POOLING BY INTERSTATE MOTOR FREIGHT COMMON CARRIERS

JOHN M. RECORDS*

In these days of concern by carriers, regulators, and the public alike with means to reduce the consumption of motor fuel in the United States, it would be well to consider the use of pooling by interstate carriers as one device by which that end may be accomplished; a device by which with official approval, such carriers may eliminate certain operations which are economically unfeasible without jeopardizing their certificates.

DEFINITION OF PROBLEM AREA

The situation involves the regular route certificates of interstate common carriers.[1] A particular route is authorized to two or more such carriers with service at several or all of the intermediate points between the larger cities which are the termini at either end of the route. The available traffic to and from the small intermediate points, if it were spread among the authorized carriers, is not enough for each carrier to justify a frequency of service acceptable to the shipping public without being at the same time too costly for it to handle. There is obviously too much competition on the route and some sort of adjustment should be made. Each carrier tries to accomplish its own adjustment in order to bring its costs into line. It may reduce the frequency of its peddle runs to once or twice a week; it may encourage shippers to seek the services of one of the other carriers; and it may interline shipments for delivery. This problem just is one facet of the "small shipments problem" which has plagued the shipping public, the carriers, and the Commission for a considerable number of years.

INTERLINING AS A SOLUTION

Interlining would seem to be an acceptable solution, particularly if one carrier should receive the intermediate point traffic of enough of the other carriers to make it worthwhile to perform acceptable service. Reduction in the overall number of partially loaded and empty miles over the route logically would have the effect of increasing the caliber of service and at

* Counsel, Yellow Freight System, Inc. Shawnee Mission, Kansas.

1. This paper deals with pooling as a device to be used by motor freight common carriers. It is available also to railroads, bus companies and barge lines under Section 5(1) of the Interstate Commerce Act, 49 U.S.C. 5(1), hereinafter referred to as the "Act". The Interstate Commerce Commission which administers the Act will be referred to as "Commission" or "I.C.C.".

Published by Digital Commons @ DU, 1974

the same time conserving fuel. But interlining has been found not to be consonant with the duty imposed upon motor carriers by Section 216(b) of the Act[2] to provide reasonably continuous and adequate service to and from their authorized service points.[3] It also violates the provision uniformly contained in certificates issued by the Commission reading as follows: "IT IS FURTHER ORDERED, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate."

Failure to serve may result in institution of proceedings by the Commission's Bureau of Enforcement under the authority of Sections 204(c)[4] and 212(a)[5] of the Act for the purpose of suspending or revoking the respondent's operating authority if it fails to reinstitute service to the involved points after being ordered to do so.

One of the early cases in which the Commission considered whether the interlining of traffic to small intermediate points on a carrier's route could be considered a reasonably adequate and continuous service is *Red Ball Motor Freight, Inc.* v. *Herrin Transportation Company*.[6] This is a case in which the complainant was the carrier to which the defendant habitually interlined its small shipments. Apparently the complainant finally got its fill of this scurvy treatment and turned to the Commission to compel its rival to serve the points itself.

The Commission, Division 5, vindicated the complainant by ordering the defendant to institute, within 60 days after the date of service of the order, reasonably continuous and adequate service to the public for the transportation of traffic tendered to it for movement to or from intermediate points on its authorized route between Houston and Shreveport.

In the course of its report, the Commission said that under circumstances in which three large common carriers, including the defendant, had authority to serve practically all points on the route under consideration; that the traffic moving to these points consisted principally of intrastate shipments; and that most of the points had relatively small population, it could not be expected that any one carrier would have opportunity daily

2. 49 U.S.C. § 316(b).

3. *Red Ball Motor Freight, Inc.* v. *Herrin Transportation Company*, 52 M.C.C. 453 (1951); *Pacific Intermountain Express Co. - Investigation* of Practices, 96 M.C.C. 604 (1964).

4. 49 U.S.C. 304(c).

5. 49 U.S.C. 312(a).

