

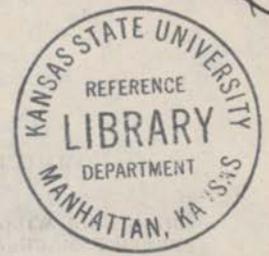
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HOUSE - Interstate & Foreign Commerce
EXEMPTION OF TERMINAL AREA OPERATIONS
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HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 5978

A BILL TO AMEND SECTION 202(C) OF THE INTERSTATE COMMERCE ACT TO PROVIDE FOR PARTIAL EXEMPTION FROM THE PROVISIONS OF PART II OF SUCH ACT OF TERMINAL AREA MOTOR CARRIER OPERATIONS PERFORMED BY OR FOR COMMON CARRIERS BY WATER IN INTERSTATE COMMERCE SUBJECT TO THE SHIPPING ACT, 1916, AND THE INTERCOASTAL SHIPPING ACT, 1933 (AND IDENTICAL BILLS)

JULY 20, 1961

Printed for the use of the
Committee on Interstate and Foreign Commerce



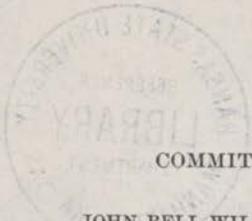
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EXEMPTION OF TERMINAL AREA OPERATIONS



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EXEMPTION OF TERMINAL AREA OPERATIONS

THURSDAY, JULY 20, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1334, House Office Building, Hon. Samuel N. Friedel presiding.

Mr. FRIEDEL. The committee will come to order.

The Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce is meeting this morning to hold hearings on 12 bills to amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of such act of terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

These bills are:

H.R. 5978, by our colleague on this committee, Mr. Jarman of Oklahoma; H.R. 6062 by Mr. Miller of California; H.R. 6071 by Mr. Van Pelt of Wisconsin; H.R. 6086 by Mr. Ellsworth of Kansas; H.R. 6182 by Mr. Gubser of California; H.R. 6194 by Mr. Hosmer of California; H.R. 6246 by Mr. Cohelan of California; H.R. 6270 by Mr. Thompson of Louisiana; H.R. 6624 by Mr. Garmatz of Maryland; H.R. 6681 by our colleague on this committee, Mr. O'Brien of New York; H.R. 6904 by Mr. Horan of Washington; and H.R. 7544 by our colleague on this committee, Mr. Curtin of Pennsylvania.

A copy of H.R. 5978 and the reports from executive departments and agencies thereon, will be made a part of the record at this point.

(H.R. 5978 and department reports referred to follow.)

[H.R. 5978, 87th Cong., 1st sess.]

A BILL To amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of part II of such Act of terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 202(c) of part II of the Interstate Commerce Act is hereby amended to read as follows:

“(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

“(1) to transportation by motor vehicle by a carrier by railroad subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, or by a common carrier by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, incidental to transportation or service subject to such parts or such Acts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regu-

lated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, as transportation or service subject to part IV when performed by such freight forwarder, and as transportation or service subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, when performed by such common carrier by water in interstate commerce;

"(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, a water carrier subject to part III, a freight forwarder subject to part IV, or a common carrier in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental."

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 3, 1961.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of April 3, 1961, requesting the views of this Office with respect to H.R. 5978, a bill to amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of part II of such act of terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

The Secretary of Commerce, in his report to your committee on this measure, is recommending its enactment as a means of fostering the expansion of container operations in the offshore domestic trades. Both the Secretary of Commerce and the Chairman of the Interstate Commerce Commission, however, recommend that the bill be amended to clearly limit the scope of the proposed terminal area motor carrier exemption to legitimate terminal area operations.

The Bureau of the Budget agrees with the views of the Secretary of Commerce and recommends that the proposed legislation be enacted, provided that the above-mentioned amendment is incorporated into the bill.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

THE SECRETARY OF COMMERCE,
Washington, D.C., July 7, 1961.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of April 3, 1961, for the views of this Office in regard to H.R. 5978, a bill to amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of such act of terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1915, and the Intercoastal Shipping Act, 1933.

H.R. 5978 transfers regulation of motor carriers servicing water carriers subject to the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933 from part II of the Interstate Commerce Act to the Federal Maritime Board. The bill would add to section 202(c) an exemption from part II for motor transportation within terminal areas in the performance of transfer, collection, or delivery services if performed by or for a common carrier by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

Section 202(c) was added to the Interstate Commerce Act by the Transportation Act of 1940 (54 Stat. 898, at 920). This action exempts from certification and rate regulation under part II of that act motor transportation within terminal areas in the performance of transfer, collection, or delivery services, if performed by or for railroads subject to part I, water carriers subject to part III, or freight forwarders subject to part IV. Such terminal area motor transportation which is exempted from part II is regulated as part of the particular line-haul transportation to which it is incidental.

As the law presently stands, section 202(c) does not exempt from part II terminal area motor transportation incidental to water transportation between the mainland and Alaska, Hawaii, Puerto Rico, or Guam. Although Alaska and Hawaii are now States of the United States, section 18(a) of the Hawaiian Statehood Act (73 Stat. 4), and section 27(b) of the Alaskan Statehood Act (72 Stat. 339), both provide that the Federal Maritime Board retain its jurisdiction over water transportation between those States and the mainland.

The Commission has held that motor carriers performing service in the port of Seattle in connection with transportation by water to Alaska were not entitled to the exemption because the line-haul carrier was not subject to the act (*Consolidated Freightways, Inc., Extension, Seattle, Wash.*; 74 M.C.C. 593, 1958). In its decision the Commission stated that Congress had probably intended to exempt from economic regulation "all" purely local operations, but stated that the remedy appears to lie in additional legislation rather than a forced construction of the present law. The proposed bill is designed to provide such legislation which would apply the exemption uniformly to all modes of transport.

The proposed amendment to section 202(c) would extend this provision to common carriers by water in interstate commerce who are subject to the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933. These steamship lines operating between the 48 mainland States and Alaska, Hawaii, Puerto Rico, and Guam would be placed in a position to perform their own pickup and delivery services within the port areas that they serve. Thus, an entire rate, including the pickup and delivery service, would be regulated by the Federal Maritime Board. This is a logical sequence in the development of container transportation of water carriers in the offshore domestic trade. Passage of H.R. 5978 would clearly permit through rates from point of origin within a port area to point of ultimate destination within a port area served by the water carrier, and should facilitate the expansion of these container operations in the offshore domestic trades.

As the bill presently reads, there is no provision as to which agency shall determine the limits of the terminal area to which the exemption in section 202(c) will be applicable. In order to avoid misunderstandings and confusion, the Department of Commerce suggests the following amendment of H.R. 5978:

"The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purpose of this section 202(c)."

As we interpret the bill, the exemption of "transportation by motor vehicle * * * by a common carrier by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933," subject to the further restrictions of the bill, includes such transportation by common carriers by water who operate between a State of the United States, and a possession of the United States, because of the definition of "common carrier by water in interstate commerce" in the Shipping Act, 1916, includes such carriers, and transportation between a State and possession remain subject to that act and the Intercoastal Shipping Act, 1933. The matter, however, may not be entirely free from doubt, because the bill would amend part II of the Interstate Commerce Act, and the Interstate Commerce Act contains a definition of "interstate commerce" which confines that term to commerce between States or between two places in the same State through another State. To clarify the bill in this respect, the Department recommends that the bill be amended as follows:

(1) By inserting after the word "commerce" on line 7, page 2, the words "as defined in the Shipping Act, 1916, and";

(2) By inserting after the word "carrier" on line 2, page 3, the words "by water";

(3) By inserting after the word "commerce" on line 2, page 3, the words "as defined in the Shipping Act, 1916, and".

With the revisions as suggested above, the Department does not oppose the enactment of this bill.

EXEMPTION OF TERMINAL AREA OPERATIONS

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Acting Secretary of Commerce.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 14, 1961.

