmental concern, little attention seems to have been paid in Congress to the problem of finding ways to insure an optimum economic relationship of the several modes of transport. The focus was upon cures for the contemporary disorganization and financial incapacity of the transportation industry.

Joseph B. Eastman, serving both as Federal Coordinator of Transportation and as Chairman of the Commission, held broader views. Noting that the value-of-service theory of rate making had had an important influence upon the railroad rate structure, he asserted that the motor truck was threatening this theory all over the world. He foresaw the necessity for sweeping readjustments of the rate structure with emphasis upon the cost-of-service factor as a basis. And he suggested that, "The prospects are that there will be disruption of the rate structure in any event, but there is more chance of keeping this tendency within reasonable limits with comprehensive regulation than without."[3] Moreover, he recognized that the private truck would set the limits, but even he appears not to have suspected the extent to which private transportation would prove to be selective, hence dangerous out of proportion to its volume to the rate structure and earning power of common carriers.

The advent of regulation in the motor carrier industry compelled organization of the for-hire carriers and cooperation in the matter of rate policy and tariff publication.[4] The organized common carriers made no serious attack upon the railroad rate structure.[5] They viewed the railroads as their major competitors and rail traffic as a chief source of added tonnage. Since they possessed generally a superior service, judged by the needs of the time, they had learned that motor carrier rates upon a par with those of the railroads would tend to result in a satisfactory volume of traffic. Hence they viewed the rate-making problem largely as a study in meeting rail competition and, faced with a revenue emergency in many parts of the country because of the difficulty of controlling rate cutting among themselves,[6] they invoked the Commission's minimum rate powers to fix the railroad

3. H.R. Doc. No. 89, 74th Cong., 1st Sess. 120 (1935).

4. These developments were actively fostered by the Interstate Commerce Commission as prerequisite to successful compliance with the act and effective regulation.

5. Analytically viewed, this means that they made no attempt of consequence to develop a structure of rates based upon the characteristics of motor transportation.

6. Specialized carriers were a particular source of this phenomenon. See WILLIAMS, *op. cit. supra* note 2, at 7-10, for a discussion of the diversity of motor carrier interests.

rate stucture, with some exceptions, upon the industry.[7] Subsequent events have produced numerous modifications, but the essentials of the classification have been preserved, together with the relationships of the classes. If an increasing proportion of traffic has tended to move under commodity rates, this is more the result of the effort to achieve territorial uniformity in classification and in class rates in the face of differing commercial circumstances than it is of the policy of motor common carriers to adjust their rates in the light of the economic characteristics of motor transportation.[8]

In essence, therefore, twenty-three years of regulated competition between railroads and motor common carriers has resulted in preservation of the classification and of the structure of class rates. Yet both were developed by an organized industry which, when taken as a whole, enjoyed a monopoly of domestic intercity transportation at all points off of the navigable waters. Upon its own initiative the railroad industry developed a structure of rates weighted heavily by the value-of-service principle and both the Commission and the courts had found this structure, on the whole, to embrace wise public policy. Neither railroads nor motor common carriers sought to move away from it, but instead resorted to numerous particular rate adjustments in their competition, one with another, and with unregulated and private carriage.

Thus the transition toward a cost basis of rates which Eastman expected, and one may surmise feared, has made no great progress in the regulated area. The restraint provided by the regulating structure must have some responsibility, but it may be argued whether its influence has not been, primarily to lend essential support to the policies of the regulated carriers themselves. In considerable measure the rate structure has been held together, but at the cost of a growth in unregulated and private carriage at a rate which appears to have been considerably more rapid than the growth of freight transportation as a whole.

Contrasting Economic Characteristics in the Forms of Transportation

The first fifty years of American experience with federal regulation of transportation under the Interstate Commerce Act is almost wholly confined to the regulation of railroads. These carriers formed a na-

7. The initial cases were Midwestern Motor Carrier Rates, 27 M.C.C. 297 (1941); Territory Motor Carrier Rates, 24 M.C.C. 501 (1940); Central Territory Rates, 8 M.C.C. 131, 8 M.C.C. 233 (1938); New England Motor Carrier Rates, 8 M.C.C. 287 (1938); Middle Atlantic States Motor Carrier Rates, 4 M.C.C. 68 (1937). In numerous supplemental reports adjustments of specific minima were prescribed.