6. See f.n. 3

or regularly to transport interstate shipments to all points on the route. The defendant did not have the intrastate rights. Therefore, Division 5 said an occasional interchange with a competitor of a shipment also should not be construed as non-compliance with the condition that reasonably continuous and adequate service be rendered by the holder of a certificate. But to actually render no direct service when it had an opportunity to do so to 14 points on a considered route, could not be considered compliance.[7]

Similarly, in *Pacific Intermountain Express Co. Investigation of Practices*,[8] upon the institution of separate investigations by the Bureau of Inquiry and Compliance of the Commission, PIE, Missouri Consolidated Freightways Corporation, and Riss & Company, Inc. were found to have failed to provide reasonably continuous and adequate service in violation of Section 216(b) of the Act[9] where they had interlined LTL shipments to Garden City and other points in Kansas to which they held direct authority. Division 1 cited the *Red Ball* case[10] with approval. PIE had instituted the service before the hearing at Garden City, and all of the respondents had delivered truckload shipments direct to the involved points and they argued that this activity and the fact that their interline arrangements were satisfactory to the shipping public should lead to the conclusion that they were providing a reasonably continuous and adequate service. The Commission nevertheless approved entry of an order requiring them all to institute and provide such service. It said that if need for their services no longer existed, it would logically follow that their certificates of authority should be revoked.

POOLING

Of course, a carrier may voluntarily seek to have the Commission amend its certificate to eliminate routes or points which it no longer wishes to serve. Perhaps understandably, carriers seem reluctant to do this, or indeed to suffer involuntary revocation, perhaps because they feel that they may possibly desire the authority in the future should some new commercial development take place along the route to generate additional and more desirable traffic. The problem then becomes one of preserving the authority intact for possible future use or sale while at the same time assuring that adequate service is maintained to the public. Pooling of service has been found in several instances to be the answer.

7. 52 M.C.C. at p. 457-458.
8. See f.n. 3
9. 49 U.S.C. 316(b).
10. See f.n. 3.

The leading Commission decision on the subject of pooling of service by motor common carriers of freight in *Consolidated Freightways Corporation of Delaware, et al, Pooling*.[11] In that case, eight multi-state carriers and one single-state carrier entered into an agreement for pooling of service and filed an application for an order under Section 5(1) of the Act[12] for its approval. The points involved were located on U.S. Highway 77 between Oklahoma City and the Oklahoma-Texas state line (except points in the Oklahoma City Commercial Zone), and at the off-route point of Sulphur, Oklahoma. What had precipitated the agreement was a complaint filed against the multi-state carriers and others by the Oklahoma Corporation Commission alleging failure to render adequate service at authorized points.

The underlying situation was that the multi-state carriers operated linehaul equipment over U.S. Highway 77 between Oklahoma City and Dallas - Fort Worth, a distance of 215 miles, and found it economically unfeasible to stop vehicles to pick up or deliver LTL shipments to the intermediate points. They almost always handled volume shipments to the intermediate points direct. The single-state carrier, Ryan Freight Lines, Inc., was handling most of the LTL traffic at the Oklahoma points on U.S. Highway 77 through interline arrangements at Oklahoma City.

Since the agreement specified that the linehaul carriers would tender all of their traffic, even the volume loads, to Ryan, that carrier anticipated a healthy increase in its business under the agreement.

Furthermore, it argued that if the pooling agreement were not approved and the multistate carriers were required to institute direct service this traffic would diminish and Ryan's economic health would deteriorate.

CONTRACT REQUIREMENTS

The form of contract entered into by the parties and approved by the Commission in the *Consolidated* case[13] was found to be one for the pooling or for the division of service and therefore that it was the type of agreement contemplated by Section 5(1) of the Act.[14]

The Commission discussed the elements which must be incorporated in such an agreement for the pooling of service. The agreement must be among carriers subject to Part II of the Act.[15] The proposed pooling must be in the interest of better service to the public or the economy of

11. 109 M.C.C. 596 (1971).