HON. OREN HARRIS,

Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: Your letter of April 3, 1961, addressed to the Chairman of the Commission and requesting a report and comments on a bill, H.R. 5978, introduced by Congressman Jarman, to amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of part II of such act of terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, has been considered by the Commission and I am authorized to submit the following comments:

Section 202(c) of the Interstate Commerce Act, which H.R. 5978 would amend, now provides a partial exemption from the provisions of part II of the act of terminal area motor carrier operations performed by or for carriers subject to parts I, II, III, and IV thereof. H.R. 5978 would extend this partial exemption to such motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

While we have no objection to the proposed extension of the exemption as such, the bill, if enacted in its present form, would give rise to a serious problem. Under existing law the Commission has the power to determine the limits of terminal areas of carriers subject to parts I, II, III, and IV of the Interstate Commerce Act. See, for example, *Central Truck Lines, Inc., et al. v. Pan-Atlantic Steamship Corporation* (82 M.C.C. 395) in which the partial exemption was discussed insofar as it related to a water carrier subject to the Commission's jurisdiction and, in effect, fixed the terminal areas of the defendant carrier at Tampa, Jacksonville, and Miami, Fla. If H.R. 5978 should be enacted without a clarifying provision, there may be some question as to whether the Commission would have jurisdiction to determine the terminal areas of water carriers subject to the Shipping Act and the Intercoastal Shipping Act, with the result that water carriers subject to those acts could fix extensive terminal areas of ports within which they could provide motor carrier service which would not be subject to economic regulation. This would place other carriers at a distinct competitive disadvantage. This situation is illustrated in a proceeding now pending before the Commission in docket No. MC-C-3000, *Western Motor Tariff Bureau, Inc. v. Matson Navigation Company*.

The situation appears to be further complicated by a recent holding of the Federal Maritime Board in docket No. 815, *Common Carriers by Water—Status of Express Companies, Truck Lines and Other Non-Vessel Carriers*. In that proceeding the Board found that "any person or business association may be classified as a common carrier by water who holds himself out by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise, to provide transportation for hire by water in interstate or foreign commerce as defined in the Shipping Act, 1916; assumes responsibility or has liability imposed by law for the safe transportation of the shipments; and arranges in his own name with underlying water carriers for the performance of such transportation, whether or not owning or controlling the means by which such transportation is effected, is a common carrier by water as defined in the Shipping Act, 1916."

In order to make certain the Commission's authority to determine, for the purpose of the amendments proposed in H.R. 5978, the terminal area limits of common carriers by water subject to the shipping acts, we recommend that the bill be amended by making provision therein for the addition of the following new paragraph (3) to section 202(c):

"(3) The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purposes of subsection (c) of this section."

Such a provision would place water common carriers subject to the jurisdiction of the Federal Maritime Board and water common carriers subject to the Commission's jurisdiction on an equal basis insofar as the terminal area exemption in section 202(c) is concerned.

If amended as suggested above, we would have no objection to the enactment of H.R. 5978.

Respectfully submitted.

EVERETT HUTCHINSON, *Chairman.*

Mr. FRIEDEL. The first witness is our colleague from California, Hon. George P. Miller, who is the sponsor of H.R. 6062. Mr. Miller, we will be glad to hear you at this time.

STATEMENT OF HON. GEORGE P. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Mr. Chairman, I appreciate the opportunity of appearing before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, relative to my bill, H.R. 6062.

In introducing this legislation, I am joining many other cosponsors in proposing this amendment to section 202(c) of the Interstate Commerce Act, which is greatly needed at the present time.

In the course of this hearing, I am certain that a detailed legal analysis will be presented on behalf of the need. However, the important thing we should remember is this. New technical advances in this modern day and age have brought water transportation into an area where innovations such as trailer containers now travel both by land and sea. With such development it is imperative that the confusion and inconsistency with respect to the regulatory status of terminal area operations by motor vehicles when conducted by our four water carriers, be eliminated. It is simply a question of treating this new form of transportation the same as other terminal area operations which have long been subject to section 202(c) of the Interstate Commerce Act.

Mr. Chairman, I want to go on record as enthusiastically subscribing to the provisions of H.R. 6062 and companion legislation and want to urge favorable action by this committee.

Mr. FRIEDEL. Are there any questions? If not, we appreciate your appearance, Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. FRIEDEL. The next witness is another colleague from California, Hon. Jeffery Cohelan, who introduced H.R. 6246. Mr. Cohelan, we will be glad to have your testimony at this time.

STATEMENT OF HON. JEFFERY COHELAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COHELAN. Mr. Chairman, I appreciate this opportunity to express my support of H.R. 5978 and my own companion bill, H.R. 6246, which would amend the Interstate Commerce Act to expand the partial exemption now applicable to carriers subject to that act.

One of the many indications of the need for this legislation is the wide support which it enjoys. Among its backers are the Comptroller General, the Bureau of the Budget, and the Federal Maritime Board, along with the Interstate Commerce Commission, the Department of Justice, and the Secretary of Commerce, who are not opposed to such legislation.

The reason for this wide approval is the commonsense of this legislation, which would promote uniformity in the treatment of interstate common carriers; a uniformity which should take the place of the inequities which exist at the present time.

This legislation is also necessary to bring the act up to date, for it would include the two new States of Alaska and Hawaii in the exemption in section 202(c), which at present includes only the 48 contiguous States. Such a provision is only logical in view of the intent of the Interstate Commerce Act to regulate the commerce among all the States of our Nation. There is no logical reason why these States should be excluded from this legislation.

In general, it may truly be said that this legislation is in the public interest by virtue of the fact that it provides for uniform regulation of interstate carriers. In conclusion, I urge this committee to carefully consider the legislation before them and to report it favorably.

Mr. FRIEDEL. Are there any questions? We appreciate your appearance and testimony, Mr. Cohelan.

Mr. COHELAN. Thank you, Mr. Chairman.

Mr. FRIEDEL. The next witness will be Rupert L. Murphy, a Commissioner of the Interstate Commerce Commission.

Mr. Murphy.

STATEMENT OF RUPERT L. MURPHY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. MURPHY. Mr. Chairman, may I report that I have with me today Commissioner Tuggle and Commissioner Goff and Mr. Stillwell, the Director of our Bureau of Operating Rights.

Mr. FRIEDEL. We are very pleased to have them.

Mr. MURPHY. Mr. Chairman and members of the subcommittee, my name is Rupert L. Murphy. I am the present Vice Chairman of the Interstate Commerce Commission and have served in that capacity since March 7 of this year. I am appearing today to testify on the Commission's behalf with respect to H.R. 5978, which would amend section 202(c) of the Interstate Commerce Act.

Section 202(c) of the Interstate Commerce Act now provides a partial exemption of terminal area motor carrier operations performed by or for carriers subject to parts I, II, III, and IV of the act. The effect of H.R. 5978 would be to extend this partial exemption to such motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act of 1916, and the Intercoastal Shipping Act of 1933.

The Commission has no objection to the proposed extension of the exemption as such. However, a serious problem will arise if the bill is enacted in its present form.

As the law now reads the Commission has the power to determine the limits of terminal areas of carriers subject to parts I, II, III, and

IV of the Interstate Commerce Act. For example, see *Central Truck Lines, Inc., et al. v. Pan-Atlantic Steamship Corp.*, 82 M.C.C. 395, decided March 21, 1960, in which the partial exemption was discussed insofar as it related to a water carrier subject to Interstate Commerce Commission jurisdiction and, in effect, fixed the terminal areas of the defendant carrier at Tampa, Jacksonville, and Miami, Fla.

Accordingly, if H.R. 5978 were to be enacted without a clarifying provision, some doubt may arise as to whether the Commission would have jurisdiction to define the terminal areas of water carriers subject to the shipping acts.

In such circumstances, water carriers subject to those acts could fix extensive terminal areas of ports within which they could provide motor carrier service that would not be subject to economic regulation. Other carriers would thus find themselves at a distinct competitive disadvantage. In fact, there is now pending before the Commission a proceeding, docket No. MC-C-3000, *Western Motor Tariff Bureau, Inc., v. Matson Navigation Co.*, in which this very situation is illustrated.