8. The rapid adoption of the Docket 28300 basis of class rates by motor carriers is evidence of continuance of the policy of securing parity with the rail bases of rates.

tionwide system of transportation composed of firms which had similar characteristics. All were common carriers of all commodities, with minor exceptions, between all points on their lines. All had cost structures which were basically similar. Although there were significant problems—for example, the weak-and-strong road problem—these were not so intractable as to seriously impede the development of a viable regulating system. The justification for the rate structure upon which regulation relied was derived from the theory of railroad economics which treated of the carriers in groups and which recognized competition external to the industry as an exception to the normal scene, encountered at few points, and dealt with accordingly.

Not until the advent of a nationwide system of improved highways and of trucks capable of long-distance carriage did the railroads face competition throughout the territory which they served. As it developed, this competition came to be described as pervasive because it could be brought to bear at any point and, as the vehicle was perfected, for increasing lengths of haul. Competition external to the railroad system became the rule rather than the exception. But the competition was from a type of carrier having not only different service capabilities, as noted above, but also a quite different cost structure. Moreover motor carriers were not required to render a universal service, but were free to enter into carriage specialized as to commodities, points served and class of service as their business judgment might consider wise.

Both rail carriers and the regulatory authorities thus faced a drastically altered situation and neither appears to have been quick to grasp the implications. If anything, the railroads were slower than the Commission and showed no disposition until the last few years to study the conditions which they faced upon a broad front and to attempt to determine a rate making policy which it would be in their interest to follow. That the differences between rail and motor carrier cost structures are material is apparent both from a consideration of the nature of their respective plant and operations and from comparison of such cost studies as are available. These latter are not strictly comparable, nor are they free from controversy as to the accuracy with which they represent the behavior of costs within each of the two industries. Nevertheless they confirm the differences which one would expect *a priori* while failing to afford acceptable quantitative measures of those differences.

It is apparent from average ton-mile revenue data, when taken in conjunction with earnings data, that the average motor carrier ton mile is created at a cost several times that of the average rail ton-mile. However, in the light of differences in the composition of traffic,

in average haul and in other factors, these averages have little meaning. More than half of motor common carrier traffic, both in tonnage and revenue, is less truckload, and these carriers are predominant in the handling of small shipments. Railroads have been very nearly displaced in this class of business. In the absence of acceptable rail cost studies pertaining to less carload traffic, no quantitative comparisons of the level and structure of costs is feasible for this type of business. Yet it appears from the nature of the operations conducted by the two forms of transport that motor carrier terminal costs are characteristically lower than rail costs while their higher vehicle-mile line-haul costs may well be offset in good part by the better loading which they are capable of securing from the large volume of traffic at their disposal.

A number of studies are available both of rail carload costs and of motor carrier costs on truckload quantities. These studies, although embracing some differences in concept which deny them strict comparability, confirm the general impression that motor carrier terminal costs are lower than rail costs, while their line-haul costs build up more rapidly per vehicle mile and per ton-mile. This is true whether full or out-of-pocket costs are referred to. Hence, on short hauls motor carrier costs can be expected to be lower than rail costs, while upon longer hauls they will exceed rail costs by an increasing margin as the length of haul grows. Upon carload traffic, it appears that the point at which motor carrier costs move above rail costs may well be found short of a 100-mile haul. What little is known of these relationships suggests a significant difference in the structure of costs by the two modes of transport representing (1) a difference in the level of unit terminal costs and (2) a different rate of progression in the line-haul cost. Furthermore, while a straight-line function can be accepted as representative of motor carrier line-haul costs, a strong argnment can be offered to the effect that the rail function tapers with the result that line-haul costs are somewhat less per ton mile for the longer than for the shorter hauls. These relationships suggest that, with respect to particular types of traffic, there is a dividing point or zone in length of haul where economy of transportation by truck gives way to economy of transportation by rail which is roughly ascertainable by appropriate cost studies. They suggest further that additional economy is to be found in the production of transportation by meshing the relatively low terminal costs of motor carriers with the relatively low line-haul costs of the railroads to the extent this can be done without unacceptable transfer costs between the two types of transportation.[9]

