

Vanderbilt Law Review

Volume 11
Issue 4 *Issue 4 - A Symposium on Motor
Carriers*

Article 4

10-1958

Motor Carrier Operating Authorities

Drew L. Carraway

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Transportation Law Commons](#)

Recommended Citation

Drew L. Carraway, *Motor Carrier Operating Authorities*, 11 *Vanderbilt Law Review* 1029 (1958)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol11/iss4/4>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

MOTOR CARRIER OPERATING AUTHORITIES

DREW L. CARRAWAY*

The enactment by Congress of the Motor Carrier Act of 1935¹ vested in the Interstate Commerce Commission the power, among others, to grant or deny applications for motor carrier operating authority. The exercise of this power embraces the grave responsibility to regulate motor carriers in accordance with the national transportation policy of Congress as enunciated in the Transportation Act of 1940.²

Motor carrier operating authority is a valuable intangible property right carrying with it both privileges and obligations. The holder of such authority is given the privilege of performing operations which may be developed into a profitable business but, at the same time, has the solemn obligation of providing a safe, reasonably adequate and continuous service in compliance with the provisions of the act and the rules and regulations of the Commission promulgated thereunder.

It is the intent of this article to discuss the matter of motor carrier operating authorities. The subject itself is a broad one which could be considered in far more space than is here available. Be that as it may, the purpose of this article will be to discuss certain of the more important phases of motor carrier operating authorities.

TYPES OF OPERATING AUTHORITY

All for-hire motor carrier transportation performed in interstate or foreign commerce must fall within one or the other of two types of operating authority. Such transportation must be either common carriage or contract carriage. At the outset, a common carrier was defined in section 203(a)(14) of the Motor Carrier Act of 1935 as any person that undertakes, directly or indirectly, to transport passengers or property, or any class or classes thereof, for the general public in interstate or foreign commerce by motor vehicle for compensation.³ Section 203(a)(15) of the original act defined a contract carrier as any person, not included in the definition of a common carrier, and which, under special and individual contracts or agreements, and irrespective of whether directly or by a lease or other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.⁴

* Member, Rice, Carpenter, and Carraway, Washington, D. C.

1. Act of Aug. 9, 1935, ch. 498, 49 Stat. 543 (codified in scattered sections of 49 U.S.C.)

2. 54 Stat. 899 (1940), 49 U.S.C., notes preceding § 1 (1952).

3. 49 Stat. 544 (1935), 49 U.S.C. § 303(a)(14) (1952).

4. 49 Stat. 544 (1935), 49 U.S.C. § 303(a)(15) (1952).

From the very beginning, the Commission has been plagued with the problem of determining, in many situations, whether the involved transportation was common carriage or contract carriage. A brief review of some of the leading cases demonstrates the dilemma in which the Commission found itself in attempting to delineate between common and contract carriage.

Under these definitions as originally enacted, the common carrier was required to serve the general public without discrimination or favor to particular shippers whereas, the contract carrier could pick and choose its customers and discriminate in its service to them. As early as 1937, the Commission recognized the inherent disadvantages encountered by common carriers in their efforts to compete with contract carriers. In connection with that recognition, the Commission interpreted the Interstate Commerce Act as having for its underlying purpose the regulation of contract carriers in such a manner as to insure adequate and efficient common carrier service.⁵

The first attempt to give effect to this congressional policy of protection for common carriers from competitive contract carrier services was the decision in *Contracts of Contract Carriers*.⁶ In that proceeding, the Commission set forth a number of general requirements with which contract carriers were required to conform in the future. Those general requirements related to the contracts or agreements under which contract carriers perform service. Such contracts or agreements were required to be in writing, bilateral in nature and impose specific obligations upon both the carrier and the shipper, and were required to cover a series of shipments during a stated period of time. Copies of such contracts were required to be preserved by the contract carriers as long as they were in force and for a period of one year thereafter. Also, in that proceeding, the Commission expressed the view that compliance with these requirements would remove many hindrances then existing with respect to the practical and effective administration of the Interstate Commerce Act and would at the same time give reasonable protection to common carriers.

These requirements were supplemented in *Filing of Contracts by Contract Carriers*,⁷ in the first instance by the requirement that contract carriers maintain on file with the Commission true copies of the contracts under which they provide transportation and, in the second instance, by the later requirement that such contracts be made available for public inspection in the files of the Commission. The public inspection requirement was later set aside and vacated in this same proceeding as a result of legislative amendment.⁸

5. *Contracts of Contract Carriers*, 1 M.C.C. 628 (1937); *Keystone Transp. Co.* 19 M.C.C. 475, 491 (1939).

6. *Ibid.*

7. 2 M.C.C. 55 (1937), *modified*, 20 M.C.C. 8 (1939).

8. *Filing of Contracts by Contract Carriers*, 28 M.C.C. 75 (1941).

A further attempt by the Commission to regulate contract carriers in such a manner as to give effect to the congressional intent to protect common carriers is found in *Keystone Transp. Co.*⁹ The principle there enunciated has since come to be known as the "Keystone" restriction and, stated briefly, is the specification in the permit of a limitation of a service for a particular class of shippers further limited to a particular class of commodities. The power of the Commission to so restrict or limit a contract carrier's operating authority was firmly established by the Supreme Court in *Noble v. United States*.¹⁰ The propriety of the "Keystone" restriction was re-examined and affirmed by the Commission in *Simon McAteer*.¹¹ That principle thus became firmly established and has been imposed in numerous grants of contract carrier authority beginning with *Arthur Jones, Jr.*¹² and as recently as *Francoeur Contract Carrier Application*.¹³ Although the imposition of the so-called "Keystone" restriction in certain types of contract carrier authorities was a step in the right direction, it did not, standing alone, accomplish the congressional intent to protect common carriers from competition of contract carriers.

This matter of the regulation of contract carriers to the end of protecting common carriers embraced the necessity for a sharp line of demarcation between the two with respect to status as common or contract carriage. Such a distinction has been extremely difficult to make in those instances where there exist elements of both types of carriers. As early as *Earl W. Slagle*¹⁴ the fundamental distinction between common carriage and contract carriage was reflected by the absence of the words "for the general public" from the definition of a contract carrier as set forth in the act, and the inclusion of those words in the definition of a common carrier. It developed, however, that the distinction was not so simple.

One of the important decisions of the Commission with respect to the distinction between common and contract carriage was *Merrill M. Pregler*.¹⁵ The applicant's claim to contract carrier authority in that proceeding was predicated solely upon the assertion that it did not intend to serve the general public. The mere assertion was held to be insufficient to establish status and the Commission followed the precedent of its earlier decision in the *Slagle* case.¹⁶ Of particular importance in that decision is the statement that the portion of the contract carrier definition of "under special and individual contracts

9. 19 M.C.C. 475 (1939).