Recently, the Federal Maritime Board, in docket No. 815, *Common Carriers by Water—Status of Express Companies, Truck Lines and Other Nonvessel Carriers*, made a finding that appears to further complicate this situation. The Board, in that proceeding, found that:

Any person or business association may be classified as a common carrier by water who holds himself out by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise, to provide transportation for hire by water in interstate or foreign commerce as defined in the Shipping Act, 1916; assumes responsibility or has liability imposed by law for the safe transportation of the shipments; and arranges in his own name with underlying water carriers for the performance of such transportation, whether or not owning or controlling the means by which such transportation is effected, is a common carrier by water as defined in the Shipping Act, 1916.

In order to make certain the Commission's authority to determine, for the purpose of the amendments proposed in H.R. 5978, the terminal area limits of common carriers by water subject to the shipping acts which I have mentioned, the Commission recommends that the bill be amended by making provision for adding a new paragraph (3) to section 202(c) to read as follows:

(3) The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purpose of subsection (c) of this section.

Subject to the amendment I have just suggested, the Commission would have no objection to the enactment of H.R. 5978.

I might mention, Mr. Chairman, that the Senate Committee on Commerce has in the last few days ordered out the recommendation of approving a bill which carries the identical suggestion which we make here.

Mr. Chairman and members of the subcommittee, the Commission appreciates this opportunity to state its position with respect to this bill. If there are any questions at this time, I will do my best to answer them.

MR. FRIEDEL. Thank you very much, Mr. Murphy. It is a very clear and precise statement.

Mr. Stagers, do you have any questions?

Mr. STAGGERS. No questions.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Jarman.

Mr. JARMAN. Mr. Chairman, I think Mr. Murphy's statement is fair and to the point. I will add that as the author of H.R. 5978, the identical bill to the bill in the Senate committee, the suggested amendment is certainly acceptable to me.

Mr. MURPHY. Thank you.

Mr. FRIEDEL. Thank you very much, Mr. Murphy.

Mr. MURPHY. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Norman Scott, general traffic manager, Matson Navigation Co.

**STATEMENT OF NORMAN SCOTT, GENERAL TRAFFIC MANAGER,
MATSON NAVIGATION CO.; ACCOMPANIED BY WILLIS R. DEMING,
ATTORNEY FOR MATSON**

Mr. SCOTT. Mr. Chairman and members of the subcommittee, I am Norman Scott, general traffic manager of Matson Navigation Co. My company appreciates this opportunity of appearing before your subcommittee in support of H.R. 5978. I am accompanied this morning by Mr. Willis R. Deming, attorney for Matson Navigation Co.

My company supports H.R. 5978 to obtain clarification of the jurisdiction over certain terminal area drayage functions which are incidental to water transportation in domestic offshore trades. To explain the operational considerations and economic benefits to users of our service, which we believe make the clarification not only desirable, but necessary as well. I would like to describe briefly the present procedures for handling cargo in conventional break-bulk form.

In general terms, cargo which is offered for ocean transportation is delivered to the dock by rail, truck, both common carrier and contract carrier, and also by proprietary truckers, moving generally in small lots of individual packages which require marking each individual parcel or unit with the name of the consignee, the individual pieces requiring multiple handling not only during the course of the operations of loading to and from the ship, but prior to and after the goods have been in the custody of the ocean carrier.

Inherent in this conventional break-bulk system, is a high labor content of cost, damage, pilferage, delays, and the cost necessary to properly package and mark the cargoes. We have recently embarked in my company, and there are other operators in the steamship industry as well, who have done the same, on a program to develop and implement containerization of cargo. In containerization we attempt to handle large units of a standardized size which contain the small individual packages, having been loaded at off-dock locations.

Ideally, under these types of container operations, the contents of a container are placed into it at the point of origin of the shipment and the contents are not removed from the containers until the unit has arrived at its ultimate destination.

For purposes of illustration, I hope you will bear with me if I confine my remarks describing the operation to a description of Matson's container service.

Mr. Chairman, I have taken the liberty to ask the clerk to distribute this at this time in order to call your attention to appendix A of this rather voluminous report. Appendix A contains some photographs of key units in the Matson container system which, I think, would be helpful in following my remarks concerning the description of the equipment and the service.

The company has a total of nine ships which are equipped to carry containers. Of these vessels 1 carries containers exclusively; 2 others are very large container carriers which also serve a dual purpose of carrying bulk cargoes; and the remaining 6 of the 9 carry a total of 75 containers each on deck.

The container equipment which we operate includes both units for carrying conventional dry cargo and also refrigerated cargo. Necessary for the support of the system are shoreside cranes which have been constructed specially for this system, marshaling areas adjacent to the ship berths where containers are accumulated either prior to or subsequent to vessel loading, or discharging operations, and what we call container freight stations which are off-dock freight platforms where container contents can be handled to or from the containers themselves.

At the present time my company's container service has sufficient capacity to handle approximately 85 percent of the commercial cargo between the ports of San Francisco and Los Angeles and Honolulu. We have employed in our system a total of approximately \$18 million. Container cargo is tendered to our company by having the merchandise delivered to the freight station which I referred to, or by having containers loaded at shippers' places of business. The units themselves, which are the cargo-carrying capability of the ship, are transported over the road on specially designed skeletal chassis from which the containers may be readily demounted.

The containers, when loaded, or after being discharged from a ship pending delivery to customers, are assembled at dockside marshaling areas. The loading, as I mentioned earlier, is performed by the large shoreside cranes which have been purchased and erected for this purpose.

The principal benefits which derive to the users of this service are lower costs, reduced damage and pilferage, faster transit times, and improved vessel turnarounds. From the customers' standpoint, a single phone call, the quotation of a single rate, and a single payment for a shipment, which includes insurance and wharfage, is the result of our container service in the port areas where it is provided.

To achieve the maximum efficiency of this system, we believe it is necessary to operate the incidental drayage functions in the terminal areas as a tightly integrated part of the overall operation geared to vessel and shipside container handling functions. The reasons for this are that it permits materially improved equipment utilization and operational flexibility, the virtual elimination of deadhead hauling of empty equipment.

It permits coordination of vessel stability requirements, that is, putting the heavy containers in the bottom of the ship. It also permits maximizing the use of space within the containers.

For the reasons just enumerated, the savings in transportation costs, which Matson has achieved cannot be maintained for the benefit of customers unless the company's right to continue the use of single drayage agents in the terminal areas is made clear by the proposed amendment to section 202(c).

It is our belief that if section 202(c) is not amended, shippers, consignees, and consumers will lose a large part, if not all, of the savings in transportation costs which have already been passed on to them under single factor rates covering both port-to-port transportation and incidental terminal area services.

Many years ago, before the regulated motor and water carriers, the Interstate Commerce Commission recognized the right of line-haul rail carriers to perform pickup and delivery service within appropriate terminal areas. Subsequently, after assuming jurisdiction over motor carriers and water carriers, subject to the Interstate Commerce Act, the right of these types of carriers as well as freight forwarders to perform incidental terminal area motor vehicle transfer, collection, and delivery services as part of their line-haul operation was recognized by further amendment to section 202(c).

The Federal Maritime Board has accepted tariffs naming single factor rates in the domestic trade between the mainland and Alaska, Hawaii, and Puerto Rico, covering both water transportation and incidental pickup and delivery services within terminal areas.

The Board has regulated such rates under the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933. Some doubt was cast on this procedure when the Interstate Commerce Commission indicated in Consolidated Freightways, Inc., extension-Seattle, reported at 34 M.C.C. 593, that the provisions of 202(c) of the act do not apply to pickup and delivery services performed by motor vehicle solely within the Seattle, Wash., commercial zone, incidental to continuous through movement by water between Seattle and Alaska regulated by the Federal Maritime Board, because such water transportation is not subject to the Interstate Commerce Act.

The terminal area pickup and delivery services in the Alaska trade were considered to be subject to regulation by the Interstate Commerce Commission under part II of the act. The Commission recognized that its decision was highly technical and probably undesirable from a regulatory standpoint. It commented that the remedy appeared to lie in additional legislation.