9. The Commission has recognized the tendency for the relative economy of the two forms to be governed by length of haul and has, in a few instances,

A second important divergence in the cost structure results from the difference in proportion of variable costs. There appears to be a fair degree of agreement that motor common carrier costs are approximately 10 per cent fixed and 90 per cent variable with changes in the volume of traffic handled.[10] The overheads of private and contract carriers are customarily somewhat lower than those of common carriers, hence the proportion of variable expenses is somewhat higher for these types of carrier.[11] The traditional view was that from one-half to two-thirds of rail costs were fixed, although more recent expressions accept as much as 80 per cent as variable.[12] An argument of some strength can be made that so large an estimate of variable costs for the railroad industry can apply only to changes in the volume of traffic far larger than those normally at issue in a rate proceeding. The Commission's out-of-pocket costs for railroads have application to the long run, during which substantial changes in plant and equipment can be effected so that investment is altered. Motor carriers have no investment in permanent way and a comparatively limited investment in terminal and fixed maintenance facilities. Their primary investment is in equipment which is depreciated on a much shorter life than is rail equipment which is readily adjustable to changes in traffic volume by leasing. Charges for the use of permanent way provided by the public take the form of registration fees, fuel taxes and third structure taxes, and these are variable in contrast with the relatively fixed charges for carrying the investment in and maintaining permanent way in railroad ownership.

In the period prior to railroad recognition of the widespread competition which now faces them, the rail rate structure was built upon the premise that fixed costs were a very large element in total costs. The movement of low-grade commodities could, therefore, be encouraged by rates well below the average on the assumption that such rates covered the direct, or added, costs which they occasioned. The fixed costs could be distributed over the higher value items in the traffic composition with more or less regard to their ability to bear freight charges without material restraint upon their movement.

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given recognition to this tendency in its actions upon rate proposals. See New Automobiles in Interstate Commerce, 259 I.C.C. 475 (1945). One of the first regulatory actions which recognizes a definite dividing line by length of haul is Petroleum from Colorado & Wyoming to Western Trunkline Territory, 289 I.C.C. 457, 466 (1953).

10. Interstate Commerce Commission, Statement No. 1-54, p. 71 (1954). See also HUDSON & CONSTANTIN, MOTOR TRANSPORTATION: PRINCIPLES AND PRACTICES 600 (1958).

11. Some evidence in this matter as respects contract carriers appears in Petroleum Between Washington, Oregon, Idaho, & Montana, 234 I.C.C. 609, 626 (1939).

12. *Rail Freight Service Costs in the Various Rate Territories of the U. S.*, S. Doc. No. 63, 78th Cong., 1st Sess. 75 (1943).

Emphasis was upon a total revenue adequate to insure profitable operation, an object which could be secured by adjusting the level of the rates from time to time. At any given level of rates, the rates for particular hauls and particular commodities could be adjusted in the light of the relative value of service. Hence, no necessity appeared for study of the costs of particular hauls. Rates tended to be relatively low not only for low-grade commodities but also, when placed upon a ton-mile basis, for the longer hauls.

Under this structure of rates, wide distribution of most commodities was facilitated. Yet even traditional concepts of the fixed-variable relationships in rail costs did not overcome the limited ability of important staples and bulk raw materials to sustain transportation charges. Hence, while bituminous coal would seldom move beyond 450 miles in an all-rail haul, many high value manufactures could move freely to any part of the nation. On the whole, the developed structure of rail rates tended to encourage the maximum movement of all commodities which the state of the arts in transportation permitted and thus to give market, commercial and industrial competition broad play.

