

THE INTERSTATE COMMERCE COMMISSION AND THE
CONSUMER

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If he has been reading his press notices, it may appear to the consumer that he is now, for the first time, receiving some attention from public officials. However, this impression may not be justified under closer scrutiny.

Although the consumer is not specifically mentioned in the Interstate Commerce Act,¹ it is interesting to note that more than 50 references to the public interest are contained in the Act.

Some observers seem possessed of a conviction that the lowering of carrier rates necessarily equates with rising benefits to the consumer. However, neither the Interstate Commerce Act nor the National Transportation Policy calls for carriers to provide the rock-bottom rates many consumers would advocate. The original Act contained no provisions which would encourage low rates. Today's statute clearly reflects a national intent for carriers to provide such offerings consistent, of course, with the cost of rendering the service. While low rates as desirable characteristics in American transportation now are inherently accepted, there was a 46-year span between enactment of the original Act to Regulate Commerce in 1887 and passage of the Emergency Railroad Transportation Act,² which provided in Section 15a(2) of the Interstate Commerce Act a new rule of ratemaking that included the words *lowest cost*.

“In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the *lowest cost* consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.”

Two years later in the midst of the depression the Hoch-Smith resolution³ expressed Congressional support for the Interstate Commerce Com-

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1. 49 U.S.C. Sec. 1 et. seq.

2. Act of June 16, 1933, 48 Stat. 220.

3. 49 U.S.C. Sec. 55.

mission to effect for agricultural products "the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

On September 18, 1940, the Congressionally enacted National Transportation Policy⁴ became law. It also became a preamble to the Interstate Commerce Act. The National Transportation Policy did not specifically call for low rates but did validate the promotion of *economical* service and encouragement of *reasonable* charges.

Both for the benefit of the consumer and for carriers in competitive squeezes, the Interstate Commerce Commission has developed a long history of encouraging low rates in transportation, even to the extent of approving rates established by carriers at levels lower than their expenses on certain traffic. The Commission recognized a need for some noncompensatory rates and was upheld by the Supreme Court in *Baltimore & O.R. Co. v. United States*, 345 U.S. 146 (1953).

"* * * For not only are fair decisions as to vegetable rates vital to the welfare of farmers and whole sections of the country; the health and well being of the Nation are involved. Moreover, Commission power to adjust rates to meet public needs is implicit in the congressional plan for a nationally integrated railroad system. * * * And so long as rates as a whole afford railroads just compensation for their overall services to the public the Due Process Clause should not be construed as a bar to the fixing of noncompensatory rates for carrying some commodities when the public interest is thereby served."

The latest Congressional direction on the subject of low transportation rates was expressed October 15, 1966, with enactment of the Department of Transportation Act.⁵

"Sec. 2(a) The Congress declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient and convenient transportation at the *lowest cost* consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources."

The depth to which transportation rates can descend for the benefit of the consumer while, still providing adequate revenue for the viability of a

4. Act of Sept. 18, 1940, 54 Stat. 899.

5. Public Law 89-670, 80 Stat. 931.

national transportation system, cannot be precisely prescribed by Congressional edict nor established by a formula conceived and ordered by the Interstate Commerce Commission.

Some consumer advocates may disagree, but most of the participants in the transportation community—both carriers and shippers—would probably concede that rate levels are not necessarily the most accurate way of measuring benefits to the consumer. By any measurement, evolution is occurring in the Interstate Commerce Commission's interest in, appraisal of, and attitude toward the ultimate consumer—as an individual rather than in the collective.

During the decade of the 1960's the Interstate Commerce Commission, as well as other government agencies at Federal, state and local levels, came into closer contact with individual consumers. The Commission's involvement developed in three principal areas: railroad passenger service; small shipments; and household goods movements.

The Commission's new involvement with consumers, as represented by those who rode passenger trains or thought that such train service should be available for emergency use, arose with enactment in 1958 of Section 13a of the Interstate Commerce Act. This action placed the Commission in a scorching hot seat, fired by the ire of consumers who wanted passenger trains retained and railroads who wanted to be rid of them.