When the previous amendments to section 202(c) were effected to ocean transportation of freight to and from Alaska, Hawaii, Puerto Rico, and Guam was generally limited to dock-to-dock service. The development of integrated container services represents a major technological advance in transportation for these offshore areas which demands off-dock receipts and delivery of freight to achieve its maximum efficiencies.

We believe that to attain these efficiencies for container services of the offshore domestic water carriers the proposed amendment is of greater urgency for such carriers than for those who presently enjoy the exemption under the act as it stands.

The proposed amendment to section 202(c) will eliminate uncertainty as to what agency shall regulate terminal area services of motor vehicle operations incidental to water transportation in the domestic

offshore trade. The Interstate Commerce Commission has suggested that the bill include a clarifying provision that the Commission has exclusive jurisdiction to prescribe the limits of the water carriers' terminal limits. Appropriate provision is contained in other bills introduced in the House to amend section 202(c), such as H.R. 7544, and we support the addition suggested by the Interstate Commerce Commission.

The Secretary of Commerce has suggested certain clarifying additions so that H.R. 5978, if enacted, would apply uniformly to all water carriers in domestic trades regulated by the Federal Maritime Board. We also support these amendments to H.R. 5978. We believe that the amendments are in the public interest.

Included in the back of the volume which was distributed earlier are statements from 108 persons who use Matson's container service urging that it be continued in its present form.

We understand that the Federal Maritime Board, acting through the Department of Commerce, does not object to the enactment of this bill. We also understand that the Bureau of the Budget agrees with the views of the Secretary of Commerce that section 202(c) be amended as a means of fostering the expansion of container operations in the offshore domestic trades.

On July 18, 1961, the Senate Committee on Commerce acted favorably on S. 1978, a companion bill to H.R. 5978, containing the provision suggested by the Interstate Commerce Commission.

With your permission, I am submitting for the record the detailed memorandum and a statement in support of the proposed amendments to section 202(c). These materials contain a more detailed description.

Mr. FRIEDEL. How large would that memorandum be?

Mr. SCOTT. You have it, Mr. Chairman.

Mr. FRIEDEL. This one here?

Mr. SCOTT. Yes, sir.

Mr. FRIEDEL. That will not be in the record. It will be in our files.

Mr. SCOTT. I will be happy, Mr. Chairman, to answer any questions you may have about our service and the need for amending section 202(c).

Mr. FRIEDEL. Mr. Jarman.

Mr. JARMAN. Mr. Chairman, I would like to call attention to the information set out in appendix B of the material submitted by Mr. Scott this morning. It graphically indicates the savings in transportation costs that are being achieved on representative commodities with Matson Navigation Co.

For example, the exhibits show a saving to the shipper ranging from 13 percent to 31 percent, through the use of the containerization method as contrasted with the old shipping practices. These savings are obtainable because it is possible for this company to give a single factor rate covering port-to-port transportation and incidental terminal area services. I think that those examples are indicative of the public interest involved in the passage of this legislation.

I would like to ask Mr. Scott if there has been any opposition to the bill. If so, would you describe the form it has taken and who the objectors have been?

Mr. SCOTT. We have had several indications that there have been at least a small group of members of the trucking industry in southern California who have indicated that they do not favor this exemption which we seek. I might say in that connection, that in the selection of our drayage agents who are performing the drayage functions for us they were chosen by competitive bidding, and included among the people who have indicated opposition to this proposed legislation are the least two unsuccessful bidders for the work which has since been performed by others.

I would also comment, Mr. Chairman, that the company's present operations have been challenged before both the Interstate Commerce Commission and the Federal Maritime Board. Since the right to perform the functions, as we now do, through a drayage agent has been questioned, we believe that the amendment to section 202(c) would clarify that point and I would like, if you would permit me to do so, to ask Mr. Deming to comment on the legal aspects of that question.

Mr. DEMING. The legal aspects are covered in the six-page statement which Mr. Scott provided to the committee this morning beginning at page 3, so I will not take the committee's time to analyze those orally.

Mr. SCOTT. Mr. Chairman, may I offer for the record a letter from the Southern Pacific Co. addressed to the Honorable John Bell Williams, chairman of this subcommittee, in which the Southern Pacific Co. supports H.R. 7544, a companion bill before the House of H.R. 59782.

Mr. FRIEDEL. It will be so included.

(Southern Pacific letter referred to follows:)

SOUTHERN PACIFIC CO.,
San Francisco, July 18, 1961.

HON. JOHN BELL WILLIAMS,
*Chairman, Subcommittee on Transportation and Aeronautics,
House Committee on Interstate and Foreign Commerce,
House Office Building, Washington, D.C.*

DEAR SIR: I am writing in support of H.R. 7544. This bill permits a water carrier, within terminal areas, to provide or arrange for land transportation incidental to water transportation. In lifting restrictions upon a water carrier's ability to provide incidental land transportation in a limited area, the bill will promote a greater freedom in transportation and further desirable coordination of water and land transportation. Thus, the bill furthers the objectives which this company has espoused in regard to transportation. Furthermore, as a practical matter, this bill would facilitate the program of containerization which has been embarked upon by Matson Navigation Co. and other supporting interests and which we believe will result in more efficient transportation and the advancement of the American merchant marine.

I understand hearings on this bill will be held on the 20th instant. I ask that, if consistent with your practice, this letter be made a part of the record.

Very truly yours,

GEORGE L. BULAND.

Mr. JARMAN. Mr. Scott referred in his testimony to certain clarifying amendments that have been suggested by the Department of Commerce. I would like to say for the record, Mr. Chairman, that those clarifying amendments are acceptable to me as author of one of the bills.

Mr. Scott, what is being sought in this legislative proposal only gives water carriers not subject to part III of the Interstate Commerce Act the same identical pickup and delivery service exemption

provisions that are afforded part I (rail carriers), part III (water carriers), and part IV (freight forwarders). It simply makes for uniformity in that field of transportation; does it not?

Mr. SCOTT. I believe that is correct; yes, sir.

Mr. JARMAN. I think that is all, Mr. Chairman.

Mr. FRIEDEL. I would like to offer for the record now a letter I have from the Association of American Railroads, signed by Gregory S. Prince, executive vice president and general counsel, indicating that they would have no objection if we accept the amendments suggested by the Commerce Department and the Interstate Commerce Commission. It is addressed to John Bell Williams.

(Association of American Railroads letter follows:

ASSOCIATION OF AMERICAN RAILROADS,
LAW DEPARTMENT,
Washington, D.C., July 19, 1961.

HON. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. WILLIAMS: We received notice of hearing to be held before your committee on Thursday, July 20, 1961, on H.R. 5978, and 11 other similar or identical bills. Each of these bills would amend section 202(c) of the Interstate Commerce Act to provide for partial exemption from the provisions of part II of such act for terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. It is the purpose of this letter to state for the record the position of the railroad industry on these bills.

Section 202(c) of the Interstate Commerce Act now provides a partial exemption from the provisions of part II of the act for terminal area motor carrier operations performed by or for carriers subject to parts I, II, III, and IV of the act. H.R. 5978, and the similar bills, would extend this partial exemption to such terminal area motor carrier operations performed by or for common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

The Interstate Commerce Commission, under existing law, now has the power to determine and define the limits of terminal areas of carriers subject to parts I, II, III, and IV of the Interstate Commerce Act. This authority in the Interstate Commerce Commission is vital and essential to the partial exemption granted by section 202(c). If this section is to be amended as provided in H.R. 5978, it is necessary that the Interstate Commerce Commission be given jurisdiction to determine and define the limits of terminal areas of common carriers by water subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, within which areas terminal motor carrier operations may be performed under the partial exemption granted. Without such provision water carriers subject to the shipping acts mentioned could, without restraint fix extensive terminal areas of ports within which they could provide motor carrier service free from economic regulation. The absence of such restraint would place other carriers, including the railroads, at a distinct competitive disadvantage.

