

## **Motor Carrier Regulatory Reform and its Impact on Private Carriers\***

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With your indulgence, I would like to review the important topic of motor carrier regulatory reform and its impact on private carriers. This, of course, is a timely subject, first, because many companies are now making a decision to enter private carriage and, second, because regulatory reform issues are being intensively debated in Washington at this time. There are interrelationships and I hope to detail some of them for you so that you will have a clear view of the setting of this "great debate," if you will, now going on in Washington.

With the main exception of private carriers, interstate for-hire trucking has been regulated by the Interstate Commerce Commission since 1935. Forty-three years have passed and we now have a piercing review of the impact of that regulation on the economy, on regulated carriers, and on shippers. Into the lists have come two contending viewpoints. One is the status quo viewpoint: make no regulatory change. The Motor Carrier Act under which the ICC regulates common and contract carriage has served us well. This status quo viewpoint, entailing as it does massive resistance to any regulatory reform, is embodied principally among the common carriers—particularly the larger regular route general commodity carriers.

At a polar opposite, and representative of the other extreme, are those

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who want to eliminate totally all trucking regulation. Sometimes these people are referred to as "deregulators": they believe in wide open competition and in the free play of market forces. This is the "think tank" perspective, espoused by such groups as the American Enterprise Institute for Public Policy Research. Sources high in the Carter administration identify with this view as do certain sources in the Congress; and so also do the Antitrust Division of the Department of Justice and the Council on Wage and Price Stability.

A more moderate stance is being taken by the Interstate Commerce Commission which, paradoxically for a regulatory agency, is in the process of implementing some thirty-nine Task Force recommendations to reform, both from a procedural and a substantive standpoint, motor carrier regulation. This effort to reform is probably the supreme irony of all because rarely have I experienced in Washington a regulatory agency reforming itself by diminishing the total amount of regulation which it imposes over industries under its jurisdiction!

In terms of the claim of total disaster if we have sweeping regulatory reform versus the claim of supreme public good if we do, I am reminded of a story of the young English lieutenant, a recent graduate of the English West Point, Sandhurst. Unfortunately, this gentleman was at the bottom of his class. Shortly after graduation, he was drilling his troops near the cliffs of Dover. He gave the order, "Forward march." The troops marched toward the precipice. Looking deeply troubled, and as the troops approached the brink, a wise old sergeant-major turned to the young lieutenant and said: "Sir, if you don't know how to say 'halt,' at least say 'goodbye'!" And so it is in Washington these days. Some think we are saying goodbye to the regulated trucking industry as we have known it for the past forty-three years. Some think the status quo should be maintained. Others think there is a middle course to regulatory reform. The questions are beginning to be answered now and will be answered in the next few years with responses that will determine the future of the regulated trucking industry. These responses will have and, indeed, are already having a very considerable impact on private carriage.

#### PRIVATE CARRIAGE AN EMBARRASSMENT

Those who want sweeping regulatory reform and those who want to maintain the status quo as far as regulation is concerned both find the existence and evident phenomenal growth in recent years of private carriage an embarrassment. There is a considerable paradox in this. Those who want to retain the status quo, namely, the larger common carriers, find the existence and growth of private carriage embarrassing, notwithstanding that they could point to it with some advantage in their battle to avoid sweeping

regulatory reform, to wit, "deregulation." Private carriage could be identified as an open market competitor to regulated trucking, which indeed it is. Its growth, in accordance with figures I will cite for you shortly, suggests that it is a very effective response or alternative to deficient common carrier service and high rates. Nevertheless, the regulated carriers are afraid to point to private carriage or its growth because to do so suggests that there may be something wrong in certain quarters with the current regulatory scheme. While the existence and growth of private carriage would be plausible aids to the arguments against sweeping regulatory reform, they also (and here's where the irony lies) constitute to some extent a criticism of the regulatory scheme as it now exists. Thus, according to the status quo lines of reasoning, to point to the growth of private carriage would also be giving aid and comfort to those who want sweeping regulatory reform.

On the other hand, the "deregulators," those who want sweeping regulatory reform, ignore, perhaps deliberately, the dimension of private carriage in the trucking marketplace of the United States. It is no help to them to point out that shippers have a choice. If regulated carriage does not suffice for any reason, free entry into private carriage, without any operating authority or permission of the ICC, is available. Indeed, private carriage is a surrogate regulator so that, arguably, where the ICC fails in its regulation of the common carriers, private carriage succeeds through the normal interplay of market forces.