In view of their different cost structure, motor carriers penetrate less deeply into the commodity composition of traffic at every length of haul save the shortest. Put otherwise, they may haul virtually any commodity on the shortest haul, but as the length of haul increases they are more and more confined to the higher rated commodities in the rail rate structure. Hence, from a commodity point of view, the depth of their competition with the railroads tends to diminish as the length of haul increases. So far as value of service in the traditional sense is a major determinant of the rail rates, the relative cost of service of the two methods of transportation has no immediate bearing upon their competition. All that is necessary is for the motor carrier to confine its holding out to traffic on which its costs are below the applicable rail rates. Whether these are above or below rail costs is irrelevant.

The ability of the individual motor carrier, whether private or for-hire, to specialize upon a defined portion of the transportation task distinguishes it further from the rail carrier which has a general responsibility to carry. Certain of the rail carriers enjoy a high degree of specialization in the handling of particular large commodity flows, but this is the result and reflection of the characteristics of the territory which they serve. When an industrial firm undertakes private truck transportation it frequently carves out a particular segment of its traffic to be handled in this manner—that traffic which it can supply at a cost usually at or below the going rates of public carriers, and which lends itself to private handling. It can and does rely

upon the public carriers to meet its other requirements and to accept the overflows and fluctuations. Many for-hire carriers likewise undertake to perform a specialized rather than a general purpose service. Hence the general purpose carrier, whether rail or motor, may find itself faced with a series of specialists seeking to divert precisely that traffic which tends to be most remunerative either because of a high basis of rates or because the transportation characteristics of the traffic permit it to be handled at less than average costs.

The Central Question of Public Policy in Transportation

The issues which have led to controversy over the character of regulation and of other phases of government transportation policy have shaped up largely as issues between railroads and motor carriers. This results partly from the pervasiveness of motor carrier competition and partly from the fact that motor transportation has affected railroads more seriously than any other form of transport by draining away large volumes of the most remunerative rail traffic. Yet the issues have applicability to all phases of intercarrier competition.

In the measures promoted by one or another form of transport, by shippers' groups or by parties external to the immediate competitive struggle, the public issues are made to appear manifold. Nevertheless they all surround a central question: How to insure that the nation may obtain the essential transport services at the lowest cost.[13] Freight transportation is not of value standing alone, but only as a part of a process which begins with the extraction of the raw materials and ends with the ultimate consumption of the goods. Although transportation literature contains much that is designed to explain the importance of transportation in an exchange economy, and particularly in an industrial economy, it is not well furnished with analyses of the inter-relationships between transportation and industrial and commercial development.[14]

Transportation supplies a degree of speed, security and regularity (or predictability) in overcoming space at a cost. The service standards are achieved at a price, and lower standards of service can frequently be rendered at less cost. Some forms of transport are better adapted to furnish certain of the service qualities at a high standard than are others. But types of transport which, in the conduct of transport services which are normal to them (or optimum from a cost point of view) do not approach the highest standards of service, may be able to render their inferior services at a lower cost. While

13. We need not inquire here whether money costs as derived in our market system are a proper representation of the costs appropriate to economic allocation.

14. Location theory has made some headway, but it tends greatly to simplify both the transportation and production sides.

some industrial or commercial operations may require the support of the best transport services available, others may find that the lower costs associated with some types of transport more than offset the non-transport costs which result from the use of inferior services.

The variety of transportation services and combinations thereof which we are now able to create at varying levels of cost affords us a greater potential for industrial and commercial adjustment than ever before. Transportation, in both its service and cost dimensions, relates to all production and distribution in the economy. It is a major determinant of trends in centralization and decentralization both of production and distribution functions. It therefore influences the scale upon which these activities are conducted and the degree of economy which will be attained in consequence. It plays a significant part in determining the general patterns of location and of the market configurations surrounding manufacturing and extractive locations as well as warehouse outlets. Indirectly, therefore, it plays a part in determining the character and intensity of the competition which will be encountered in any market area.