Only one of the bills set for hearing before your committee, namely H.R. 7544, contains this essential provision vesting such exclusive jurisdiction in the Interstate Commerce Commission. You are doubtless aware of a similar bill, S. 978, pending in the Senate. This Senate bill likewise contains provision to determine and prescribe the limits of terminal areas for the purposes that the Interstate Commerce Commission shall have exclusive jurisdiction of section 202(c).

The position of the railroads is that any bill receiving favorable consideration by your committee must, for the protection of other interested carriers and in the public interest, contain a provision vesting exclusive jurisdiction in the Interstate Commerce Commission to determine and prescribe the limits of terminal areas of all carriers for the purposes of section 202(c). As I have stated, H.R. 7544 does contain such provision. If such jurisdiction is vested in the Interstate Commerce Commission, as would be done by H.R. 7544,

then the railroad industry has no objection to the proposed amendment of section 202(c). In the absence of such provision, the railroad industry is strongly opposed to the proposed amendment.

I respectfully request that this letter, stating the position of the railroad industry, be made a part of the record of hearing before your committee on these bills.

Yours very truly,

GREGORY S. PRINCE.

Mr. SCOTT. Mr. Chairman, may I inquire as to the inclusion in the record of my prepared statement?

Mr. FRIEDEL. Your prepared statement will be included in the record.

(Mr. Scott's statement referred to follows:)

STATEMENT OF NORMAN SCOTT, GENERAL TRAFFIC MANAGER OF MATSON NAVIGATION CO.

Mr. Chairman and members of the subcommittee, I am Norman Scott, general traffic manager of Matson Navigation Co., which provides ocean transportation service between Pacific, gulf, and Atlantic coast ports and Hawaii regulated by the Federal Maritime Board under the Shipping Act of 1916 and the Intercoastal Shipping Act of 1933. We appreciate this opportunity of appearing before your committee in support of H.R. 5978. This bill, with some clarifying language suggested by the Department of Commerce, would amend section 202(c) of the Interstate Commerce Act so as to make it clear that the Federal Maritime Board has exclusive jurisdiction over the economic regulation of terminal area transfer, collection, and delivery services performed by motor vehicle by or for all water carriers in the domestic noncontiguous trades regulated by the Board, if such terminal area services are incidental to the water transportation service regulated by the Board and are performed within terminal area limits which the Interstate Commerce Commission would have exclusive jurisdiction to prescribe. We understand that both the Federal Maritime Board, acting through the Department of Commerce, and the Interstate Commerce Commission, have advised you they do not object to the enactment of this bill, with some clarifying amendments. We also understand the Bureau of the Budget agrees with the views of the Secretary of Commerce that section 202(c) be amended as a means of fostering the expansion of container operations in the offshore domestic trades, and has recommended to your committee that the proposed legislation be enacted, with the clarifying amendments. The Comptroller General of the United States advised the Senate Committee on Commerce that the proposed changes to section 202(c) would promote uniformity in the treatment of interstate common carriers, and that he believed the changes to be in the public interest. On July 18, 1961, the Senate Committee on Commerce acted favorably on S. 1978, a companion bill to H.R. 5978.

This amendment to section 202(c) of the Interstate Commerce Act is in furtherance of sound congressional policy of long standing that Federal statutes and regulatory principles must keep pace with important developments in transportation services. Many years ago before it regulated motor and water carriers, the Interstate Commerce Commission recognized the right of line-haul rail carriers to perform pickup and delivery service within appropriate terminal areas. After motor carriers became regulated under part II, Congress enacted section 202(c), giving statutory recognition to the principle that rail and water carriers subject to the Interstate Commerce Act could continue to provide terminal area service with motor vehicles, subject to economic regulation under part I or part III of the act as a component of their basic rail or water services, rather than under part II as motor vehicle operation. In 1942 when regulation of freight forwarders was added under part IV of the act, section 202(c) was amended so that the freight forwarders' incidental terminal area motor vehicle transfer, collection, and delivery services would be subject to economic regulation under part IV as a component of the freight forwarder service, rather than under part II as motor vehicle operation.

When the previous amendments to section 202(c) were effected, ocean transportation of freight to and from Alaska, Hawaii, Puerto Rico, and Guam was generally limited to a dock-to-dock service. The development of integrated container services represents a major technological advance in transportation for

these offshore areas which demands off-dock receipt and delivery of freight to achieve its maximum efficiencies.

The proposed amendment to section 202(c) eliminates uncertainty as to what agency shall regulate terminal area services by motor vehicle incidental to water transportation in the domestic offshore trades. For many years the Federal Maritime Board has accepted tariffs naming single factor rates in the Alaska, Hawaii, and Puerto Rico trades, covering both water transportation and incidental pickup and delivery services within terminal areas. The Board has regulated such rates under the Shipping Act of 1916 and Intercoastal Shipping Act of 1933, applying essentially the same type of regulation as the Interstate Commerce Commission exercises over similar rates subject to the Interstate Commerce Act.

Some doubt was cast on this procedure in 1958 when the Interstate Commerce Commission stated in *Consolidated Freightways, Inc., Extension—Seattle*, reported at 34 M.C.C. 593, that the provisions of section 202(c) of the act do not apply to pickup and delivery services performed by motor vehicle wholly within the Seattle, Wash., commercial zone, incidental to continuous through movement by water between Seattle and Alaska regulated by the Federal Maritime Board, because such water transportation is not subject to the Interstate Commerce Act. While the issue was not contested there, the terminal area pickup and delivery services in the Alaskan trade were considered to be subject to regulation by the Interstate Commerce Commission under part II of the act. The Commission recognized that its decision was highly technical and probably undesirable from a regulatory standpoint. It commented that the remedy appeared to lie in additional legislation. If it is correct, that decision presents a serious operating and regulatory problem for other domestic noncontiguous trades. However, if H.R. 5978 is enacted, it provides the remedy.

Matson Navigation Co.'s cargo container service between California and Hawaii, instituted in 1958 and greatly expanded since that time to meet shippers' demands, includes incidental transfer, collection, and delivery service within its terminal areas, under single factor rates filed with and regulated by the Federal Maritime Board. But Matson's right to provide this service under such rates has been challenged by certain motor carriers in proceedings which are pending before both the Federal Maritime Board and the Interstate Commerce Commission. They contend that in the absence of specific provisions in section 202(c), a water carrier serving the domestic noncontiguous trades has no right to provide terminal area services by motor vehicle operated by it or its agents under single factor rates filed with the Federal Maritime Board. If their contention is sustained and section 202(c) is not amended, container service in the domestic noncontiguous trades may be reduced to pier-to-pier movement, at much higher total transportation cost to shippers, consignees, and consumers.

This amendment to section 202(c) is necessary for the following reasons:

1. Cargo container service effects important reductions in transportation costs by eliminating multiple cargo handling, reducing the time required to load and discharge the ship, and minimizing the exposure of the cargo to loss, damage, and pilferage.

2. Maximum savings in container service transportation costs can be realized and passed on to shippers, consignees and consumers only by having terminal area handling of the container traffic conducted by a single agency of the linehaul carrier. The principal reasons why this is true are:

- (a) Permits maximum equipment utilization.
- (b) Develops operational flexibility.
- (c) Minimizes one-way, deadhead hauls by draymen.
- (d) Facilitates coordination of vessel stability requirements.
- (e) Permits optimum stowage of cargo in containers.
- (f) Pinpoints responsibility for loss or damage to cargo and equipment.
- (g) Provides readily available trained personnel for commodities which require special skills.
- (h) Assures compliance with Coast Guard regulations.

3. For the reasons just enumerated, the savings in transportation costs which Matson has achieved cannot be maintained for the benefit of shippers and consignees unless its right to continue the use of single drayage agents is made clear by amendment of section 202(c). The use of a selected drayage agent in each terminal area is now permitted under section 202(c) for rail and water carriers and freight forwarders regulated by the Interstate Commerce Commission. It should not be denied to water carriers in the domestic noncontiguous

trades regulated by the Federal Maritime Board. Indeed, we believe the exemption is more urgently needed for such water carriers for their offshore domestic container services than for those classes of carriers which presently enjoy the exemption.