Further compounding the paradox is the fact that private carriers have to a large extent (and I admit there are exceptions) opted out of this national debate over regulatory reform. One does not see many private carriers lining up on one side or another of the major regulatory reform issues. Most private carriers appear to have chosen not to worry too much about the outcome of the great debate because they are hauling their own traffic. I realize this is an oversimplification, but there is a great deal of truth in it. Indeed, private carriers themselves, by their very judgments to go into and expand private carriage, represent a special free market manifestation of regulatory reform. Ironically, however, these very private carriers all too commonly seem not to appreciate fully the implied criticism of motor carrier regulation that their involvement in private carriage represents.

Private carriers are moving away from common carriage with an ever-quickenning pace. No "by-your-leave" is needed from the Congress, the Carter administration, or the Interstate Commerce Commission to do this. Managerial decisions do it. Thus, I submit to you that if we look deeply enough, we'll find that private carriers themselves exemplify a profound manifestation of regulatory reform in terms of increasing dissatisfaction with the way common carrier service is offered and regulated in the United States today. But the kind of regulatory reform private carriers are interested in lies wholly within their own control. This is why we see little, if any,

identification of private carriers with the formal regulatory reform issues as they are being debated today within the Carter administration, the Congress, and, significantly, within the Interstate Commerce Commission itself.

#### GROWTH OF PRIVATE CARRIAGE

I think some figures are in order which will underscore the dimension of private carriage in the United States today. I certainly don't want to overwhelm you with statistics, but I do want to leave you with the impression that, as far as the trucking industry is concerned, private carriage dominates. Regulated carriage does not. These figures bear very heavily on the regulatory debate but are not acknowledged by the principal debaters. For example, in *American Trucking Trends, 1976 Statistical Supplement*,<sup>1</sup> we note that in 1975, the latest statistical year, there were twenty-four and a half million trucks on the road in the United States of all sizes.<sup>2</sup> But twenty-three and a half million of these vehicles were used by private carriers.<sup>3</sup> Interpreting, over ninety-five percent of all trucks on the road that year were utilized by private carriers! Five or less percent were utilized by regulated carriers, common and contract, local and long-distance. When we look at the largest vehicles of five or more axles, called "eighteen wheelers" in the trade, we see that there are just about as many of these trucks used by private carriers as are used by for-hire carriers. It is a one-for-one ratio! If you want to test this, spend a few hours driving on an interstate highway and note the ratio of private trucks to regulated trucks.

In a June 20, 1978, report on issues in regulating interstate motor carriers, the General Accounting Office pointed out that in 1977 there were about 16,600 trucking firms under ICC regulation.<sup>4</sup> These are common and contract carriers. The same GAO report indicated that there are an estimated 113,000 to 150,000 interstate private carriers,<sup>5</sup> the private carriers thus outnumbering regulated carriers by more than nine to one. Actually, no one knows the number of interstate private carriers because they are not required to register as such with any regulatory body, but road checks and private surveys confirm the above-100,000 figure for interstate private carriers.

A recently concluded survey, done at decade intervals by the Private Carrier Conference of the American Trucking Associations, showed dra-

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1. AMERICAN TRUCKING ASSOCIATIONS, *AMERICAN TRUCKING TRENDS, 1976 STATISTICAL SUPPLEMENT* (1976).

2. *Id.* at 20.

3. *Id.*

4. U.S. GENERAL ACCOUNTING OFFICE, *ISSUES IN REGULATING INTERSTATE MOTOR CARRIERS* 13 (Pub. No. CED-78-106-1978).

5. *Id.*

matic growth in private carriage.<sup>6</sup> Ten years ago 72.6% of private carrier fleets were twenty units and under.<sup>7</sup> Currently, 73.5% are twenty units and over.<sup>8</sup> Fleet size is up 130% in eleven years.<sup>9</sup> Private fleets were found to be covering wider service areas.<sup>10</sup> The number of fleets covering twenty or more states doubled in the decade from 19% to 38.2%.<sup>11</sup> All fleets involved leasing of some type, and the biggest gain was in driver leasing by private carriers. According to the Private Carrier Conference, some 20.7% of all private carrier fleets utilized leased drivers.<sup>12</sup> As the Conference survey pointed out, U.S. private carriage fleets have been a little-known factor in the huge trucking industry.<sup>13</sup>

A 1972 Census of Transportation reflected its estimate that on a total intercity ton mile basis (that is, one ton moved one mile by a truck) including all freight commodities, both private and exempt motor carriers accounted for some 57.9% of the total intercity ton miles moved by truck.<sup>14</sup> The Interstate Commerce Commission, for one, has acknowledged that the bulk of the intercity motor traffic is, therefore, not regulated and has stressed that the enormous extent of unregulated motor carriers represents a continuing competitive challenge to common carriers.