10. 319 U.S. 88 (1943).

11. 42 M.C.C. 35 (1943).

12. 21 M.C.C. 470 (1940).

13. 72 M.C.C. 271 (1957).

14. 2 M.C.C. 127, 133 (1937).

15. 23 M.C.C. 691 (1940).

16. 2 M.C.C. 127 (1937).

or agreements" means a special and individual service which is required by the peculiar needs of a particular shipper.

Shortly after the decision in the *Pregler* case¹⁷ Congress amended the definitions of common and contract carriage by the Transportation Act of 1940.¹⁸ The Commission was thereupon confronted with the necessity for making a determination as to whether those amendments did or did not result in any substantive change in the definitions as originally contained in the Motor Carrier Act of 1935. If there did not result any substantive changes in those definitions, the Commission's prior interpretations would, in effect, have the approval of Congress. If such substantive changes were the result of the amended definitions, it would require some new administrative action on this matter of common vs. contract carriage. This question was disposed of in *N. S. Craig*,¹⁹ which proceeding presented the Commission with the opportunity (a) of determining whether such substantive changes had been made and (b) of implementing its prior administrative interpretations. Reference to that case shows that the amended definitions actually constitute legislative approval of the Commission's prior administrative determination of the original statutory definitions and as set forth in the *Pregler* case.²⁰

In another effort to further simplify the problems of distinguishing between common and contract carriage, the Commission again stated in the *Craig* case,²¹ that the ultimate test of common carriage is the existence or non-existence of a public holding out, or lack of it, and that this depends upon individuality and specialization of the service in the case of a contract carrier, as contrasted to a common carrier's service to the general public. It was pointed out that such specialization could consist of (a) the furnishing of equipment especially designed to carry a particular type of commodity, (b) the training of employees in the proper handling of commodities, and (c) the supplying of related non-transportation services such as the assembling, placing, or servicing of machinery, or the devotion of all of a carrier's efforts to the service of a particular shipper, or a very limited number of shippers, under a continuing arrangement which would make the carrier virtually a part of the shipper's organization. It was there held that the absence of one or the other forms of specialization, as stated above, conclusively negatives contract carriage within the meaning of the definition in the act. This specialization test was applied in *Midwest Transfer Co.*²² Application of the so-called *Craig*

17. 23 M.C.C. 691 (1940).

18. 54 Stat. 919 (1940), 49 U.S.C. § 303(a) (14), (15) (1952).

19. 31 M.C.C. 705 (1941).

20. 23 M.C.C. 691 (1940).

21. 31 M.C.C. 705 (1941).

22. 49 M.C.C. 383 (1949), *aff'd*, 51 M.C.C. 355 (1950), *supplemented*, 52 M.C.C. 261 (1950).

case²³ criteria to the cited proceeding resulted in findings that Midwest was performing common carrier service under contract carrier permits because the required specialization was lacking.

The continuing program of the Commission to establish a line of demarcation between common carriers and contract carriers was dealt a serious blow as a result of the decision of the Supreme Court in *United States v. Contract Steel Carriers, Inc.*²⁴ In that case, the Supreme Court held that active solicitation by a contract carrier of business within the bounds of its operating authority does not mean that it is holding out service to the general public; that the contract carrier is free to search aggressively for new business within the limits of its permit; and that "specialization," which the Commission had developed as a part of the test, may be found from the fact that only strictly limited types of steel products are transported by this particular contract carrier under individual and continuing contracts with a comparatively small number of shippers. This judicial stamp of approval for what amounts to promiscuous solicitation by a contract carrier runs counter to everything that the Commission has sought to establish through the years of motor carrier regulation. This is shown by a statement of the Commission with respect to this Supreme Court decision in its annual report to Congress for the fiscal year 1956, as follows:²⁵

Freedom to solicit customers without a restriction to specialized service will obliterate the distinction between common and contract carriers which Congress prescribed. . . .

It was abundantly clear to the Commission that the only way in which the effect of this Supreme Court decision could be overcome was by legislation. The Commission thereupon recommended to Congress in its annual report for the year 1956, amendments to the Interstate Commerce Act the substance of which was as follows: That the definition of a contract carrier as contained in section 203(a) (15) of the act²⁶ be amended so as to state clearly the nature of the services that could be performed by such carriers and to provide that such services by contract carriers may be performed under continuing contracts for only one person or for a limited number of persons; that section 212 of the act²⁷ be amended by adding a new paragraph which would give the Commission the power to revoke the permit of a contract carrier and to issue in lieu thereof a certificate of public convenience and necessity if it should find, after hearing, that the

23. 31 M.C.C. 705 (1941).

24. 350 U.S. 409 (1956).

25. 70 ICC ANN. REP. 163 (1956).

26. 49 Stat. 544 (1935), 49 U.S.C. § 303(a) (15) (1952).

27. 49 Stat. 505 (1935), 49 U.S.C. § 312 (1952).

operations of the so-called contract carrier do not constitute contract carriage under the revised definition but are in fact those of a common carrier; that section 209 (b) of the act²⁸ be amended so as to give the Commission the power to limit the person or persons and the number or class of persons for which a contract carrier may lawfully perform transportation services without obtaining additional authority, and to provide in section 209 (b) of the act that additional permits may be issued to contract carriers only upon a showing that existing common carriers are unwilling or unable to provide the type of service for which a need has been shown.²⁹

Pursuant to the Commission's recommendations, Congress enacted Public Law No. 85-163 on August 22, 1957, amending the Interstate Commerce Act in substantially the form requested by the Commission.³⁰ Two important phases of this new legislation are that the Commission is now empowered to name the shipper or shippers in the permit for whom the contract carrier may provide service and the Commission was directed to examine all outstanding contract carrier permits and, after hearing, was authorized to revoke a permit and issue to the carrier, in lieu thereof, a certificate of public convenience and necessity as a common carrier if it finds that the operations of the carrier holding the permit do not conform to the revised definition of a contract carrier. In revoking the permit and issuing authority as a common carrier, the certificate so issued is to authorize transportation as a common carrier of the same commodities between the same points or within the same territory as authorized in the permit.

Pursuant to the described statutory enactment of August 22, 1957, the Commission is now engaged in examining all outstanding contract carrier permits. Formal hearings have been held upon a number of them. At this writing, additional problems are confronting the Commission in those situations where it is determined that the operations being performed are actually those of a common carrier and not those of a contract carrier under the revised definition. Some of the more important problems are:

- (a) Whether the common carrier authority to be issued in lieu of the contract carrier authority either can be or should be restricted against the interchange of traffic with other common carriers,
- (b) Whether the common carrier authority to be issued in lieu of the contract carrier authority can be or should be restricted against tacking or joining for the purpose of performing through service under separate authorities.