4. If section 202(c) is not amended, shippers, consignees, and consumers will lose a large part, if not all, of the 13 to 31 percent savings in transportation costs which have already been passed on to them under single factor rates covering both port to port transportation and incidental terminal area services provided by selected drayman.

With your permission I am submitting for the record a memorandum in support of the amendment to section 202(c) which contains a more detailed description of Matson's container service and the closely integrated functions of the drayage agent in performing terminal area services. Attached to it are photographs of the equipment used in the container service, a compilation of some of the transportation cost reductions resulting from the container service originating in terminal areas, and 108 statements of people who want to continue using container transportation and the incidental terminal area services. I will be happy to answer any questions you may have about our service and the need for amending section 202(c).

I respectfully urge that the committee approve the proposed amendment to section 202(c) of the Interstate Commerce Act.

Mr. FRIEDEL. Out next witness is Mr. Dan R. Schwartz, Motor Carriers Lawyers Association.

STATEMENT OF DAN R. SCHWARTZ, MOTOR CARRIERS LAWYERS ASSOCIATION, DETROIT, MICH.

Mr. SCHWARTZ. Mr. Chairman and gentlemen of the committee, I wish to thank you for the opportunity of appearing here today to express views on the legislation you are considering.

Mr. name is Dan R. Schwartz; my office and mailing address is 1730 Lynch Building, Jacksonville 2, Fla. I have practiced law at Jacksonville for 30 years continuously except for a 3½-year period in 1942-45. I have specialized in representing motor carriers before State regulatory bodies since 1934 and before the Interstate Commerce Commission since the passage of part II of the Interstate Commerce Act of 1935. Since 1935, I have devoted virtually all of my time to motor carrier work.

2. I have been designated by the president of the Motor Carriers Lawyers Association, herein referred to as the association, as a specially appointed member of the association's legislative committee and have been authorized and directed by him and by the chairman of the legislative committee to appear and testify, giving the association's views on the proposed legislation specified in the caption hereof. This directive stems from the resolution adopted by the association at its annual conference in Dallas, Tex., on April 14, 1961.

3. The Motor Carriers Lawyers Association, organized in 1941, is composed of about 370 lawyers throughout the United States who, as do I, specialize in motor carrier representation before Federal and State regulatory agencies. Its current officers are: George S. Dixon, president, 2150 Guardian Building, Detroit 2, Mich.; Wentworth E. Griffin, first vice president, 1012 Baltimore Building, Kansas City Mo.; Howell Ellis, second vice president and chairman, legislative committee, 1210 Fidelity Building, 111 Monument Circle, Indianapolis, Ind.; Edwin C. Reminger, third vice president, 905 The Leader Building, Cleveland, Ohio; Ewell H. Muse, Jr., fourth vice president, 415 Perry Brooks Building, Austin, Tex.; Phineas Stevens, treasurer,

700 Petroleum Building, Jackson, Miss.; Beverly S. Simms, secretary, 512 Barr Building, 910 17th Street NW., Washington, D.C.

At this point, if it please the committee, in view of the statement by Mr. Jarman with respect to the amendment proposed by Commissioner Murphy, I will depart from my written statement and summarize the position in just a few sentences.

Mr. FRIEDEL. Your complete text will be inserted in the record. (Mr. Schwartz' statement referred to follows:)

4. The association respectfully recommends that the proposed legislation be enacted providing it is made clear that the Interstate Commerce Commission has the same power and authority to determine and fix the limits of the terminal areas of the common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, as it presently has with respect to the carriers regulated by it under the Interstate Commerce Act. The reasons for this position are set forth below.

5. For brevity, I shall hereinafter refer to the Interstate Commerce Commission as the Commission, to the Interstate Commerce Act as the act, to the common carriers by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, as the non-ICC water carriers, to the carriers regulated under the act as ICC carriers, and to the Federal Maritime Board as the Maritime Board.

6(a). The association recommends enactment of the legislation because it believes it only proper and fair that the motor carrier operations of, or operations being conducted by others as agents or under contractual arrangements with, non-ICC water carriers in terminal areas should be given exactly the same exemption from economic regulation as is presently given by section 202(c) to the terminal area motor carrier operations of ICC carriers. By economic regulation is meant the requirements of the act respecting the licensing of operations by the issuance of certificates of public convenience and necessity or permits and the controlling of rates, fares, and charges of the carriers. Presently the terminal area motor carrier operations of the non-ICC water carriers, or of their agents or others acting under contract or in concert with them, are subject to economic regulation by the Commission.

(b) An examination of the proposed legislation at once raises the question which agency, if any, shall determine and fix the limits of terminal areas for the non-ICC water carriers? It is possible that the result of the present proposal may be either a jurisdictional vacuum or, what will be almost as bad, a jurisdictional conflict between the Commission and the Maritime Board.

(c) It is proposed to deprive the Commission of the power to regulate, except with respect to safety, the terminal area motor carrier operations of non-ICC water carriers. The Commission, of course, has no power to regulate the non-ICC water carriers in any other respect and since there appears to be no specific mention of motor carrier operations in the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, the non-ICC water carriers would be in a position to claim that neither the Commission or the Maritime Board has authority to prescribe terminal area limits and each such carrier could fix its own terminal areas as it chooses. Based upon actual experience, I feel that the water carriers would conduct substantial over-the-road motor carrier operations under the guise of terminal area operations. My experience derives from the position taken by a carrier then known as Pan-Atlantic Steamship Co. which, claiming the right to fix its own terminal areas in the State of Florida, conducted motor carrier operations to inland points as far distant as 75 miles from the port it served until the Commission prescribed proper terminal area limits and put an end to its long-distance operations; see *Central Truck Lines, Inc. v. Pan-Atlantic Steamship Corp.*, No. MC-C 2163, 82 M.C.C. 395. Fortunately, this carrier was and is subject to regulation of the Commission under part III of the act so that there was no question of the Commission's power and authority to determine and prescribe the terminal area limits in which uncertificated motor carrier operations could be conducted by Pan-Atlantic Steamship Co. under section 202(c) of the act.

(d) Assuming that the Maritime Board which does have some control over the non-ICC water carriers, can find legislative warrant to determine and prescribe terminal area limits for such carriers, it is not certain that the Board will use the same criteria or arrive at the same result as would the Commission. It is

not expected that two separate and uncoordinated agencies dealing with the subject of terminal areas can achieve readily, if at all, a unified policy of administration, procedure, and treatment. It is very possible that the Maritime Board would fix terminal areas considerably in excess of those allowed by the Commission, so that the non-ICC water carriers will conduct for-hire motor carrier operations free of economic regulation in competition with certificated motor carriers subject to economic regulation by the Commission. This competition, in my opinion, will have an adverse effect upon the regulated motor carriers and be contrary to the national transportation policy (Transportation Act, 1940; preamble to the Interstate Commerce Act, title 49 USCA).

7. It is therefore respectfully suggested that the proposed legislation be amended by adding thereto a provision in substance and tenor, as follows:

"The Commission shall have exclusive jurisdiction to determine and fix the of terminal areas under this section."

Respectfully submitted.

DAN R. SCHWARTZ.

Mr. SCHWARTZ. Yes, sir; I ask that my statement, however, go into the record and any questions with respect to the statement I will answer now or later, as the committee may desire.

The position of the Motor Carriers Lawyers Association briefly is that stated by Commissioner Murphy as far as the Commission is concerned.

I was the attorney for Central Truck Lines and other motor carriers in the case of *Central Truck Lines v. Pan-Atlantic Steamship Company*, which Commissioner Murphy's statement cites and so does mine, and we have had experience with water carriers in the matter of fixing terminal areas. We, therefore, recommend to the committee that H.R. 5978 be passed with the amendment suggested by Commissioner Murphy.

I would like to point out to the committee that all of these bills are not quite exactly the same. H.R. 7544 does contain in a subparagraph (3) the statement which is in better wording than that suggested by me in my statement:

(3) The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purpose of this section 202(c).