12. 49 U.S.C. 5(1).

13. *Consolidated Freightways Corporation of Delaware, et al. Pooling*, 109 M.C.C. 596, 607 (1971).

14. 49 U.S.C. 5(1).

operation. It must not unduly restrain competition. It must be assented to by all of the carriers involved. The agreement must imply that the multi-state carriers will continue to solicit traffic for the pool points and otherwise perform all the duties inherent in their motor carrier operating rights, the only exception being that they will fulfill their obligation through the use of an agent.

The policy of the Commission is clearly stated as follows:[16]

> "Where we have examined the situation in the light of current conditions and a concrete proposal to continue and even improve operations under a pooling-of-service arrangement which would benefit both the carriers involved and the shipping public, we can find that the active and continued interests and participation by carriers in such a pooling arrangement can be considered to have met the duty imposed by section 216(b). Such a finding, we emphasize, does not imply that any carrier may casually abandon its duty to render an active and continuous service under its certificates."

Other features of the particular agreement in the *Consolidated* case[17] are: service would be performed by Ryan on a five-day-per-week basis at the pool points; tender of outbound freight by Ryan to the proper multi-state carrier would be prompt; Ryan's remuneration would be on the basis of the regular schedule of revenue splits from time to time obtaining among Oklahoma carriers for division of joint interstate rates; the multi-state carriers would be responsible for the collection of charges and handling of loss and damage claims; and Ryan would deliver truckload shipments in the multi-state carriers' trailers. The term of the agreement is five years from the effective date, with no need for further approval from the Commission for successive five-year renewals in the absence of changes affecting its substance. Any of the parties may withdraw from the agreement upon 30 days written notice to each of the other parties and to the I.C.C. Entry as a party is open to any interstate motor common carriers authorized to serve any pool point, with notice to the I.C.C. The agreement is expressly made subject to the approval of the I.C.C. by means of a Section 5(1) application.[18]

15. 49 U.S.C. 301 *et seq.* The agreement in this case provided for Ryan to perform cartage service at Ardmore and Oklahoma City under certain circumstances and at rates to be established for such service. The Commission said that such terminal area operations would be exempt under Section 202(c)(2), 49 U.S.C. 202(c)(2) and provision for them should not be included in the contract because the Commission has no jurisdiction over such service.

16. 109 M.C.C. at 606.

17. See f.n. 11.

18. 49 U.S.C. 5(1),

EXTENSION APPLICATIONS IN POOLING AREA

At about the same time as the carriers in the *Consolidated* case[19] filed their application for approval of the contract they had entered into, Texas-Oklahoma Express, Inc. filed an application under Section 207 of the Act[20] for extension of its authority to transport general commodities over regular routes between Dallas and Oklahoma City over U.S. Highway 77 serving all intermediate points except certain points in Texas, and serving Sulphur, Oklahoma as an off-route point. The request for authority encompassed the same points in Oklahoma which were the subject of the pooling agreement in the *Consolidated* case.[21]

One of the three protestants in the application proceeding[22] was Ryan Freight Lines, Inc. In its Report, Division 1 referred to the pending complaint proceeding in the Consolidated case[23] and the related pending pooling application, and the fact that there had been a hearing examiner report in the pooling case conditionally approving it. After thoroughly discussing the circumstances that various carriers had engaged in the practice of interchanging less-than-truckload shipments involving the Oklahoma points along U.S. Highway 77, and in doing so, were attempting to effect certain operating economies, and that this was one of the basic premises underlying the pending pooling agreement, Division 1 said:[24]a"The practice of common carriers' interchanging freight destined to points which they are authorized to serve directly in single-line operation cannot be condemned where it is accomplished under appropriate legal sanction. Under a given set of circumstances, this kind of interchange service may serve a useful purpose, such as effecting operating economies or efficiencies which are helpful both to the participating carriers and to the shipping public."