What is to be sought, therefore, by appropriate national policy is a set of conditions that will enable such a choice of transportation services to be made as will, in conjunction with the other processes involved in production and distribution, result in a minimum total cost at the level of the ultimate consumer. Traditional regulatory policy as applied to railroads, looked at broadly, confirmed the essential principles of rate making which the carriers had developed in their own interest. These called for making rates as low as the supposed out-of-pocket costs if necessary to induce movement of a low grade commodity or of more valuable commodities upon longer hauls. They assessed the overheads most heavily upon highly valuable items, luxury items and moderate hauls and graded downward on the basis of relative standards. Since the shipper can haul for himself or contract for specific services wherever the resulting rates, service considered, lie above the cost of performing the service for himself the old principles cannot long survive. While they existed they doubtless fostered a greater centralization of industry, a larger scale of production in many manufacturing enterprises, and a greater degree of competitive penetration of markets by rival producers than would a different policy of distributing the overheads.[15] It may be that an overexpansion of transportation in relation to the rest of the economy resulted, but though the cost of production may thus have been inflated, intangible benefits resulting from a greater variety of products in the market

15. It is to be remembered that the rate structure was shaped largely during a period when the older conceptions about railroad fixed costs prevailed, hence that wide latitude was considered to be available in the assignment of burden to the various classes of traffic.

and from heightened competition and a widened range of alternative sources for the purchaser were realized.

When other forms of transport, and particularly motor transport, became more broadly competitive with the railroads, there was a strong tendency for them to base their rates upon the existing rail rate structure. Where parity with the rail rates was not sought, differentials designed to compensate for the supposed value of differences in quality of service were proposed.[16] When motor carriers in essence adopted the rail rate structure while more or less confining their holding out to such traffic as they could handle profitably at those rates, they provided a ready basis for developing traffic in view of their generally superior service. At first sight no harm would appear to result from this policy except to the railroads which might, thus, lose remunerative traffic; the shipper would secure a superior service at the same rate and the motor carrier, if it exercised proper control over the traffic which it sought and conducted an efficient operation, would profit. Given the principles underlying the rail rate structure, however, this course of events would set in motion more far reaching consequences. For the comparative cost structures of rail and motor carriers would insure that, except for the shortest hauls, the traffic diverted would generally be traffic which the rails could handle at a lower cost than the motor carriers and which had been priced to absorb more than a pro rata share of overhead. Its loss to the rails would, therefore, put a more than proportionate share of pressure upon the profit margin of these carriers and compel them to seek increased revenues by general increases in rates. Since such general increases would tend to enlarge the range of traffic open to motor carrier competition and thus invite further diversion, the pressure of increased rates was necessarily felt most heavily by the raw materials, staples, and other low-grade items which traditional rate policy had favored. Thus a rather massive reversal of the trends which railroads had promoted was set in motion.

What is more important, this process is no mere redistribution of the transportation burden. For the increased burden upon the lower-grade traffic has been but partially compensated by a reduced burden upon the higher-grade traffic. Indeed, the shift has been toward a more expensive form of transportation in respect of a great part of this traffic, and the nation's transport bill per ton-mile of service produced has been steadily increasing even after allowance is made for changes in the general price level. That this increase has been accompanied by significant service improvement is no conclusive test of its economic desirability. Part of that improvement has resulted from employment of the more flexible motor carrier in traffics where

16. As, quite generally, in the water trades.

it is more costly than the railroad per unit of carriage performed, part of it from an enforced and expensive upgrading of the rail service.[17] To the extent that rates are upon a parity or nearly so for services of different quality, the shipper will almost automatically choose the superior service. It is not necessary for him to measure the comparative worth of the two services unless the rates charged for them differ.

On the other hand, where an inferior service can be produced at substantially less cost the shipper may find its use advantageous if rates reflect the difference in cost; the increased inventory, handling and other costs which he might encounter when using the inferior service might be more than offset by the lower rates. This is, indeed, the rationale behind much use of water carriers which operate at rates differentially below those of rail carriers. Moreover, the history of traffic in a number of commodities that have been highly competitive between rail and motor carriers has shown a tendency for the traffic to shift back to the railroads, despite their supposedly inferior service, when a comparatively small reduction below the level of motor carrier rates is achieved.[18] It must be supposed, indeed, that considerable traffic remains sensitive to rate differences even where these are accompanied by observable service differences. And if shippers are to be encouraged to use the service which best fits the requirements of their enterprise, they must be able to choose upon the basis not merely of known quality of service as exemplified by actual performance, but also on the basis of the cost of providing the service which must be reflected in the rate charged if it is appropriately to affect their choices. Neither optimum use of the several types of transportation nor advantageous coordination of them can be furthered unless this essential condition is met in reasonable degree. The alternative of service competition at equal rates, strongly urged by the motor carriers, would accelerate the trend toward increased unit costs of transportation, for it would require of railroads that they subvert their character as low-cost haulers in the mass and over long distances and strive to equal the flexibility of the motor carrier. Such a policy would force shippers increasingly to resort to providing their own transportation.