In a very interesting presentation,<sup>15</sup> W.K. Smith stated his belief that there has been a decline in the position of common carrier trucking relative to private and exempt truck carriage. Significantly, he added that the use of private and other forms of nonregulated truck transportation now constitutes the largest share, revenue basis, of intercity freight. Quoting from the Summary of National Transportation Statistics released by the Department of Transportation in its Annual Report in June 1976, he stated that some 26.1 billion dollars were expended for unregulated intercity trucking while some 22.7 billion dollars were expended for regulated intercity trucking.<sup>16</sup>

Are the common carriers concerned? They appear to be. In a 1980 projection survey conducted by the ATA,<sup>17</sup> it was concluded that there is unmistakable evidence that the regular route carriers face their most signifi-

6. PRIVATE CARRIER CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, THE PRIVATE CARRIER 2 (n.d.).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1972 CENSUS OF TRANSPORTATION: TRUCK INVENTORY AND USE SURVEY (1972).

15. Address by W. K. Smith, Vice President of Transportation, General Mills.

16. *Id.*

17. Ex Parte No. MC-98, New Procedures in Motor Carrier Restructuring Proceedings (Interstate Commerce Comm'n, April 20, 1976), Initial Statement of Regular Common Carrier Confer-

cant and fastest-growing competition in the form of private trucking.<sup>18</sup> This study showed that shipments under 500 pounds are not significant to private carriers with only 3% of this traffic moving in private carriage and with no increase projected by 1980.<sup>19</sup> However, the Common Carrier Conference anticipated that there will be increasing diversion of traffic to private carriage in other weight categories. For example, in the 500 to 5,000 pound category, 8% moved in private carriage in 1976. This is scheduled to increase to 10% in 1980, a 25% increase.<sup>20</sup> In the 5,000 to 10,000 pound category, the common carriers believe that 13% of the shipments moved in private carriage in 1976 and that this would grow to 20% by 1980. This is a 54% increase.<sup>21</sup> Shipments weighing over 10,000 pounds moved approximately 24% in private carriage in 1976. This number would grow to approximately 39% by 1980. This is a 62% increase.<sup>22</sup> Overall, the common carriers believe that approximately 40% of available tonnage in 1976 moved in private carriage and that this is slated to go to 52% in 1980, an increase of 30%.<sup>23</sup>

#### ACCOUNTING FOR THE SHIFT

Why the shift to private carriage? The universal answer is dollars—dollars in terms of direct reductions in costs compared to common carrier rates or dollars in terms of service which may be described as “keeping the customer.” Service and economics vie as the only reasons for this growing movement toward private carriage and away from regulated carriage. Most observers conclude that this shift is symptomatic, that there is something wrong with the way the regulated carriers conduct their business and with the way they are regulated by state and federal agencies.

Most companies do not want to go into private carriage. They are in it because they have to be. They would prefer to rely, to the extent reasonably possible, on regulated carriers to handle their traffic. Transportation is an alien business to them, one they must learn in terms of diversification

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ence of American Trucking Associations, Inc., Appendix B: Report of Regular Common Carrier Conference by the Competitive Transportation Committee.

18. *Id.* at 4.

19. *Id.*

20. *Id.* at 5.

21. *Id.*

22. *Id.*

23. *Id.* That private carriage plays a major role in the nation's surface freight distribution system is confirmed also by the Industrial Shippers Survey (Plant Level), published by the United States Department of Transportation, September 1975. 49.2% of those surveyed used either company-owned or leased vehicles to transport some of their output. More importantly for purposes of regulatory decision making, the study found that 46% of the surveyed companies projected an increased use of private transportation in the future. Overwhelmingly, they reported that service and cost considerations (or both) were their primary reasons for operating a private fleet.

from the normal primary businesses with which they are familiar. Notwithstanding, even if we had the best regulated trucking system in the world, there still would be a considerable amount of private carriage. No one expects otherwise, but I submit to you that the very dimension of private carriage, its growth trend, exemplifying as it does a shift away from regulated carriage, suggests that those who advocate a serious, nonpartisan examination of the regulatory structure may have sound reasons for endorsing such an examination. Unfortunately, however, all too often the debate becomes clouded with too much propaganda.