The report concludes that in spite of the possibility that the pooling application might be approved by the Commission and represent the only feasible meansof assuring expeditious service for the shippers along U.S. Highway 77 in Oklahoma, the TOX application should be nevertheless approved, but should be limited to a term of three years, during which the carrier would be required to file an annual "performance report" with the Commission's Bureau of Economics, supplying information detailed in the order.

19. See f.n. 11.

20. 49 U.S.C. 307.

21. See n.f. 11.

22. *Texas-Oklahoma Express, Inc., Extension—Oklahoma Points*, 110 M.C.C. 769 (1969).

23. See f.n. 11.

24. 110 M.C.C. at 779.

EFFECT ON FINANCE CASES

In Section 5 acquisition cases,[25] the parties may find that the Commission will refuse to transfer, because they are considered dormant, segments of certificates involving authority to intermediate points where those points have been served only by interlining traffic. The intermediate point authority of one such segment was eliminated by the Commission in *Murphy Motor Freight Lines, Inc. - Control and Merger - G & P Transportation Co., Inc. and Roadway Cargo, Inc.*[26] Similarly, such evidence tendered in support of viable operations was refused in *East Texas Motor Freight Lines, Inc. - Purchase - Lee American Freight System, Inc.*[27] In the latter case, the fact that the protestants also engaged in the practice of interlining to points which they had authority to serve was considered not germane to the basic issue of whether a motor carrier involved in a Section 5 transaction had been conducting, active and viable operations.

In *Clairmont Transfer Co. - Control - Milburn, Inc.*[28] Division 3 relied upon the *Murphy*[29] and the *East Texas*[30] cases in approving the transfer of Milburn's authorities to Clairmont upon the condition that the dormant portions of the Milburn certificate be cancelled. After referring to the pooling agreement in the *Consolidated* case,[31] Division 3 said:[32]

> "While the Commission has approved such arrangements where it has been in the best interests of the public to do so, and lends its continuing support to these multiple-line substitutions for single-line service if they are being conducted pursuant to appropriate approval, it does not condone, and, in fact, condemns the carrier practice of regularly serving, by means of interline or interchange, authorized points which a carrier may move directly. See *T.I.M.E.-DC, Inc. - Investigation and Revocation of Certs.*, 113 M.C.C. 897, and cases cited therein. Such condut not only violates section 216(b) of the act, but also is contrary to the very terms of common carriers' certificates of public convenience and necessity."

The chronology of events in connection with *Consolidated* is important

25. 49 U.S.C. 5.
26. 90 M.C.C. 535 (1962).
27. 109 M.C.C. 299 (1969).
28. 116 M.C.C. 1 (1972).
29. See f.n. 26.
30. See f.n. 27.
31. See f.n. 11.
32. 116 M.C.C. at p. 5.

to an understanding of various contemporaneous and subsequent cases which refer to it. The complaint which precipitated the filing of the application for approval of the pooling agreement was filed in March, 1967. The application itself was filed in May, 1968. Hearing was in March 1969 at Oklahoma City. The examiner's report was served on November 6, 1969, and the final report of the Commission was not served until March 8, 1971. In 1970, not long after the report of the examiner was out, the Commission instituted two investigations of importance, *T.I.M.E.-DC, Inc. - Investigation and Revocation of Certificates*, which has resulted in a Division 1 report[33] and *Pacific Intermountain Express Co. - Investigation and Revocation of Certificate*.[34] The latter case embraces 11 proposed pooling applications involving points in Nebraska and Iowa.

The *T.I.M.E.-DC* report was the subject of a petition for reconsideration filed by the respondent, to which the Bureau of Enforcement replied. Thereafter, three applications for approval of pooling agreements in the involved territory were ordered by Chairman Stafford on April 2, 1972, to be assigned to Division 1 for handling and determination on a consolidated record with the *T.I.M.E.-DC* case and, by its order dated May 15, 1973, served May 23, 1973, the Commission permitted the intervention of the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Traffic Conference, providing that the issues were not to be broadened unduly. The same two conferences through a single representative have written the Commission in the *PIE* case requesting to be considered "participating parties" and have made representations in support of the pooling agreements filed in that case. Thus, both cases are now pending on petitions for reconsideration of the latest orders in each. The pooling agreements which are involved in the *PIE* and *T.I.M.E.-DC* cases were patterned very closely after the agreement approved in the *Consolidated* case.