28. 49 Stat. 552 (1935), 49 U.S.C. § 309(b) (1952).

29. 70 ICC ANN. REP. 162-63 (1956).

30. 71 Stat. 411 (1957), 49 U.S.C. §§ 303(a) (15), 309(b), 312(c) (Supp. V, 1958).

There are of course, other problems confronting the Commission in these so-called conversion cases but the two stated above are of utmost importance both to common carriers and to contract carriers. They arise from the fact that the Commission has consistently held that contract carriers may not interchange traffic with other carriers and that separate contract carrier authorities held by the same carrier may not be tacked, joined, or combined and through service thereafter provided under the separate authorities.³¹

It would seem that the revised definition of a contract carrier as contained in the Act of August 22, 1957, goes a long way toward establishing by legislative enactment that which the Commission has attempted to establish by administrative determination. The difficulties which have been experienced in the attempt to establish a line of demarcation between common carriage and contract carriage have been many but it now appears that this new legislation should make much easier the task of the Commission in this respect.

SOURCE OF OPERATING AUTHORITY

Transportation for compensation in interstate or foreign commerce by a motor carrier may not be performed lawfully without appropriate operating authority or qualification for exemption under applicable provisions of the Motor Carrier Act. The principal sources of such operating authority or exemption, as the case may be, are discussed below.

"Grandfather" Operations

The first source of motor carrier authority results from what are commonly referred to as "grandfather" operations. At the time the Motor Carrier Act of 1935 was enacted, Congress made provisions for the issuance of operating authority to those motor carriers which were then performing transportation for compensation. Section 206(a)(1) of the act provided that a certificate was to be issued to those common carriers which were in bona fide operation on June 1, 1935, and which had continued to so operate since that date except as to interruptions in service over which the common carrier had no control.³² Similar provisions with respect to contract carriers were contained in section 209(a)(1) of the act.³³

These two sections of the act, one relating to common carriers and the other relating to contract carriers, are commonly referred to as "grandfather" sections. In each instance, it was required that the application be filed with the Commission by February 12, 1936, and,

31. Service of Contract Carriers, 49 M.C.C. 103 (1949).

32. 49 Stat. 551 (1935), 49 U.S.C. § 306(a)(1) (1952).

33. 49 Stat. 552 (1935), 49 U.S.C. § 309(a)(1) (1952).

if so filed by that date, the carrier could continue performing operations until its application was finally determined.

The unprecedented burden placed upon the Commission by these two "grandfather" sections in the act is demonstrated by the fact that 82,777 such individual "grandfather" applications were filed with the Commission on or before the deadline of February 12, 1936. They represented thirty-two percent of the total motor carrier applications of all types that were filed with the Commission in the approximate twenty-year period from the enactment of the Motor Carrier Act of 1935 to the end of the Commission's fiscal year 1955.³⁴

As of this time, the described provisions of the act which established June 1, 1935 and July 1, 1935 as the "grandfather" dates for common and contract carriers respectively, have served their purpose. All such applications filed on or before February 12, 1936, have been finally determined. Certain important principles were established by the Commission however in determining the many "grandfather" applications. For example, interruptions in service were found to be within the control of the respective applicants and fatal to the claims for "grandfather" authority when due to an inability to obtain insurance,³⁵ failure to comply with city regulations,³⁶ financial inability to obtain proper vehicles,³⁷ and lack of profitable business.³⁸

Examples of situations where the interruption in service was found to be beyond the control of the respective applicants and not fatal to the claim of "grandfather" authority are the following: illness of the owner of a one-man business,³⁹ strike due to labor difficulties,⁴⁰ highway construction projects,⁴¹ floods,⁴² closing of highways during winter period,⁴³ and to avoid possibility of unlawful operations.⁴⁴ One of the more important principles was the pronouncement of the Supreme Court in *United States v. Carolina Freight Carriers Corporation*⁴⁵ that the Commission could not "atomize" a grandfather claimant's prior service, product by product, so as to restrict the scope of the operation where, in addition to a holding out, there was substantial evidence of a bona fide operation with respect to a large group of commodities or with respect to a class or classes of property.

34. 69 ICC ANN. REP. 94 (1955).

35. *Bloise F. Fownes*, 41 M.C.C. 582 (1942).

36. *Paulmaur Transp. Co.*, 28 M.C.C. 395 (1941).

37. *Earl Wheeler*, 26 M.C.C. 588 (1940).

38. *W. O. Standring*, 26 M.C.C. 257 (1940).

39. *Angelo L. Bianchi*, 43 M.C.C. 26 (1943).

40. *Martin Transports, Ltd.*, 44 M.C.C. 27 (1944).

41. *Transportation, Inc.*, 26 M.C.C. 129 (1940).

42. *Hubert C. Elliott*, 11 M.C.C. 148 (1939).

43. *Lewis McKay*, 4 M.C.C. 93 (1938).

44. *William J. Hughes*, 22 M.C.C. 219 (1940).

45. 315 U.S. 475 (1942).

The foregoing relates to the "grandfather" operations of motor carriers at the time of the enactment of the Motor Carrier Act of 1935. Prior to September 1, 1950, motor carrier transportation within the continental United States or traffic moving to or from possessions or territories of the United States was not subject to the jurisdiction of the Commission. This was so because a territory or possession was neither a state nor a foreign country as these latter terms were defined in the act.⁴⁶ By the act of September 1, 1950, Congress brought such transportation under the jurisdiction of the Commission. This was done by amending the definition of "foreign commerce" in section 203 (a) (11) of the act to include such transportation. By that same act, Congress amended sections 206 and 209 to include a "grandfather" date of March 1, 1950, for common and contract carriers then engaged in that type of transportation, namely, traffic moving to or from points in a territory or possession of the United States.⁴⁷ A total of 122 such "grandfather" applications were filed with the Commission within the permissible one hundred and twenty day period after the passage of the act of September 1, 1950.⁴⁸

The most recent "grandfather" clause was created by the Transportation Act of 1958 which removed the exemption for certain named commodities but provided for issuance of operating authority to those carriers which were transporting on May 1, 1958, the commodities that formerly enjoyed the exemption.⁴⁹

New Operations

The second principal source of operating authority results from the filing of applications for authority to institute new operations. A common carrier applicant has the burden of proving that public convenience and necessity require the proposed operations. A contract carrier applicant has the burden of proving that the operations will be consistent with the public interest.⁵⁰

From the standpoint of an applicant for common carrier authority, the test of public convenience and necessity has been defined in *Pan-American Bus Lines Operation*⁵¹ as requiring a determination as to whether the proposed operation will serve a useful public purpose responsive to a public demand or need; whether that purpose can be served as well by existing carriers; and whether it can be served by

46. M. S. Dodd, 34 M.C.C. 705 (1942); Alfred Wilson Bayham, 33 M.C.C. 660 (1942); Garden City Transp. Co., 27 M.C.C. 661 (1941); Norbert E. Stangler, 27 M.C.C. 463 (1941).