Section 13a delegated to the Commission a limited power beyond that of the state commissions to act on railroad proposals for train discontinuances. The intent of the law was to permit railroads to terminate nonessential trains no longer capable of sustaining themselves. As first proposed to Congress, Section 13a's sole standard for discontinuing a train was whether it was operating at a deficit. On the recommendation of the Commission, Congress added another standard—the public's need of the service. Measuring each train-off proposal against both of these standards, the Commission has prohibited the discontinuance of over 600 trains. Our concern in this area has been relieved in large measure with the creation of a new corporation designed to administer the Nation's intercity rail service—Amtrak.

In accordance with the Rail Passenger Service Act of 1970⁶ the Commission was no longer involved in ruling upon railroad proposals to discontinue passenger train service, except for commuter and shorthaul operations and non-Amtrak carriers which remained under Section 13a. The Rail Passenger Service Act of 1970, however, did assign to the Commis-

6. Public Law 91-518, 84 Stat. 1327.

sion continuing responsibilities in rail passenger service including adequacy of service, equipment and facilities. In addition, the Commission was directed to prepare an evaluation of the results of the basic system's operations at the end of the one year. The Commission's review, issued October 30, 1971, generally called for provision of subsidies or government guaranteed loans to assure continued operations of the Nation's intercity passenger service.

The Commission's report indicated, and consumers concerned with rail passenger service doubtless would overwhelmingly agree, that Amtrak operations were beset by serious scheduling problems and many trains habitually ran behind schedule. With few exceptions, Amtrak inherited old equipment showing the ravages of time and use, and old passenger stations generally in need of repair.

While the Commission will have no direct participation in the operation of the Nation's railroad passenger train service under Amtrak aegis, it will have an input in the interest of consumers through its authority⁷ to prescribe regulations for safe and adequate service, equipment and facilities. This authority filled in a jurisdictional gap over the quality or adequacy of rail passenger service which the Commission found it lacked in the so-called "Sunset adequacies" case.⁸ In this proceeding, the Commission found it had no power to require adequate standards of service on passenger trains.

A second special concern to the Commission has been the small shipper. Because of advancing technology, changing distributive patterns and new marketing concepts, the small shipper at times has found his transportation sources inadequate. As cost accounting became more sophisticated in the 1960's many carriers found that certain small shipments were unprofitable or marginally profitable to transport, because they required irregular pickups or deliveries at small out-of-the-way communities or in highly congested urban areas with unusually high operating costs. Carriers tended to seek out the more profitable and ignore the less profitable traffic. At the same time, shippers of truck loads and high density commodities complained about having to subsidize the less profitable business by paying rates that were out of proportion to the cost of handling their traffic.

In 1968, the Commission formulated a program which involved a request for legislation authorizing it to require establishment of motor car-

7. Section 801.

8. *Adequacies—Passenger Service—Southern Pacific Company Between California and Louisiana*, 335 I.C.C. 415 (1969).

rier joint rates and through routes on an intramodal and intermodal basis, the exercise a more emphatic look at carriers' service fitness, and a close scrutiny of small shipment rates. Court actions to correct carriers' service failures were to be accelerated. Court fines ranging up to \$1,400 were obtained against a number of individual motor carriers for failing to provide adequate and reasonable service.

The Commission also issued a regulation⁹ compelling motor common carriers of property to provide transportation service to the fullest extent of their operating authority and ability. New rules¹⁰ were proposed, requiring motor common carriers of property to maintain daily records of service. These records would show the reason for the failure of each request not being fulfilled. Tariffs would be required to provide for services conforming with carriers' operating authorities and filing of tariffs which restrict the scope of authorized operations would be forbidden.

The Commission also has investigated the status of freight forwarders,¹¹ leading to a recommendation to the Congress for legislation which would allow forwarders to enter into negotiated arrangements with railroads for an experimental period of three years. This would enable forwarders to utilize more effectively the services of railroads and to expand their service to more shippers at more points.

The Commission generally has come to the conclusion that one of the most successful advancements in improving small shipment service lies with obtaining legislation for ordering through routes and joint rates by motor carriers. If the Commission were empowered to require the carriers to establish through routes and joint rates it could then order interline service to small shippers. This would be a major step toward solving many of the problems confronting the small shipper and the consumer located in off-lying communities.