REASONABLE AND ADEQUATE SERVICE

Examiner (now Administrative Law Judge), William A. Royall in his Report and Order served April 2, 1971), in the *T.I.M.E.-DC* case, found that the respondent had failed to provide reasonably continuous and adequate service to the public as a regular route common carrier at 366 involved points in Arkansas, Missouri, Oklahoma, Tennessee and Texas. The respondent had always solicited traffic to and from the points, but would provide service by interlining through

33. 113 M.C.C. 897 (1971).

34. Docket No. MC-C-6767. The latest decision in the case is the decision of Division 3 dated September 5, 1973 served October 10, 1973.

its gateways and terminal points or by handling in single-line service if the shipper specifically routed the traffic by respondent. Judge Royall concluded that to compel the institution of direct service, without affording respondent the opportunity to legally conform its operations in order to discharge its certificate obligations, would not be in the public interest or consistent with the Commissions's obligations to shippers and carriers alike. He then cited the *Consolidated* case[35] with approval and ordered T.I.M.E.-DC to enter into a pooling agreement within 60 days and file an application for its approval, failing which an order would be entered requiring the respondent to institute such reasonably continuous and adequate service to the public at the involved points as to maintain compliance with the terms of its certificates. Then if the respondent wilfully failed to comply with the latter order, its certificates would be revoked or suspended, in whole or in part.

Division 1 on appeal agreed with the Examiner that T.I.M.E.-DC had been in violation of Section 216(b) of the Act[36] and had failed to comply with the terms and conditions of its certificates, but disagreed with him with respect to the part of his recommended order that directed the respondent specifically to enter into a pooling agreement. Division 1 stated:[37]

> "Moreover, we believe that institution of service as required in the order entered herein is a prerequisite to our determination whether or not a pooling agreement would be in the interests of better service to the public or of economy in operation. [Footnote omitted.] Thus, if respondent, subsequent to reinstitution of service, desires to exercise its managerial discretion and enter into a pooling agreement with any other carrier, it may file such an application seeking this Commission's approval. [Footnote omitted.]"

As mentioned above, subsequent to the Division 1 report T.I.M.E.-DC apparently filed some pooling applications, but whether or not they were preceded by institution of service at the points involved is not apparent at this time.

Approximately a year and a half after the Division 1 report in *T.I.M.E.-DC*, Administrative Law Judge John Dodge's Report and Order was served in *Pacific Intermountain Express Co. - Investigation and Revocation of Certificate*.[38] There PIE was accused of failing to

35. See f.n. 11.
36. 49 U.S.C. 316(b).
37. 113 M.C.C. at 902.
38. Docket No. MC-C-6767.

render direct service to a considerable number of authorized points in Iowa and Nebraska. Prior to resolution of the investigation case, the carrier filed applications for approval of the 11 pooling agreements which were very closely patterned after the approved agreement in *Consolidated*.[39] Judge Dodge, therefore, had for consideration both the investigation and the pooling applications. He dealt with the investigation and revocation case first in his report and concluded that the record clearly showed that the respondent was wilfully failing to render direct service to a substantial majority of the Nebraska and Iowa points named in the investigation order; that what service was performed to the small points was done by interline; and, that PIE intended to continue interlining unless the Commission ordered it to institute direct service or approved the pooling applications as to certain of the points. He concluded that while the wilful failure to provide a reasonably adequate and continuous service was a violation of the terms and conditions of the particular certificate under consideration in Iowa and Nebraska, there was no evidence of a violation of Section 216(b) of the Act.[40]

The latter determination was based upon the fact that the section specifies a duty to furnish "adequate service only, and in this case, there was no sufficient evidence to make a determination on that point. As a preface to and explanation of his recommended order, Judge Dodge said:[41]