47. 64 Stat. 574 (1950), 49 U.S.C. §§ 303(a) (11), 306(a) (3) and 309(a) (3) (1952).

48. 65 ICC ANN. REP. 101 (1951).

49. 72 Stat. 573 (1958).

50. 49 Stat. 551 (1935), 49 U.S.C. § 307(a) (1952); 49 Stat. 552 (1935), 49 U.S.C. § 309 (b) (1952).

51. 1 M.C.C. 190, 203 (1936).

applicant without endangering or impairing the operations of the existing carriers contrary to the public interest. From the standpoint of an applicant for contract carrier authority, the term "consistent with the public interest" has been defined in *Forest Worm*,⁵² as meaning not against nor contradictory to the public interest and as being in harmony with the national transportation policy of Congress. Up to October 31, 1955, there had been filed with the Commission a total of 51,720 applications for authority to institute new motor carrier operations.⁵³

In connection with applications seeking authority to institute new motor carrier operations, and in connection with other quasi judicial functions of the Commission, the doctrine of *res judicata* does not apply.⁵⁴ But dependent upon the particular factual situation, there are numerous elements of proof required to be made before the Commission will issue authority to institute a new operation or service as either a common or contract carrier. Since that is to be the subject of a separate article in this symposium issue, this second source of motor carrier operating authority will not be discussed further.

"Registered" Operations

A third source of motor carrier operating authority is the second proviso of section 206(a) (1) of the Motor Carrier Act which permits a carrier operating wholly within one state to register with the Commission its intrastate authority and thereafter participate in handling interstate traffic under that registered intrastate certificate.⁵⁵ Such a carrier is commonly known as a "registered operator" and is exempt from the certificate requirements of the act for operations under the registered certificate but is subject to all other requirements of the act.

In order to qualify in the first instance, and in order to continue that qualification, the physical operations of a registered carrier must be confined within the boundaries of a single state. Once the carrier's operations are extended beyond the state boundaries, the registration exemption is lost and a certificate of public convenience and necessity must be obtained to cover the previously registered operations if their performance is to be continued.⁵⁶ For example, where a multiple-state carrier proposes to purchase a registered operator, a certificate must be obtained to cover the registered operations of the selling car-

52. 32 M.C.C. 641 (1942).

53. 69 ICC ANN. REP. 94 (1955).

54. *Merchandise in Mixed Truckloads*, 63 M.C.C. 453, 462 (1955); *Arco Auto Carriers, Inc.*, 49 M.C.C. 731, 770 (1949); *Baltimore & A. R.R. v. Red Star Motor Coaches, Inc.*, 44 M.C.C. 243, 246 (1944).

55. 49 Stat. 551 (1935), 49 U.S.C. § 306(a) (1) (1952).

56. *Kentucky Midland Truck Lines, Inc.*, 32 M.C.C. 467 (1942).

rier.⁵⁷ A registration application will be denied where the carrier is in control of, controlled by, or under common control with a multiple state carrier.⁵⁸

A registered operator having nothing more than a desire to obtain from the Commission a certificate of public convenience and necessity to cover its registered operations, will ordinarily have its application for such a certificate denied.⁵⁹ The general rule seems to be that a certificate will be issued to cover a registered operation where service in addition to that which may be performed as a registered operator is needed by the public and would be of benefit to the public. Thus, a registered common carrier of passengers has been granted a certificate to cover the registered operations so that it could transport charter groups to and from points outside the state under the incidental charter authority granted in section 208(c) of the act.⁶⁰

There often arises the situation where a registered operator seeks authority to purchase operating authority which, if granted, would result in the registered operator performing operations in more than one state. In other instances, a multiple-state operator may seek authority to acquire a registered operator. In these instances, an application seeking the issuance of a certificate to cover the registered operations must be filed and is ordinarily handled along with the purchase application. The past continued performance of lawful transportation by the registered operator is important evidence of a public need for continuance under a certificate.⁶¹

This source of motor carrier operating authority—registration of an intrastate certificate under the second proviso of section 206(a) (1) of the act—represents a substantial group of carriers as shown by the fact that a total of 10,292 such registration applications had been filed with the Commission by October 31, 1956.⁶²

Exemptions

The Interstate Commerce Act contains a number of exemptions, some of which relieve the qualifying carrier from the requirement of obtaining a certificate of public convenience and necessity and

57. Illinois Greyhound Lines, Inc., 15 M.C.C. 86 (1938).

58. Wilson Transp. Co., 51 M.C.C. 233 (1950); M & M Truck Lines, Inc., 44 M.C.C. 617 (1945); L. M. Luter, 42 M.C.C. 150 (1943).

59. Sunset Motor Lines, 61 M.C.C. 123 (1952); H. A. Day, 53 M.C.C. 672 (1952).

60. Central Kentucky Bus Lines, Inc., 61 M.C.C. 581 (1953); Texas Bus Lines, 61 M.C.C. 61 (1952).

61. Floyd and Beasley, 58 M.C.C. 507 (1952), *aff'd*, 116 F. Supp. 167 (N.D. Ala. 1953); Service Transp., Inc., 65 M.C.C. 687 (1956); Miller & Miller, 57 M.C.C. 395 (1951); C & D. Motor Delivery Co., 38 M.C.C. 547 (1942).

62. A total of 9,638 had been received by October 31, 1955 and an additional 654 were received in the period November 1, 1955 to October 31, 1956. 69 ICC ANN. REP. 94 (1955); 70 ICC ANN. REP. 70 (1956).

others of which relieve the qualifying carrier of the necessity of complying with additional statutory requirements.