Mr. Chairman, that concludes my statement in chief of the bill.

Mr. FRIEDEL. Thank you, Mr. Schwartz.

Mr. Jarman?

Mr. JARMAN. I thank Mr. Schwartz for his support of the bill and assure him that the amendment that I will offer when the subcommittee goes into executive session will be identical with paragraph (3) of H.R. 7544.

Mr. SCHWARTZ. Thank you very kindly, sir.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Collier.

Mr. COLLIER. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. SCHWARTZ. Thank you, sir.

Mr. FRIEDEL. Our next witness will be Mr. Carl Wheeler of the Sea-Land Co.

Mr. Wheeler, if you do not want to read your prepared statement, we will have it inserted in the record and you may highlight it.

STATEMENT OF CARL WHEELER, SEA-LAND CO., NEWARK, N.J.

Mr. WHEELER. Thank you, Mr. Chairman.

My name is Carl Wheeler, I am special advisor, regulatory affairs, for the Puerto Rican division of Sea-Land Service, Inc.

In the interest of conserving the time of this committee, with the permission of the chairman, we will not read our prepared statement into the record. However, we do request that it be made a part of the record. We would like, however, to offer two or three comments concerning H.R. 5978.

It is our understanding, and Mr. Jarman mentioned it briefly this morning, that the Commerce Department has recommended an amendment which will clarify the definition of interstate commerce in accordance with a definition as appears in section 1 of the Shipping Act, 1916.

With that amendment, Sea-Land endorses the legislation, and we urge favorable congressional action.

Mr. FRIEDEL. Does that also include the other amendment recommended by Mr. Murphy?

Mr. WHEELER. Yes, sir; we do recommend that as well.

Mr. FRIEDEL. Thank you.

Mr. Jarman?

Mr. JARMAN. I thank Mr. Wheeler for his support of the bill.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Collier?

Mr. COLLIER. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. WHEELER. Thank you very much.

(Mr. Wheeler's statement referred to follows:)

STATEMENT BY CARL H. WHEELER, SPECIAL ADVISER, REGULATORY AFFAIRS,
SEA-LAND SERVICE, INC.

We appreciate the opportunity to appear before this committee today to discuss H.R. 5978 and similar bills to amend section 202(c) of the Interstate Commerce Act of 1940. I am here on behalf of Sea-Land Service, Inc., Puerto Rican Division. We maintain regular biweekly sailings from Port Newark, N.J., to the principal ports in Puerto Rico.

During the last 5 or 6 years this country's merchant marine has achieved significant improvements in the methods of carrying cargo in ocean transportation. Probably the most important of these recent changes has been in the field of containerization, which permits the movement of goods in carrier-owned containers thereby minimizing cargo handling costs, transmit time, and claims for loss and/or damage to merchandise.

Sea-Land Service, Inc., while perhaps not the originator, has pioneered in containerization, and was the first company to utilize a standard-size container in the mass common carriage of goods by water. Today Sea-Land operates a total of six full container ships, of which three are employed in our Puerto Rican service. These vessels have the capacity to lift 23,712 containers annually in each direction. Our service is conducted pursuant to the Shipping Act, 1916, as amended, the Intercoastal Shipping Act of 1933, as amended, and those other statutes governing the common carriage of goods by water in the offshore domestic noncontiguous trade.

Shippers and consignees can only achieve the maximum benefits of containerization when containers are loaded and/or unloaded at the actual ultimate origin and destination of the traffic. When this cannot be accomplished, goods must not only be multihandled on the way to shipside, but then again handled and loaded into containers thereby defeating many of the advantages of containerization. Rehandling of goods in itself substantially increases the possibility of loss

or damage, causes delays in transit, not to mention the added handling costs which are experienced by the carrier and must, in turn, be passed on to shippers and consignees in the ocean carrier's freight rate. Therefore, in lieu of shippers and consignees deriving the maximum economic and operational advantages from containerization, the service becomes nothing more than a modified conventional operation when the traffic must be handled either into or out of container equipment at carrier's pier facility.

We have been quite successful during the last few years in reaching the actual origin or destination of much of our traffic. This has been accomplished by developing interchange arrangements with ICC certificated motor carriers who utilize our container equipment in lieu of their own trailers.

However, we have been unable to achieve an optimum service from either the shippers' or carriers' standpoint since there is still a relatively large percentage of multihandled cargo moving across our terminal.

You may ask why we have not been successful in reaching the origin and/or destination of more of our traffic. The answer to this involves several factors. Both the water carrier and motor carrier achieve relatively poor equipment utilization under interchange arrangements where the water carrier is dealing with 30 or 40 different motor carriers. For instance, the water carrier may make container equipment available to two different motor carriers, both of which are going to pick up a 20,000-pound shipment from two different shippers located only one block apart. In lieu of a single trailer which has the capacity to lift both shipments, two pieces of equipment must be dispatched. The water carrier does not achieve optimum loading of his container equipment and the motor carrier is faced with the expense of deadheading tractor equipment to pick up our container equipment. Since the cost of equipment and service are factors which are included in the level of rates, it is in the public interest for the water carrier to minimize equipment costs by utilizing a minimum number of containers, and the motor carrier must minimize expenses by achieving maximum utilization of his tractors and manpower by eliminating deadhead trips.

Where container equipment is moved by interchange involving the use of a substantial number of motor carriers, none of these carriers achieve a sufficient volume of business in order to effect sufficient economies to produce an adequate rate structure. As a result, many shippers today find it will be no more expensive, and in some instances less expensive, to make their own trucking arrangements and to tender their goods to the water carrier at our pier facility.

Enactment of this proposed amendment of section 202(c) of the Interstate Commerce Act will correct some of the aforementioned problems. This proposed legislation will permit a water carrier, such as Sea-Land who is equipped to do so, to perform pickup and/or delivery services within prescribed terminal zones, and thereby render a complete transportation service to and from those shippers and consignees located in such areas. By performing the pickup and/or delivery of goods incidental to the line haul ocean transportation ourselves, we will be able to achieve maximum equipment utilization and the lowest possible cost for the performance of these services. Since we will be working against a fixed volume of traffic, we will be in a position to maintain a "pool" of container equipment at key locations thereby minimizing deadhead trips to obtain empty container equipment. We will be able to coordinate our pickups so as to achieve maximum utilization of our tractors and manpower. These factors will enable us to perform said terminal services at a substantially lower cost than would otherwise be possible.

As long as we receive a substantial quantity of traffic at our terminal, our rates must be predicated upon our cost of receiving, checking and loading this freight into our trailer equipment. With enactment of the proposed amendment to section 202(c), Sea-Land, by offering local pickup and delivery service incidental to the line haul ocean transportation, will be able to place these same goods into our container equipment at shipper's premises for that sum or possibly less than is currently paid by the shipper to merely transport his goods to our pier. In other words, we should be able to develop a tariff structure wherein the cost incidental to the transportation of the goods can be more accurately related to the services which are performed. Where goods move under a pickup service thereby eliminating the ocean carriers rehandling, a tariff structure can be developed wherein terminal costs are deleted from the ocean freight rate, thereby providing an optimum service at the lowest possible cost.

The advantages which can accrue to shippers and consignees have been demonstrated by Matson's operation under their westbound container freight tariff No. 14. The advantages are further demonstrated by our own domestic operations which are conducted pursuant to part III of the Interstate Commerce Act, and we offer and we do perform pickup and delivery service incidental to our line haul transportation under the present exemption in section 202(c).

We urge that this committee endorse prompt passage of H.R. 5978 and similar bills so that the citizens of Puerto Rico, Guam, Hawaii, and Alaska may enjoy those benefits which have accrued to shippers and consignees within the continental United States since passage of the Motor Carrier Act which included the original section 202(c) exemption in 1935. These bills do nothing more than that. Rail and water carriers conducting their operations pursuant to the Interstate Commerce Act have repeatedly shown the benefits of the present section 202(c) exemption, and it is our belief that those citizens of our non-contiguous States and territories should not be deprived of these same benefits.