Alfred F. Dougherty, Jr., Director of the Bureau of Competition of the Federal Trade Commission, stated, in criticizing the current rate bureau system for fixing common carrier rates, that such a system tends to raise the prices charged through the tariffs on the regulated truckers. He stated that unregulated truck rates in Canada, for example, are about seven percent lower than corresponding rates in the United States.<sup>24</sup> Even regulated carriers that do not belong to rate bureaus have testified that their rates are at least five percent lower than the rates of bureau members. Additionally, case studies examining reasons for shifts by shippers from common to private carriage have often found that the shippers have concluded they can maintain the same service at a lower cost. Dougherty's views are reflective of one of the principal areas of regulatory reform debate today, namely, the way rate bureaus are administered. At present they are immune from the impact of antitrust laws by virtue of exemptions granted by Congress and sustained by the Interstate Commerce Commission. But the rate bureaus are under deep challenge at the ICC by the Antitrust Division of the Department of Justice; we may see some change here.

Those who argue that the rate bureau concept is an abuse stress that it creates inflated regulated truck rates and this, in turn, creates an economic climate where shippers find it increasingly attractive to switch to private carriage. They argue that if there is no change in the rate bureau concept, shippers having freedom of choice will increasingly move to private carriage, thereby effecting their own version of regulatory reform no matter what the Interstate Commerce Commission does or doesn't do.

In a practical vein, Joe Sims, a former Deputy Assistant Attorney General, Antitrust Division, Department of Justice, has assailed the rate bureaus.<sup>25</sup> In his view, the regulated trucking industry is a legal cartel. He charged that as a cartel the regulated trucking industry is doing a better job than many "honest-to-gosh cartels" in the most important function of a car-

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24. *Federal Regulation of Ratemaking in the Motor Carrier Industry: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 7 (1978) (statement of Alfred F. Dougherty).

25. Address by Joe Sims, Deputy Assistant Attorney General, Antitrust Division, 49th Annual Meeting of the Association of ICC Practitioners (June 22, 1978).

tel—making monopoly profits. He alleged that trucking companies make more money than they would in a competitive market.<sup>26</sup> He cites as support for his view ICC statistics on earnings of Class I motor carriers. In the calendar year ending December 31, 1977, according to the ICC, the return on equity of these carriers averaged 19.66%—up almost 3% from the previous year. It would have been much higher except for the Western District, where carriers only managed, according to Mr. Sims, a 15.95% return on equity. In both the Eastern and Southern Districts, he pointed out that the average return on equity exceeded 20%! In drawing comparisons, he pointed out that domestic trunk airlines have in recent years only been earning about 7%, although they have been doing much better recently. The median for all U.S. industries is generally thought to be somewhere around 14%.<sup>27</sup>

Moreover, he charged that this 20% rate of return does not include the 13% per year appreciation in the value of certificates—"those four billion dollar guardrails that keep out the rabble and insure high profits for those already in," according to Mr. Sims.<sup>28</sup> Whether or not he is correct, I do not know; but I do know that the whole concept of rate bureaus is in for a profound reexamination. Whether their current use will be reaffirmed, modified, or discontinued remains to be seen. But what does not remain to be seen is the reaction of private carriers who are increasing the size of their fleets. Here we see the paradox of the marketplace reforming itself irrespective of what the Department of Justice, the Interstate Commerce Commission, and the regulated trucking industry do.

As I see it, what I have said so far and the figures I have quoted to you underscore the soundness of the decision of many companies to commence in a very substantial way proprietary fleet operations. As a result of a recent survey, a typical large company has concluded that about forty million dollars was spent on regulated truck transportation. But with the establishment of a transportation division, private carriage would offer this company a 15% reduction from the prevailing common carrier rates. This discount is acknowledged to be approximately equal to the sum of the common carriers' marginal profit, administrative, and sales expenses. By providing service equivalent to or better than that offered by commercial carriers, private carriage would supplant 20% of the company's estimated commercial truck traffic during the first year of operations and, selectively, increase penetration in future years to a rate of 30 to 40%. Relating this 30 to 40% figure to the 1976 survey figure of forty million dollars, and this no

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26. *Id.*

27. *Id.*

28. *Id.*



doubt will increase, you see exemplified in one company the very shift of traffic for economic and service reasons that I have been talking about.