One such exemption is contained in section 204(a) (4a) of the act which exempts from all the provisions of the act transportation found to be of such character, nature or quantity that it would not, if exempt from regulation, substantially affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce. Such applications for exemption have been denied where adverse effect upon authorized carriers would be the result.⁶³ Actually, there has been very little attempted use of this exemption as evidenced by the fact that only 145 such exemption applications were filed with the Commission in the approximate twenty-year period ending with October 31, 1955.⁶⁴

Section 203(b) of the Motor Carrier Act contains a number of exemptions from all provisions of that act except those in section 204 relating to qualification and maximum hours of service of employees and safety of operation or standards of equipment. The exemptions set forth in that section of the act relate to (a) vehicles used solely for the transportation of school children and teachers to or from school, (b) bona-fide taxicab service in vehicles with a capacity of not more than six passengers, (c) vehicles operated by hotels and used exclusively for transportation of hotel patrons between hotels and local common carrier stations, (d) vehicles used principally for transporting persons in and about national parks and monuments and under authorized regulation and control of the Secretary of the Interior, (e) vehicles controlled and operated by farmers in transporting their agricultural commodities and products, (f) vehicles controlled and operated by described cooperative associations, (g) vehicles used in carrying ordinary livestock, fish or agricultural commodities (but not including manufactured products thereof) provided the vehicles are not used in carrying any other property or passengers for compensation,⁶⁵ (h) vehicles used exclusively in the distribution of newspapers, and (i) transportation of persons or property when incidental to transportation by aircraft.

That same section of the act contains an exemption with respect to the transportation of passengers or property which relates to

63. William W. Payne, 48 M.C.C. 192 (1948); L. M. Slocum, 33 M.C.C. 363 (1942); Harold Morse, 34 M.C.C. 621 (1942); Louis A. Heim, 34 M.C.C. 457 (1942).

64. 69 ICC ANN. REP. 94 (1955).

65. Section 7 of the Transportation Act of 1958, approved August 12, 1958, 72 Stat. 573, amended § 203(b) of the Motor Carrier Act with respect to ordinary livestock, fish, or agricultural commodities. Some commodities formerly exempt are now subject to regulation, but a "grandfather" clause is provided for carriers who were transporting those commodities on May 1, 1958, and who file an appropriate application within the prescribed one hundred and twenty day period.

transportation performed wholly within a municipality or between contiguous municipalities or within a commercial zone except when the transportation is under common control, management or arrangement to or from a point outside the municipalities or zones. There is a condition to this exemption which requires that a passenger carrier must also be lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route or routes under authority issued by each of the states having jurisdiction. This section also provides an exemption with respect to the casual, occasional, or reciprocal transportation of passengers or property for compensation by persons not engaged in transportation by motor vehicle as a regular occupation or business. All of these exemptions contained in this section are utilized to a varying extent.

With respect to the exemption relating to transportation between contiguous municipalities, the Commission interpreted that exemption as being inapplicable where one of the municipalities is located in the United States and the other is in a foreign country.⁶⁶ The courts, however, have recently reversed the Commission's interpretation and held that such transportation is within the described exemption and does not require a certificate for its performance.⁶⁷

LIMITED-TERM OPERATING AUTHORITIES

A limited-term certificate or permit is one that expires by its own terms on the date specified in such certificate or permit. Prior to 1955, the Commission had no general policy with respect to the issuance, where appropriate, of such limited-term operating authorities. There had been, however, some isolated instances where such limited-term operating authorities had been issued prior to 1955.

The first instance of the issuance of limited-term operating authority was in *D. H. Belknap*,⁶⁸ where the permit so issued was stated to expire within eighteen months from its effective date. The next such instance was in *Dick J. Wilkins*,⁶⁹ where the permit so issued specified an expiration date one year from its effective date. Still another situation existed in *Peter T. Malley*,⁷⁰ where the permit carried an expiration date of September 1, 1939, being less than one year from its effective date. In *W. G. Burgess*,⁷¹ the certificate there issued specified that it was to expire on the termination of certain leases, the latter having expiration dates of February 18, 1956, and December 29, 1957.

66. Henry Bondy, 48 M.C.C. 132 (1948); Dale Resler, 44 M.C.C. 733 (1945).

67. *Verbeem v. United States*, 154 F. Supp. 431 (E.D. Mich. 1957), *aff'd per curiam*, 356 U.S. 676 (1958).

68. 1 M.C.C. 515 (1937).

69. 4 M.C.C. 153 (1938).

70. 12 M.C.C. 339 (1938).

71. 62 M.C.C. 253 (1953).

In *B B & I Motor Freight, Inc.*,⁷² the certificate there issued specified that it would expire when the State of Indiana permitted applicant's vehicles to traverse a named bridge.

The foregoing represents most if not all of the few instances in which the Commission had issued limited-term operating authority prior to 1955. It is clear that up to that time there had been no general policy established with respect to the issuance of limited term operating authority covering any particular commodity or any particular type of operation. In that year, the Commission rendered its decision in *Riss & Co.*⁷³ There, for the first time, the Commission established a new general policy of limiting motor carrier authority for the transportation of explosives to a period not exceeding five years. This was done for the stated purpose of instituting a more strict approach to the matter of safe transportation of dangerous explosives and compliance by such carriers with the Commission's safety regulations. The view was taken that the issuance of such limited-term certificates and permits would enable the Commission to review a carrier's safety record when and if renewal of such operating authority is sought.

This new general policy of limiting operating authority for the transportation of explosives to a period of five years has been followed since the *Riss* case⁷⁴ as evidenced by the fact that the same five-year limitation was imposed in the operating authority granted for the transportation of explosives in a number of subsequent proceedings including: *Railway Exp. Agency, Inc.*,⁷⁵ *Baggett Transp. Co.*,⁷⁶ *New York Central R.R. Co.*,⁷⁷ *Harrington Extension*,⁷⁸ and *Navajo Freight Lines, Inc.*⁷⁹ Whether this general policy of limiting the effective period of operating authority relating to explosives will be extended by the Commission to other commodities remains to be seen. It is doubtful that the justification stated to support this policy with respect to explosives could be found with respect to other commodities.

REGULAR ROUTES V. IRREGULAR ROUTES

All for-hire transportation by motor carriers in interstate or foreign commerce is performed over either regular or irregular routes. Where a certificate of public convenience and necessity authorizes transportation over regular routes, the specific routes authorized are outlined therein. Where irregular route service is authorized, particular routes

72. 62 M.C.C. 480 (1953).

73. 64 M.C.C. 299 (1955).

74. *Ibid.*

75. 66 M.C.C. 73 (1955).

76. 66 M.C.C. 355 (1956).

77. 68 M.C.C. 459 (1956).

78. 68 M.C.C. 603 (1956).

79. 72 M.C.C. 401 (1957).

are not specified. The Motor Carrier Act of 1935, as amended, does not define "regular route" or "irregular route." In administering that act, the Commission has been required to distinguish between the two services. In some instances, it has been difficult to make the distinction but in others it has been quite simple.