> "Interline of traffic seems adequate to meet public needs from this record and institution of local PIE services might result in uneconomic and wasteful expenditures of labor and money with no concomitant improvment in service to the public at the involved points. For that reason, and because it is believed that the carrier should have some freedom to plot ito course of business operations, the order will provide an option, namely that respondent either institute such service at all such points, upon penalty of possible revocation of the entire certificate for failure to comply, or alternatively file an application seeking revocation of all the said certificate except that portion set forth in appendix D hereto. The appendix will retain no local authority in Nebraska or Iowa except to serve existing terminals and most (but not all) nearby points at which service is offered from such terminals. It is reasonable that short-haul carriers be allowed to enjoy all traffic to and from smaller points (not just the unprofitable 'garbage' traffic) and that long-haul carriers be limited

39. See f.n. 11.
40. 49 U.S.C. 316(b).
41. Mimeo Report, p.14.

to the long hauls. On that basis both categories can operate profitably, each offering a specialized service with appropriate types of equipment."

NEED FOR COMPETITIVE SITUATION

Turning to the pooling applications, which covered only part of the points which it had been determined that PIE was not serving, Judge Dodge referred to the *Consolidated* case[42] and drew comparisons between the circumstances there and those involved in the PIE agreement. It will be remembered that the *Consolidated* agreement involved eight multi-state or long-haul carriers and one single-state or short-haul carrier (Ryan). Each of the 11 agreements entered into by PIE involved only one long-haul carrier (PIE) and one short-haul carrier. The judge referred to the requirement in the *T.I.M.E.-DC* case[44] that the respondent reinstitute service before there could be any favorable consideration of its pooling applications, and cited with approval *Southern Railway Company, Pooling*[44] to the effect that there must be a prior existing competitive relationship between the participating carriers before the Commission can take jurisdiction over the proposed pooling application. Accordingly, he concluded that there was no competition existing between PIE and any other pooling applicant, nor any other short-haul Iowa-Nebraska carriers at pooling points. And, in his opinion, the pooling arrangements were nothing more than an effort to rename the existing interline arrangements. The traffic would be handled on PIE bills, and the short-haul carriers would now get all of the PIE traffic, whereas they formerly shared it with other such short-haul carriers, but the Judge could find no significant difference between regular interlining and this "one-on-one" pooling. Accordingly, he specified an order which would require PIE either to institute and maintain continuous and adequate service to the full extent of its authority in accordance with the particular certificate in question or to file an application seeking partial revocation of that certificate; and denying all of the pooling applications.

In its Decision and Order[45] Division 3 approved the Report and Recommended Order of Judge Dodge except that it modified his proposed revised certificate to add certain routes which it concluded should not have been eliminated by the Judge and to use more up-to-date road designations for one of the routes.

---

42. See f.n. 11.

43. *T.I.M.E.-DC, Inc. - Investigation and Revocation of Certificate*, 113 M.C.C. 897 (1971).

44. Docket No. 27027, decided May 1, 1972 (not printed).

45. Dated September 5, 1973, served October 10, 1973.

Before Judge Dodge's Report and Order was served, there had been Commission action in a finance case[46] following which the vendee entered into a number of one-on-one pooling arrangements which received approval of the Commission upon application under Section 5(1) of the Act.[47] Apparently in challenging the fitness of the vendee, the protestants had adduced evidence which showed that the purchasing carrier was not serving directly various authorized points but was using other carriers in a joint-line service. Division 3 agreed with the examiner's warning to the applicant that such arrangements could not be continued without Commission approval under Section 5(1),[48] and also found that since the unlawful arrangements had been instituted prior to the Commission's decision in *Consolidated*,[49] it would not be fair to impute unfitness retroactively to a time before that decision.