#### DRIVER UNIONS OPPOSE REFORM

It may be difficult to accept that there are bureaucrats in Washington who actually want to reduce the amount of regulation which they impose on American industry. But this is true today. Here we have another irony. Those in industry who benefit from regulation because of its limitation on competition resist a reduction in the quantity of regulatory burdens because to the extent these burdens are reduced, competition is increased. This resistance to reform is not only true among the trucking companies themselves, but it is also true of the driver unions, principally the Teamster union. To this degree, labor and management in the regulated trucking industry see eye to eye and both are on the defensive about any significant measure of regulatory reform which would have the impact of increasing competition and reducing union driver membership.

Recently, Frank Fitzsimmons, the President of the International Brotherhood of the Teamsters, publicly berated the ICC by saying: "Can you imagine, these bureaucrats in Washington are actually trying to reduce regulation in the trucking industry!"<sup>29</sup> As some people see it, Frank Fitzsimmons is being forced to bargain with the Blackbeard of regulatory reform while the regulated trucking industry is walking the "deregulatory" planks.

Regardless of whether this is true or not, we must acknowledge that the Teamsters are a potent force in the regulated trucking industry and that their bargaining prowess has an impact on private carriage. As you know, private carriers as such are not a party to the National Master Freight Agreement and will not be sitting around the bargaining table in the next few months in an attempt to negotiate another three year Master Freight Agreement. To this extent private carriers have more freedom and a little immunity from the economic impact of such bargaining. Moreover, even where private carriers use Teamster drivers, they negotiate independently White Paper contracts that are tailored to their own needs and which differ in many respects in terms of economics and working rules from the National Master Freight Agreement.

There is, however, an overriding irony because, to the extent that the Teamsters are successful every three years in forcing up the wage and fringe benefit levels (and I might add parathetically that Mr. Fitzsimmons is looking for a forty percent increase this time around) Teamsters "improve," if I can use that word, the economic climate for private carriage. Private carriers have a better control over their costs and when the tariff rates begin to reflect the increases bargained with the regulated trucking industry by the

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29. ROCKY MTN. TEAMSTER, Dec. 1978, at 1.

IBT, it becomes all the more economically attractive for shippers to accelerate the shift toward private carriage and away from regulated carriage. So to this extent, the very near-term success of the Teamsters in raising wage and fringe benefits also may be adjudged in a parallel sense a long-term failure! This is privately admitted by certain Teamster officials who, although they express concern about the growth of private carriage, are candid enough to admit that they are a principal contributor to this very growth.

Recent reports indicate that the number of truck drivers in the 2.4 million-member Teamsters union has fallen to about 300,000 at present, down perhaps 25% from a decade ago.<sup>30</sup> The union's top negotiators clearly see this trend. Some of this decline in Teamster driver membership may be attributed to the fact that the percentage of the nation's freight hauled by predominantly nonunion irregular route carriers rose from 24.5% in 1965 to 28% in 1976. During the same period, the share of freight hauled by highly-unionized, regular route carriers fell from 34 to 26.5%. But also figuring into this equation is the growth of private carriage with nonunion or non-Teamsters' union drivers being utilized. The IBT's top negotiators clearly see this trend.<sup>31</sup>

In 1976, the Teamsters won wage and benefit increases totalling 35% in the Master Freight Agreement that expired last March 31, and the drivers now earn an average of \$25,000 to \$30,000 a year. "They are making a lot of money, and they know it," says Roy L. Williams, Chairman of the union's central conference and a key national negotiator. Instead of money, he says, "This year the emphasis is going to be on getting more free time."<sup>32</sup> This will be in the form of longer vacations and fewer hours at the wheel for over-the-road drivers. Rest assured that if this is the goal, it will be more time off for the same amount of money with ever-increasing costs to all kinds of carriers. So money it is and more of it!