Early in the administration of the act, the Commission approved and adopted a classification of motor carriers of property and divided those carriers (other than local cartage carriers) into four classes, according to the character of their service, as follows:

- (a) Carriers providing regular-route scheduled service
- (b) Carriers providing regular-route non-scheduled service
- (c) Carriers providing irregular-route radial service, and
- (d) Carriers providing irregular-route non-radial service.⁸⁰

The distinction between regular-route scheduled service and regular-route non-scheduled service is as simple as is the statement of that distinction, namely, the first being where the carrier adheres to regular schedules in operating over regular routes and the other being where the carrier does not adhere to regular schedules but dispatches trucks over the regular routes as and when they are loaded and ready for departure. The distinction between radial and non-radial service by an irregular route carrier is discussed at some length in *G. & M. Motor Transfer Co.*⁸¹ Basically, an irregular-route carrier authorized to perform radial service operates between a fixed base point or points, on the one hand, and, on the other, described points or a described territory. The transportation of shipments between points in the radial territory by operating through a point in the base territory is not permitted.⁸² Where the certificate authorizes non-radial irregular-route service, the carrier holding such a certificate may operate to, from and between all points in the described non-radial territory.

One of the leading cases in which the Commission recognized that there are certain general practices which are usually indicative of regular-route operations, as distinguished from irregular-route operations, was *Brady Transfer & Storage Co.*⁸³ Those general practices or criteria are:

- (1) Operations performed according to a predetermined plan.
- (2) The movement of significant amounts of particular types of traffic.
- (3) Vigorous solicitation of the particular type of traffic and the holding out of particular types of service.
- (4) The maintenance of terminals at significant points.
- (5) The regular or habitual use of particular routes.

80. Classification of Motor Carriers of Property, 2 M.C.C. 703 (1937).

81. 43 M.C.C. 497 (1944).

82. *Jack Cole Co.*, 32 M.C.C. 199 (1942), *aff'd*, 41 M.C.C. 657 (1943).

83. 47 M.C.C. 23 (1947), *aff'd*, 80 F. Supp. 110 (S.D. Iowa 1948).

(6) Operations between fixed termini.

(7) Significant periodicity of service and observance of definite schedules or their equivalent.

The Commission pointed out in that proceeding that none of those criteria, except possibly the observance of definite schedules, is, standing alone, necessarily conclusive of a regular-route operation but that the existence of a substantial number of them would indicate regular-route service. In determining, however, whether a given service is regular or irregular-route, the Commission has in numerous instances considered the existence or non-existence of the described criteria.⁸⁴

Motor carriers holding irregular-route authority to transport general commodities often have a tendency to evolve into regular-route operators. The Commission has stated that under such circumstances there is an obligation upon the part of such an irregular-route carrier, when it senses a public need for the rendition of a regular-route service in the place of its irregular-route service, to do one of two things, namely, either (a) stop the tendency to regular-route operations and preserve the irregular-route nature of its service, or (b) obtain appropriate authority for the new regular-route service.⁸⁵ In the latter situation, the irregular-route carrier will ordinarily file an application with the Commission seeking authority to convert its irregular-route authority into regular-route authority. There have been a number of such proceedings.⁸⁶

In such a conversion case, the real issue is whether a need has been shown for the continuation of an existing established service with the operational improvements either already effected or proposed.⁸⁷ The Commission has, however, held that such an applicant cannot permit an irregular-route service to evolve into a regular-route operation and, after long continued unlawful regular-route operation, claim the benefit of such past unlawful operations as proof of need for a regular-route service.⁸⁸

It would seem to be well established that such an irregular-route operator, upon first detecting that the irregular-route service is tending to evolve into regular-route service, should promptly seek appropriate authority for a regular-route operation in lieu of the irregular-route operation. Failure to act promptly may result in denial of the application with the resultant requirement that the car-

84. McLean Trucking Co., 67 M.C.C. 607 (1956); Alabama Freight Lines v. Arizona Express, Inc., 66 M.C.C. 567 (1956).

85. Daniels Motor Freight, Inc., 61 M.C.C. 808 (1953).

86. *E.g.*, McLean Trucking Co., 67 M.C.C. 607 (1956); Akers Motor Lines, 66 M.C.C. 805 (1956); Johnson Motor Lines, Inc., 51 M.C.C. 812 (1950); H. E. Savage, Jr., 46 M.C.C. 812 (1946).

87. Akers Motor Lines, Inc., 66 M.C.C. 805 (1956).

88. Daniels Motor Freight, Inc., 61 M.C.C. 808 (1953).

rier insure that its operation is cut back to an irregular-route operation in conformity with the criteria of the *Brady* case.⁸⁹

ALTERNATE ROUTES

The national transportation policy of Congress provides, in part, that there shall be fair and impartial regulation of all modes of transportation toward the end of promoting safe and economical service and sound economic conditions in transportation and among the several carriers.⁹⁰ The grant of authority by the Commission in proper situations for operation by motor carriers over alternate routes is in furtherance of that policy.

An alternate route is one that does not involve service to additional points but which will enable the carrier to render a more expeditious and economical service, and thereby more adequately serve the public without adversely affecting competing carriers.⁹¹ Before such alternate route authority will be granted, the applicant must meet three concurrent tests, namely (a) applicant must presently operate between both termini of the route under appropriate authority over a practical and feasible route; (b) applicant must be in competition with the present carriers operating between these termini by reason of handling a substantial amount of traffic; and (c) the competitive situation must remain unchanged if the authority sought is granted.⁹²

Ordinarily, an alternate route to an alternate route will not be granted.⁹³ There is an exception to this general rule, however, where the applicant can show that its past service over its existing alternate route could have been performed with equal competitive effectiveness over its service route had there been no prior grant over an alternate route.⁹⁴ Where no such showing is made, the application to operate over an alternate route to an alternate route will be denied.⁹⁵

SPECIFIC COMMODITY V. GENERAL COMMODITY AUTHORITY

A certificate of public convenience and necessity issued to a motor common carrier of property specifies the commodity or commodities authorized to be transported. Many of the "grandfather" clause certificates were granted without formal hearings and were based upon

89. 47 M.C.C. 23 (1947).

90. 54 Stat. 899 (1940), 49 U.S.C., notes preceding §§ 1, 301, 901, 1001 (1952).

91. Motor Express, Inc., 29 M.C.C. 56, 59 (1941).

92. Expressways, Inc., 67 M.C.C. 247, 250 (1956); Campbell Sixty-Six Express, Inc., 63 M.C.C. 569, 571 (1955); Hayes Freight Lines, Inc., 54 M.C.C. 643, 650 (1952).