The volume and pitch of dialogue between consumers and the Interstate Commerce Commission are loudest and highest in the area of household goods movements. This can be expected in a society in which roughly a fifth of the population moves each year. The transportation involves intensely personal aspects—the movement of life-long physical possessions that carry a value to the shipper that no amount of insurance can cover properly. The problem is compounded by a rule-of-thumb operation for

9. *Restrictions on Service by Motor Common Carriers*; 111 M.C.C. 151 (1970).

10. *Maintenance of Service Request Records by Motor Common Carriers of Property*, Ex Parte No. MC-80.

11. *Investigation into the Status of Freight Forwarders*, 339 I.C.C. 711, Ex Parte No. 266.

family moves in which half of them are compressed into three warm weather months. Throughout the year, moves tend to be made in the ten-day period around the first of the month. Keeping vehicles productive during slack times and retaining competent help on a full-time basis are serious challenges to the carriers.

The Commission has sought to impress upon both carrier and shipper a clear understanding of their respective rights and obligations. This effort extends to rendering informal guidance toward the settlement of loss and damage claims, although the Commission lacks authority to compel settlements.

In 1970, the Commission ordered into effect a series of comprehensive rules,¹² following a number of unsuccessful challenges in court that attempted to overturn the protection afforded by the new regulations. Carriers must present each customer with a copy of those rules prior to a move. One of the traditional problem areas confronting both shipper and carrier of household goods has been in the area of estimates. The new rules pierce the darkness previously enveloping the estimate of the cost of a household goods move. Under these rules, standard forms are available for estimates. When actual charges are more than estimated charges, the shipper can now obtain release of the shipment on payment of the estimated charges plus no more than 10 percent. The carrier must extend 16 days of credit on the balance when the charge exceeds the estimate by more than 10 percent. This eliminates storage and re-delivery charges which once plagued the consumer when full payment could not be made at the time of delivery. Overestimates and underestimates of more than 10 percent must be reported to the Commission and explained by carriers. Especially important to consumers are the rules requiring the performance of transportation during the period agreed upon by the carrier and the householder. If there is a delay in either pickup or delivery, the carrier must now notify the shipper. Reasons for the delay must be explained. The parties must then agree upon an alternative date when the service will be performed.

The rules now require a new delivery receipt which is prohibited from having any language releasing the carrier from liability. This protects the customer from being required to sign away his rights in order to obtain possession of his goods.

Household goods movers, as well as all regulated carriers subject to the Commission's jurisdiction, are now the subject of an investigation¹³ into

12. *Practices of Motor Common Carriers of Household Goods*, 111 M.C.C. 427.

13. *Rules, Regulations, and Practices of Regulated Carriers With Respect to the Processing of Loss and Damage Claims*, Ex Parte No. 263.

carriers' handling of loss and damage claims—a constant course of irritation for consumers.

Earlier mention was made of the difficulty in determining the precise quantitative level to which rates can sink for the benefit of the consumer, vis-a-vis the upward rate levels that carriers need to retain their viability. Still, some facets of the Commission's broad range investigations into across-the-board rate increases sought by carriers are moving closer to this elusive point. As an example, in a recent ruling upon general rate increases sought by the Nation's railroads¹⁴ the Commission generated and subsequently spun off separate proceedings looking into the entire railroad freight rate structure, the rate base and the rate of return.¹⁵ In the principal investigation, the Commission has made special provision for the participation of consumers and private nonprofit organizations appearing on behalf of consumers who may lack the financial resources to prepare and serve all of the statements normally required for proceedings of this nature.

Auxiliary proceedings within the basic investigation of the rail freight rate structure include Ex Parte No. 270 (Sub-No. 1)—*Investigation of Railroad Rate Structure, Export-Import Rates and Charges*, and Ex Parte No. 270 (Sub-No. 2)—*Investigation of Rail Freight Service*. Within the latter investigation, the Commission has asked shippers to file with their nearest I.C.C. Regional Office a "Railroad Freight Service Report" whenever deficiencies occur. Within 30 days after filing such a report by shippers, the carriers involved must file a reply indicating the corrective action taken. Twice yearly the Commission will issue a statement of the number and kinds of complaints filed against each railroad, along with a summary of the actions taken.