#### DRIVER LEASING ACCELERATING GROWTH OF PRIVATE CARRIAGE

Enhancing still further the increasingly attractive economic environment, driver leasing is accelerating the growth of private carriage. This service industry has been growing very rapidly. It is rare today for a company that decides to go into private carriage not also to give serious consideration to the concept of leasing drivers who would remain for payroll and labor relations purposes as employees of a driver leasing company, but be utilized in a day-to-day sense by a private carrier as would directly-employed drivers. Many driver leasing companies can offer very expert labor relations counseling and are potent negotiators when it comes to dealing

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30. BUSINESS WEEK, Aug. 21, 1978, at 86.

31. *Id.*

32. *Id.*

with any driver union. This translates into an economic advantage. By using such driver leasing companies, many private carriers have found that they achieve an effective labor relations advantage while at the same time having the benefit of private carriage. In a unionized driver situation, leasing tends to make for labor relations harmony and this, in turn, has both tangible (or measurable) and intangible economic advantages. Sometimes drivers can be leased more cheaply than they can be directly employed, even when the wage scales are identical, because of negotiated work rules and savings in overhead or administrative expense. There are fewer labor disruptions and, frequently, there is less driver turnover. Moreover, many private carriers are leasing non-union or non-Teamsters' union drivers. This also translates into dollars, efficiency, and smooth operations and constitutes a parallel inducement to private carriage expansion.

Just what will happen with respect to the upcoming National Master Freight Agreement negotiations is anybody's guess at this time. The Carter administration is really up against it with regard to inflationary factors. The Teamsters' negotiation is regarded as the key union wage pact for 1979 as far as inflationary implications are concerned. In this, too, there is a paradox because Frank Fitzsimmons is certainly a *persona non grata* at the White House. This is particularly nettlesome to a man of such power. Mutual acceptance is the usual badge of honor in Washington among the peerage of the powerful. As a result of the government's pension investigations, particularly as regards the central states trust fund, the Teamsters have had little to do with Labor Secretary Ray Marshall, and the White House has publicly shunned Teamster President Frank Fitzsimmons. The consequence has been an almost total absence of any coherent labor relations policy toward the upcoming trucking negotiations. As one administration official is reported to have said, "How the hell are you going to get a settlement with the Teamsters when Fitz wants an invitation to the White House and Marshall wants to send him to jail?"<sup>33</sup>

#### CONCLUDING OBSERVATIONS

May I offer you a few concluding observations. Whether they will be proven true in the future remains for the future to tell us.

First, private carriage is here to stay. If, for whatever reason, a company enters private carriage, it will probably stay in it. This will be true no matter what degree of regulatory reform we get, if any, which might erode the economic basis for going into private carriage in the first place. Once companies make the commitment to private carriage and structure their operations around it, there is scant likelihood that they will ever phase it out notwithstanding any change in the economic climate.

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33. *Deadline Near for Voluntary Anti-Inflation Plan*, Wash. Post, Sept. 10, 1978, at 4, col. 2.

Second, private carriage will continue to grow disproportionately to the growth of the gross national product if some changes are not made in the regulatory scene. Moreover, in the broadest sense, no matter what happens, private carriage will also be a substitute regulator or aid to direct regulation of the trucking industry by the Interstate Commerce Commission. This, however, is no reason to be complacent and, although private carriers in a special sense may be opting out of the regulatory reform debate, they still will be impacted by the consequences of this debate.

Third, the proprietary fleet will be recognized as a national resource. I have already given you the figures and dimension of this private fleet. The idea that the common carrier system is the backbone of the national transportation system must be concluded to be a myth. Indeed, a substantial argument can be made that unregulated motor carriage, principally private carriage, constitutes the backbone of the national transportation system. This in turn suggests that national policies should take this into account. I think they will!

Fourth, there are growing pressures to increase competition via regulatory reform. One source of these pressures is the Carter administration. If the Teamsters try to get too much, President Carter will probably accelerate the regulatory reform pace by introducing more competition in the trucking industry. This, in turn, would give the Teamsters pause because when this happens, Teamster driver membership will decline still further. Another source of this pressure to increase competition is inflation itself. There is a strong move within the federal government to increase competition generally in all industries to shake out the alleged "regulatory fat." This process is thought to be anti-inflationary and should not be discounted as a potent factor heating up the regulatory reform debate.

Fifth, another factor, quite apart from the others, is the growing resentment against the layering of regulation on American industry and the costs which are involved in meeting these regulatory requirements. This, of course, is broader than trucking regulation, but trucking regulation is caught up in this grassroots movement. It is influencing the people in Washington very heavily to minimize or do away with, wherever possible, the ever-growing heap of regulations imposed on business. This is a potent force which in my opinion will continue to grow in dimension and will have telling effects.