93. Hayes Freight Lines, Inc., 69 M.C.C. 205 (1956); Courier Express, Inc., 62 M.C.C. 751 (1954).

94. Gordons Transports, Inc., 71 M.C.C. 93 (1957).

95. Transamerican Freight Lines, Inc., 73 M.C.C. 457 (1957); Missouri-Arkansas Transp. Co., 72 M.C.C. 509 (1957); Dance Freight Lines, Inc., 72 M.C.C. 301 (1957); Watson Bros. Transp. Co., Inc., 72 M.C.C. 491 (1957).

informal investigations by the Commission's field staff. The commodity descriptions used were obtained in large part from statements submitted by the "grandfather" applicants themselves with the result that there was a lack of uniformity in such descriptions in the certificates actually issued.⁹⁶

Many "grandfather" applicants requested authority to transport "commodities generally" and a number of such certificates with that commodity description were issued.⁹⁷ Some sought authority to transport "commodities generally" but, based upon the proof of operations, authority was granted to transport general commodities but with named exceptions.⁹⁸ Still others sought general commodity authority with named exceptions and were granted such authority with specific exceptions.⁹⁹ The term "general commodities with the usual exceptions" has now come to mean general commodities except dangerous explosives, commodities of unusual value, household goods as defined in *Practices of Motor Common Carriers of Household Goods*,¹⁰⁰ commodities in bulk, and those requiring special equipment.¹⁰¹

The Commission has moved steadily toward uniformity in commodity descriptions in operating authorities, particularly with respect to the transportation of particular commodities or groups of commodities. In *Modification of Permits*¹⁰² commodity lists were prescribed under the classifications of meat, meat products and meat byproducts; dairy products; and articles distributed by meat packing houses. This same commodity list has been used in certificates to common carriers. Additionally, the Commission has defined certain specialized services, such as household goods in *Practices of Motor Common Carriers of Household Goods*,¹⁰³ and also with respect to the transportation of oil field equipment in *T. E. Mercer*.¹⁰⁴

The first attempt by the Commission to compile a list of all commodities transported by specialized motor carriers, as distinguished from general commodity carriers, under generic or group hearings, was in *Descriptions in Motor Carrier Certificates*.¹⁰⁵ Hundreds of com-

96. Eclipse Motor Lines, Inc., 52 M.C.C. 391, 392-93 (1951).

97. E.g., Harry Levenberg, 10 M.C.C. 49 (1938); James Douglas, 4 M.C.C. 108 (1938).

98. E.g., Georgia Motor Express, Inc., 10 M.C.C. 159 (1938), *supplemented*, 30 M.C.C. 581 (1941); Northern Motor Lines, 4 M.C.C. 202 (1937).

99. E.g., James F. Hoey, 10 M.C.C. 52 (1938); Dixie Freight Lines, Inc., 10 M.C.C. 85 (1938), *supplemented*, 24 M.C.C. 780 (1940).

100. 17 M.C.C. 467 (1939).

101. *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 216 (1952), *modified*, 61 M.C.C. 766 (1953).

102. 48 M.C.C. 628 (1948).

103. 17 M.C.C. 467 (1939), *supplemented*, 53 M.C.C. 177 (1951).

104. 46 M.C.C. 845 (1946).

105. 61 M.C.C. 209 (1952); certain additions to the listing were made in 61 M.C.C. 766 (1953).

modities are listed under generic or group headings. Rather than list numerous specified commodities in the certificate, the Commission can and does, where applicable, make reference in the certificate to the particular commodity group as set forth in that decision.¹⁰⁶

In every instance, the commodity authority granted and specified in the certificate depends upon the proof submitted. Although an application may seek authority to transport general commodities with the usual exceptions, the authority granted and specified in the certificate will be for only specified commodities if that is all for which a public need is proved. By the same token, a failure of proof will result in denial of the application in its entirety.

FITNESS, WILLINGNESS AND ABILITY

Every applicant for operating authority, either common or contract, must prove that it is fit, willing and able properly to perform the service proposed and to conform to the provisions of the Motor Carrier Act and the rules and regulations issued by the Commission thereunder.¹⁰⁷ This burden is two-fold involving (a) qualification of the applicant and (b) providence of the proposed operation. They will be considered herein in that order.

It is basic that any applicant for operating authority must show that it is financially able to perform the proposed operation.¹⁰⁸ An established carrier ordinarily has no difficulty in meeting this burden. Compared to the total, the number of applications denied on the ground of financial inability have been relatively small.¹⁰⁹

As important as any other feature is the fitness of the applicant. Past activities may indicate a complete disregard for the necessity for compliance with the statute and the Commission's rules and regulations. A recent example is found in *Gray Contract Carrier Application*.¹¹⁰ There, the applicant's past conduct was characterized by the Commission as "contumacious" and as evidencing "contempt" for regulation. The past conduct had consisted of negligence in the maintenance and operation of vehicles, failure to report accidents, failure to require drivers to maintain accurate logs, misrepresentations

106. *E.g.*, Schirmer Transp. Co., Inc., 74 M.C.C. 5, 11 (1957); Indianhead Truck Line, Inc., 71 M.C.C. 729, 732 (1957); Frozen Food Express, 71 M.C.C. 321, 325 (1957); Chemical Tank Lines, Inc., 69 M.C.C. 465, 469 (1957); Robertson Transports, 69 M.C.C. 747, 749 (1957).

107. 49 Stat. 551 (1935), 49 U.S.C. § 307(a) (1952); 49 Stat. 552 (1935), 49 U.S.C. § 309(b) (1952).

108. Harris Extension, 71 M.C.C. 9 (1957); Ritz Arrow Lines, Inc., 1 M.C.C. 339 (1936).

109. In Midwest Coast Transport, Inc., 53 M.C.C. 653 (1951), the application was denied where the applicant corporation owned no rolling stock, had a deficit of several thousand dollars, was overdrawn in its bank account, and its office equipment consisted of one calculating machine.

110. 69 M.C.C. 695 (1957).

to the Commission, and failure to disclose the true financial condition. The applicant was found unfit properly to conduct the proposed operations and the application was denied.

Another example of denial because of unfitness is *Fortier Transp. Co.*¹¹¹ Although previously admonished, that applicant had continued to perform unlawful operations. Its disregard of the admonition was considered as a willful refusal to abide by the terms of the act, and the application was denied. A similar situation existed in *Loudon Transfer, Inc.*¹¹²

An applicant for operating authority, in addition to proving that it is qualified to receive such operating authority, must also prove that it can perform a provident operation. To permit an existing carrier to embark upon an ill-advised operation might well endanger the ability of that carrier to continue performing its presently existing service for the shipping and receiving public. Proof of a profitable operation is often difficult to make in proposed long-haul one-way operations.¹¹³ If operating authority were to be granted without the requirement of a showing that the proposed operation was expected to be a provident one, the result would be a failure to carry out the national transportation policy of Congress requiring regulation toward the end of attaining sound economic conditions in transportation and among the several carriers. The Commission is attempting to attain this purpose when it requires an applicant to show that a proposed operation at least promises to be compensatory.