Public policy bears upon the central problem discussed above primarily in two ways: (1) in promotional activities it provides facilities and services and commits public credit to transportation purposes

17. Loss of volume in some rail services as a result of diversion has also, inevitably, led to higher costs upon the traffic which remains.

18. See, *e.g.*, Cigarettes & Tobacco from North Carolina to Official Territory, 281 I.C.C. 127, 142 (1951); Asbury Transportation Company v. Union Pacific Railroad Company, 248 I.C.C. 741 (1942); Petroleum from South Atlantic Ports to Southeast, 245 I.C.C. 23 (1941).

and (2) in regulatory policy it influences the character of the service and the structure of rates. Promotional activities make possible the development of more efficient transportation services, but at the present they scarcely extend at all into the railroad segment of the transportation system. Hence, the allocative function which government can discharge in influencing the rate of investment in the several forms of transport is incomplete and, to the extent that railroad earning power is not adequate to enable these carriers to keep abreast of the public sector in the application of improved technology, the shipper faces a choice in the market between the service that a comparatively obsolete rail system can afford and that which other carriers offer upon the basis of a more nearly complete application of the best that technology affords. Thus promotional activities may have basic importance in steering the development of the transport system toward or away from one which permits a reasonably optimum solution for the most effective combination of our several methods of transport.

The impact of regulation is, however, most direct because it has immediate and continuing effect upon the welfare of carriers in their competition one with another, especially to the extent that it determines or influences rate policy. In the exercise of its regulatory powers the Commission must take the effects of promotional policy as it finds them, except that it can recommend changes in congressional policy if it believes such changes to be desirable. Within the framework of the act, however, it has large discretion in dealing with the issues that arise from intercarrier competition and a broad mandate which tends to identify the public interest with what we have called the central question for public policy in respect of intercarrier competition.

The initiative in matters both of service and of rates is, however, with the carriers. If sweeping changes in rate structures are required in order to enable any type of carrier to make its economic characteristics effective in the market, then it is carriers' responsibility to bring forward proposals and to afford adequate justification. Most complaints against the Commission's discharge of its powers with respect to rate making emanates from the railroads. Yet it is hard to discover that the rail carriers have had any policy for meeting the competitive situation which they have faced over the period since the passage of the Motor Carrier Act. It is difficult to discover when or where they have defined the role which the railroad industry ought to play in an optimum transportation system for the nation, much less the service and rate policies which would be required to bring it about. Until recently they have not even undertaken on any considerable scale the examination of their own cost and service characteristics and of their relationships with competitors which is essential to the

development of such a definition. They have, it is true, fought large numbers of competitive battles before the Commission with respect to particular segments of traffic which they were losing to competitors. But in such instances they rarely attempted a showing of such economic advantage over their competitors as would entitle them to the traffic in the public interest. And their actions do not appear to have constituted phases of a well thought-out policy.

The Commission must act very largely upon the showing which carriers make in proceedings which, by their action or inaction, they have caused to come before it. The great bulk of proceedings involving rail-motor rate competition have been devoid of useful economic evidence.[19] On numerous occasions little evidence relevant to the standards which the Commission has developed has been presented. When the quality of the material with which the Commission must work in the records made before it is considered, it appears that the Commission has done reasonably well in grappling with the issues. If we have trended away from rather than toward an optimum participation by the several forms of transport the failure has been not primarily on the part of the Commission but in managerial policy and its execution.

19. See WILLIAMS, THE REGULATION OF RAIL-MOTOR RATE COMPETITION ch. 8 (1958).