Sixth, still another factor is Senator Kennedy. As Chairman of the Senate Subcommittee on Antitrust and as the future Chairman of the Senate Judiciary Committee, he is an enormously powerful factor. He has been holding hearings which have been highly critical of the regulated trucking industry. Alone or in combination with the other factors, Senator Kennedy cannot be dismissed and must be recognized as having an increasingly potent impact in the regulatory reform debate.

Seventh, we of course have the Antitrust Division of the Department of Justice. I have previously spoken about its activities. Such activities are increasing and the Division is participating in ICC proceedings when regulatory reform issues are being considered. The Antitrust Division is very pro-competition and wants to reduce the amount of regulation or otherwise increase the alternatives to the use of regulated industry service. This has already been achieved in the telephone industry.

Eighth, we have the growing impact of airline deregulation. We all know the growth in the airline passenger traffic occasioned by the so-called "discount" fares. There is increasing movement at the CAB to deregulate the airline industry still further. This, in turn, is generating more momentum and intensifying the trucking industry regulatory reform debate. I am not making a value judgment on the comparison. I am simply suggesting that it is a contributing factor which proponents of regulatory reform cite as at least partial proof of the effects of competition in lowering rates.

Last, but not least, is the activity of the Interstate Commerce Commission itself. As I said earlier in my remarks, the ICC is doing what regulatory bodies rarely do by trying to reduce the amount of regulation on the industry it regulates. This has been done under the recent chairmanship of A. Daniel O'Neal. At present the ICC is down to six commissioners, and the chances are that the Commission make-up will increasingly reflect the regulatory reform views of Chairman O'Neal. He has already taken many steps suggested by the ICC Task Force on regulatory reform and no doubt will be taking more in the future. To a great degree, the Carter administration and the Congress are looking to Chairman O'Neal to continue to initiate regulatory reform measures.

Noting that one should be wary of analogies, I still cannot help thinking of the telephone industry. Ten years ago AT&T and the Bell System had an absolute monopoly on telephone equipment and service used by all of us in the territories they serve. An unknown man from Dallas, Tom Carter, approached the courts in Texas and the Federal Communications Commission in Washington, asking that his Carterphone be allowed to be used by people who had mobile telephones in their cars so that they could talk to their homes and offices over Bell System lines.

The reaction of the Bell System was one of massive resistance and not one of minor accommodation. By opposing big, the Bell System lost big because ten years later, Bell had lost its monopoly on telephone equipment. You are now able to buy for your home and for your office any kind of telephone equipment you choose. The opportunity to make a minor accommodation with Tom Carter would have prevented the collapse of the telephone equipment monopoly. The Bell System would still have, with the exception of a minor accommodation for the Carterphone, the ability to re-

quire that you lease Bell Telephone equipment for your home and for your office.

In a parallel vein, the Bell System made the same mistake of massive resistance to private line competition. A little entrepreneur proposed a private line microwave system between Chicago and St. Louis about ten years ago. Young Jack Goeken was rebuffed by the Bell System which said he would be skimming its cream and which resisted the licensing of such a system at the Federal Communications Commission. Here again the policy of massive resistance was a grossly defective management judgment by AT&T. It lost and has since lost *all* the ensuing Commission and court battles dealing with competition with new common carriers and with unregulated businesses that wanted to sell telephone equipment to users throughout the country.

Ten years later, we have the paradox of AT&T and the Bell System on the defensive before a Congress which now seeks to codify competition as a way of life within the telephone industry. The Bell System brought this on itself by a policy of massive resistance to even the slightest change. It never reached, early on, as it should have, an accommodation with change.

At its core, the problem was a failure of regulated industry leadership. Good leadership recognizes the temper of the times and accommodates change without doing fundamental violence to its own interests. We think this experience may offer some parallel insights into the current status of the regulated trucking industry today. Whether the trucking industry will, with its leadership, have the wisdom and the ability to progress with the tide of change, shape and contain it, adapt to it where necessary, and then progress to ever-increasing growth, is an unanswered question.

I suggest, however, that if the massive resistance to change of any dimension is maintained, we will see more change than we need and the regulated trucking industry, unnecessarily, will continue defaulting to private carriage.