MODIFICATION, REVOCATION AND ABANDONMENT

Motor carrier operating authority is a valuable intangible property right carrying with it both privileges and obligations. Without it there can be no lawful provision of service for compensation. With it, a profitable business may be developed. At the same time, a holder of operating authority has the obligation to perform reasonably adequate and continuous service in conformity with provisions of the act and rules and regulations of the Commission.

The procedure whereby operating authority may be changed, amended or revoked is set forth in section 212 (a) of the Motor Carrier Act.¹¹⁴ The holder of such operating authority may request that it be amended or revoked. The Commission, either upon its own initiative or in response to a complaint, may suspend, change or revoke such operating authority for willful failure to comply with any of the provisions of the act or with any lawful order, rule or regulation of the Commission, or with any term, condition, or limitation of the

111. 68 M.C.C. 573 (1956).

112. 71 M.C.C. 224 (1957).

113. *Bos Truck Lines, Inc.*, 48 M.C.C. 50 (1948).

114. 49 Stat. 555 (1935), 49 U.S.C. § 312 (a) (1952).

operating authority. This latter action can be taken only after notice and hearing and after the holder of that operating authority has been given an opportunity to comply with the lawful order of the Commission requiring obedience or compliance with the provisions, rule, regulation, term, or condition found to be violated. These provisions come into operation only after a certificate or permit has been actually issued.¹¹⁵

Ordinarily, action looking toward revocation of an outstanding certificate or permit must conform to the provisions of the above-cited section of the act but there is an exception in that a certificate or permit obtained by fraud, misrepresentation, or issued in error, may be changed or revoked by the Commission without a proceeding under that section of the act.¹¹⁶ An example of this exception is found in *Curtis, Inc.*, where, approximately a year after the certificate had been issued, the proceeding was reopened for the purpose of considering whether the certificate should be revoked or canceled on the ground that it had been obtained by willful misrepresentation of material facts upon which the Commission relied in issuing the operating authority. Based upon the facts there developed, it was decided not to revoke or cancel that certificate but the existence of this exception to the procedure outlined in section 212(a) of the act was restated.

Where a proceeding is instituted under the provisions of section 212(a) of the act looking toward the revocation of a certificate or permit for failure to comply with a particular provision or requirement, the authority of the Commission to issue an order commanding obedience or compliance is found in section 204(c) of the act.¹¹⁷ The question has arisen as to whether the effectiveness of such an order terminates once there has been compliance with it or whether it can be of a continuing nature and thereby be utilized for a recurrence of the same violation.

Such a situation would exist where there is a complaint proceeding charging that a carrier is not performing operations under a portion of its certificate, hearing has been held, and the Commission has issued an order under section 204(c) of the act requiring institution of service. The carrier may thereafter advise the Commission of the fact that it has instituted service. Sometime later, the carrier may again cease providing service under the operating authority involved. The question then arises as to whether a new complaint proceeding must be instituted or whether the Commission can automatically re-

115. *W. G. Burgess*, 62 M.C.C. 253, 256-57 (1953).

116. *Consolidated Freightways, Inc. v. United Truck Lines, Inc.*, 53 M.C.C. 721, 726-27 (1951); *Smith Bros. Co.*, 33 M.C.C. 465, 472 (1942), *modified*, 42 M.C.C. 211 (1943).

117. 49 U.S.C. § 312(a) (1952); 49 Stat. 546 (1935), 49 U.S.C. § 304(c) (1952).

voke the authority under the earlier order requiring institution of service. The importance of this question is demonstrated by the fact that if a new complaint proceeding is necessary after a carrier again ceases operating under the involved operating authority, there might never be a revocation because the carrier could, on the issuance of each such section 204(c) order, merely reinstitute service and thereby comply, but could shortly thereafter cease operations again. This same thing could be repeated over and over with the result that there could never be a revocation.

This very important question of the power of the Commission was set at rest in *Pennsylvania Greyhound Lines, Inc. v. American Bus Lines*.¹¹⁸ In holding that the order requiring compliance is of a continuing nature, it is stated in the first decision as follows:

We do not believe, nor does it appear to have been the intention of Congress, that once there was a compliance with the section 204(c) order within the prescribed time, the effectiveness of such an order is terminated. We are of the opinion that an order under section 204(c) requiring compliance continues in full force and effect until its expiration date, if any, or until expressly terminated by us, that during such effectiveness the requirements of the section 212(a) proviso are satisfied, and that we may at any time further proceed under section 212(a) to revoke for a further willful violation, without necessity of a further notice and hearing under section 204(c) to satisfy the proviso requirements. To hold otherwise, would have the effect of virtually nullifying the intent of Congress to enable us to revoke certificates, permits, or licenses, under section 212(a). Unless a continuing order under section 204(c) satisfies the proviso requirements of section 212(a), a violator of a particular requirement need only effect a temporary compliance with the requirements of the section 204(c) order within the period prescribed in order to defeat our power to revoke, and thereafter resume his former practices until again charged and again given a new time for reformation. In other words, under such construction it would become necessary for us to proceed anew under section 204(c) in the case of an identical violation immediately subsequent to the previously prescribed period for reformation before we could proceed further under section 212(a). This would enable a habitual violator to avoid the further proceedings under section 212(a), and thus effectively nullify the powers given to the Commission to revoke certificates, permits, and licenses where the holder willfully violates the act or a requirement established thereunder after proper warning through a section 204(c) proceeding.¹¹⁹

The Commission has no power to compel a motor carrier to remain in business if that carrier desires to abandon or discontinue its operations entirely. The rule is different, however, where the motor carrier desires to abandon only a part of its operations and continue others. In the latter instance, the motor carrier is required to obtain prior

118. 52 M.C.C. 117 (1950), *supplemented*, 54 M.C.C. 365 (1952).

119. 52 M.C.C. 117, 119 (1950).

permission from the Commission for such partial abandonment. This is so because it would continue to be under the jurisdiction of the Commission so long as it holds an effective certificate and performs operations thereunder and would have to comply with any lawful requirements that the Commission might establish under section 204(a) (1) of the act with respect to continuous and adequate service.¹²⁰ This rule concerning total abandonment and partial abandonment was established in *Towns of Bristol and Hill, N. H. v. Boston & Maine Transp. Co.*,¹²¹ and restated in *Massachusetts N.E. Transp. Co.*,¹²² and *Bekins Moving and Storage Co.*¹²³

120. 49 Stat. 546 (1935), 49 U.S.C. § 304(a) (1) (1952).

121. 20 M.C.C. 581, 586 (1939).

122. 51 M.C.C. 573, 574 (1950).

123. 65 M.C.C. 56, 59 (1955).