Division 3 also noted that since the examiner's report, the applicant had filed at least eight applications for approval of pooling arrangements. Those applications were heard under modified procedure and resulted in individual orders by Review Board No. 5, each dated December 5, 1972, and served December 22, 1972.[50]

The above arrangements variously involved points in California and Washington. According to the recitals of underlying facts appearing in each of the orders, the applicants adhered very closely to the language of each of the elements of the pooling agreement in the *Consolidated* case.[51] The operating verified statement filed in each of the cases, which were not opposed, included an extensive operational study of the previous handling of traffic with each of the pooling carriers, and the entire empha-

46. *O.N.C. Motor Freight System - Purchase (Portion) - C B Truck Lines, Inc.*, 116 M.C.C 134 (1972)

47. 49 U.S.C. 5(1).

48. Id.

49. See f.n. 11.

50. No. MC-F-11386, *Los Angeles City Express, Inc. - Pooling - ONC Motor Freight System.*

No. MC-F-11399, *Sumas-Everson Auto Freight, Inc. - Pooling - O.N.C. Motor Freight System.*

No. MC-F-11400, *F & M Transfer Co. - Pooling - O.N.C. Motor Freight System.*

No. MC-F-11407, *Imperial Truck Lines, Inc. - Pooling - O.N.C. Motor Freight System.*

No. MC-F-11422, *Smith Transportation Co. - Pooling - O.N.C. Motor Freight System.*

No. MC-F-11429, *Godlen West Freight Lines - Pooling - O.N.C. Motor Freight System.*

No. MC-F-11450, *Anaheim Truck & Transfer Co. Pooling - O.N.C. Motor Freight System.*

No. MC-F-11454, *Kerner Trucking Service, Inc. - Pooling - O.N.C. Motor Freight System.*

51. See f.n. 11.

sis of the evidence was upon the money savings to be accomplished by the parties as compared to direct service.

A one-on-one pooling arrangement was approved in *Consolidated Freightways Corporation of Delaware, Inc. - Pooling — Silver Wheels Freight Lines, Inc.*[52] This arrangement also concerned a number of points in Oregon and Washington. Subsequently, by supplemental order dated December 17, 1973, served January 9, 1974, pursuant to its petition to the Commission to join in the pooling arrangement except at certain points in Oregon, Garrett Freight Lines, Inc. was admitted to the arrangement as a pooling party. Again, this matter was handled on modified procedure and there were no protestants.

SUMMARY AND CONCLUSIONS

In summary, then, the pooling of service by regular route motor common carriers of freight has been established as a method by which they may serve authorized points by the use of agents without being considered by the Commission in violation of their certificates. The *Consolidated* case[53] provides the rationale and the prototype contract to use. The *T.I.M.E.-DC* case[54] at this stage stands for the proposition that the carrier must reinstitute service at authorized points which it has not served direct before a pooling application will be approved involving those points. The *PIE* case[55] thus far indicates that one-on-one pooling may not be approved. But the success of the other cited pooling applications[56] approved on modified procedure without opposition tends to refute those conclusions about reinstitution of service and one-on-one pooling. Perhaps it depends on how the matter gets before the Commission. If upon complaint of failure to serve, reinstitution of service may be required before approval of pooling. If as part of a Section 5[57] finance case, or upon application and compelling proof of savings and efficiency in the public interest, reinstitution of service may not be required as a prerequisite to approval of pooling.

On the other hand, it seems that the question is really one of policy. Pooling is authorized by the Act. Having established that pooling - particularly of service - is appropriate under certain circumstances and with certain safeguards so that service to the shippers and receivers at small

52. Docket No. MC-F-11490, Order dated February 6, 1973, served February 12, 1973.
53. See f.n. 11.
54. See f.n. 43.
55. See f.n. 38.
56. See f.n. 46 and f.n. 52.
57. 49 U.S.C. 5.

points is or will be actually improved, then this device should be sanctioned by the Commission without regard to reinstitution of direct service or to whether or not there are only two parties to the contract.

It is felt that the Commission is more likely than not to approve a specific pooling of service proposal that makes sense on the evidence. The parties need only ask.