Apart from this examination of individual service deficiencies confronting individual consumers, the Commission earlier called upon railroads to report corrective action taken for broad scale service failures.¹⁶

Beyond the realm of the formal proceeding, which has been the customary medium for the agency, we have recently inaugurated a new program to reach consumers. The Commission has stepped off in the direction of issuing informal public advisories directly from the Office of the Chairman. To help consumers know their rights, three public advisories were issued in areas where we have detected that the public needed to know

14. *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125.

15. *Investigation of Rail Freight Rate Structure*, Ex Parte No. 270; and *Net Investment—Rail Rate Base and Rate of Return*, Ex Parte No. 271.

16. See Footnote 15, *supra*.

more about the position of the shipper. Each of these advisories—and there will be more—concern motor carriers. The first was designed to inform the average family contemplating a household goods move on the methods of assuring that it pays no more than is necessary for the weight of the shipment. The second advisory alerted consumers on their right to obtain decent small shipment service.

The most recent advisory provided a means for consumers to bring to the Commission's attention their appraisal of the quality of service provided by household goods carriers. This was a first for the Commission—a deliberate attempt to reach the consumer and to place in his hands a postage paid questionnaire by which he could inform the Commission of his views concerning his move. The volume of responses already has given indications of becoming overwhelming. Nevertheless, every response has been promptly acknowledged.

Translating these observations, as well as the many other consumer impressions the Commission is obtaining from other aspects of regulation, into formal adjudicatory channels is presenting an unusual challenge.

By and large, the rulemaking proceeding has offered the most promise. While it is difficult to separate those proceedings of special concern for the consumer from those relating to the broad public interest, the following list provides an indication of recent and current action in this area (beyond those earlier mentioned):

<u>Case Number</u>	<u>Action</u>
Ex Parte No. 55 (Sub-No. 4)	Implementation of National Environmental Policy Act of 1969.
Ex Parte No. 263	Investigate processing of loss and damage claims of regulated carriers.
Ex Parte No. 272	Investigate problems encountered by shipping public on c.o.d. or freight-collect shipments.
Ex Parte No. 278	Investigate discriminate practices of carriers.
Ex Parte No. MC-1 (Sub-No. 3)	Rules governing credit period following freight delivery.
Ex Parte No. MC-55 (Sub-No. 3)	Procedural discovery rules.
Ex Parte No. MC-85	Support of programs for reuse and recycling of waste materials.
Ex Parte No. MC-86	Implementation of the Postal Reorganization Act.
Ex Parte No. 269	Adequacy of service regulations under Railroad Passenger Service Act of 1970.

Ex Parte No. 277	Adequacy and safety of railroad passenger service.
No. 35343	Requirements for motor carriers of property to file quarterly reports of loss and damage claims.
Ex Parte No. MC-5 (Sub-No. 1)	Adequacy of coverage rules for licensed brokers of motor transportation.
Ex Parte No. MC-19 (Sub-No. 7)	Practices of motor common carriers of household goods—prohibition of different rate levels for identical movements.
(Sub-No. 12)	Exclusion of shipments requiring special handling.
Ex Parte No. MC-19 (Sub-No. 14)	Charges for reweighing shipments.
(Sub-No. 15)	Investigate violations of carriers' published rules for advance reservation of vehicle space by shippers.
(Sub-No. 18)	Determine shipper's obligation to pay carrier's charges after shipment is accidentally destroyed by fire en route.
Ex Parte No. MC-78	Use of school buses for non-school functions.
Ex Parte No. MC-82	Submission of evidence supporting general rate increases.
MC-C-6748	Determine if smoking on buses is detrimental to health and comfort of non-smoking passengers.
MC-C-6829	Investigate limitation of free baggage allowance.
MC-C-7255	Investigate employment practices.

The interests of consumers, the attitudes of consumers and the confrontation of consumers with established governmental bodies through class actions and individual initiative will probably be viewed by sociological historians as the manifestation of some unique psychic phenomenon emerging from this age, and a fair analysis will have to be left to those skilled in such disciplines.

For the moment, the practical effect is demonstrably observable. The Interstate Commerce Commission is reaching out to the consumer as never before. The end result will be improvements in the regulation of carriers for the benefit of the public interest—as well as individual consumers.