Mr. FRIEDEL. Our next witness will be Mr. James Fort, counsel, public affairs, American Trucking Associations.

You may proceed, Mr. Fort.

**STATEMENT OF JAMES F. FORT, COUNSEL, PUBLIC AFFAIRS,
AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON,
D.C.**

Mr. FORT. Mr. Chairman and gentlemen of the subcommittee, may I say, first, that I do not have a prepared statement to give to you this morning, and I hope you will accept my apologies for that.

My name is James F. Fort. I am counsel, public affairs of the American Trucking Associations, with offices at 1616 P Street NW., Washington, D.C.

I think that most of the gentlemen of the committee know the formation of the American Trucking Associations, but for the record it is the national trade association of the trucking industry representing all forms of truck transportation, both private and for-hire.

My appearance today is in opposition to H.R. 5978 and the similar bills which are before the committee today. From previous testimony today, I am quite sure that the gentlemen of the committee are familiar with the status of the present exemptions which are granted to carriers under section 202(c) of the Interstate Commerce Act. There is, however, one aspect of the exemption which is sought by the advocates of the legislation which we feel should be emphasized.

Motor carriers, railroads, freight forwarders, express companies, all of whom presently enjoy the exemption, all of those carriers are subject to regulation by the ICC. We should like to emphasize that these underlying carriers, be they rail, express, motor, or what have you, when they use the motor carrier exemption granted them in 202(c) are governed by ICC regulations. Thus, when a railroad uses a motor carrier for pickup and delivery service within a terminal area, that pickup and delivery service is included in tariffs that are filed by the railroads with the ICC.

Under the bills that are before you today, the water carriers would be granted an exemption to use motor carriers, but the tariffs which they file to cover their motor carrier service would not be filed with the ICC. Instead the Federal Maritime Board would have jurisdiction over those tariffs. That, we feel, is a most important distinction. As the committee well knows, the trucking industry has been on record and has appeared before this committee many times in the

past years to urge the elimination or, at least, the curtailment of various exemptions which presently exist in the Interstate Commerce Act.

Now we are faced with a further exemption from regulation. This committee, your counterpart in the Senate, the executive branch, and many students of transportation have expressed serious concern in recent months over the decline of the regulated common carrier industry. This concern has not been limited to any mode of transportation. The committee knows that many studies have been conducted and many solutions have been proposed in the interest of creating a stronger common carrier system in the public interest and in the interest of national defense.

Almost without exception, those studies have urged the curtailment of existing exemptions. These exemptions include the agricultural exemption, the bulk commodity exemption, the private car exemption, and dozens of others. The intent and purpose of these multiple recommendations has been to bring about stability and strength to the common carrier system.

To further amend the act to provide for exemptions at this time can only further weaken the common carrier system. We see no need for this legislation. The water carriers who seek enactment of this bill have operated for many years without such an exemption.

As we see it, this bill would allow them to (1) use their own trucks in pickup and delivery service, subject, as I said a moment ago, to Federal Maritime Board jurisdiction, and (2) it would allow them to use noncertificated motor carriers for their pickup and delivery, again subject to only Federal Maritime jurisdiction.

We see no public need for this exemption and we see a continued erosion of existing carrier service should the bill be enacted. An important aspect of the concern which has been expressed over the decline of common carriage relates to the so-called area operation. These are the blatantly illegal or, on the other hand, the quasi-illegal or questionable operations of motor vehicles which have caused much concern to the ICC and to our industry in the past few years.

Much of the testimony which has been developed before the Senate Commerce Committee in recent hearings has laid the blame for these illegal operations at the foot of various exemptions which exist from the Interstate Commerce Act today and particularly from part II. The extension of this exemption to the water carriers might well bring about a further increase in illegal operations.

Mr. Chairman, the trucking industry opposes the enactment of this bill. We strongly urge that the committee take no action on it during this session of Congress. That would complete my statement.

Mr. FRIEDEL. Mr. Fort, am I correct in my interpretation of your statement that if this amendment that the Senate adopted is included you would be in favor of the bill?

Mr. FORT. No, sir, we would still oppose the bill. We certainly believe that the addition of that amendment would improve the bill, since it would give the ICC rather than the Federal Maritime Board the authority to limit a terminal area, but even with the inclusion of that amendment we would still oppose the bill at this time.

Mr. FRIEDEL. Mr. Jarman, any questions?

Mr. JARMAN. Mr. Fort, you referred to the ICC regulation of rates at the present time, and then to the change in jurisdiction under this bill to the Federal Maritime Board. It is true that if this bill becomes law, the Federal Maritime Board would regulate the rates of the water carriers operating under this legislation; would it not?

Mr. FORT. That is my understanding, sir.

Mr. JARMAN. Is there any basis for assuming that we would not get the same kind of fair regulation of rates through the Federal Maritime Board that we get through the ICC?

Mr. FORT. I certainly did not mean to infer that there would be unfair or improper regulation on the part of the Federal Maritime Board, but simply to point out to the committee that, as I said, the underlying carriers that presently enjoy this exemption, the motor carriers, the rail carriers, express, freight forwarders, are presently regulated by the ICC, so that when a railroad, for example, operates trucks in a terminal area, that operation is subject to the same jurisdiction, that is, the ICC's jurisdiction, as the underlying carrier.

If this bill passes, the water carriers who would be brought under the exemption would be operating trucks under that same exemption, but they would not be subject to ICC regulation.

Mr. JARMAN. Would you agree that the bill under discussion would help achieve more uniformity in transportation?

Mr. FORT. There is no question but what it would achieve statutory uniformity and ATA favors uniformity, but we favor a fair, equitable type of uniformity. We do not believe this bill would give us that.

Mr. JARMAN. However, you would agree that if the bill passes, the legislation would give water carriers not subject to part II of the Interstate Commerce Act the same identical pickup and delivery service exemption provisions that are afforded part I (rail carriers), part II (water carriers), and part IV (freight forwarders)?

Mr. FORT. Yes.

Mr. JARMAN. Based on your own understanding of the facts involved, will you agree that the exemption that is proposed in the bills before us will mean lower shipping costs to the shippers?

Mr. FORT. I have no knowledge on which to base an answer to that, Mr. Jarman.

Mr. JARMAN. Have you given any study to the containerization program and the manner in which it is being handled?

Mr. FORT. Yes, the associations have given a great deal of study to it.

Mr. JARMAN. Do you know, if that is within your own knowledge, anything about comparative costs of containerization transportation with the old system of handling shipments?

Mr. FORT. I am afraid I personally do not, sir. I would only have the vaguest of information about that personally.

Mr. JARMAN. I would like to urge that you give consideration to that because it seems to me that the savings involved by the passage of this bill underlies the public interest involved. Comparative costs indicate that savings ranging from 13 percent to 31 percent are being achieved and can be achieved under this type of transportation program. I think that is a strong argument that this bill definitely is in the field of improved transportation facilities and very definitely in the public interest.

Mr. FORT. I would reply to that this way, sir.

The Congress, basically, is going to have to come to grips one of these days, as is the transportation industry, with a question of exactly what is the public interest in transportation. The transportation industry as such is not doing too well overall—railroads, airlines, motor carriers. It makes no difference to whom you may speak.

If the Congress decides that, yes, we really do want and need a strong common carrier transportation system, then the Congress is also going to have to decide at some point, "We, the Congress, are going to have to start protecting them more than we are now protecting them. We are going to have to take back some of the exemptions that we have already given. We are going to have to give them more protections in return for the service which we require of them in the public interest."

Our industry is here to serve the public. If the Congress decides that we want to give an exemption here, give an exemption there, every one of those is taking something away from the common carrier, regulated industry.

Now, this may be in the public interest because, let us say, it will result in lower rates. On the other hand, the public interest is very strong in the preservation of the common carrier system, as a part of the emotional defense effort and as an important segment of the economy of this country.

These two things must be balanced by the committee. They must be balanced by the transportation industry. I did not mean, Mr. Jarman, to make a speech on this point in reply to your comment.

Mr. JARMAN. My own reaction is that I think there is a lot of truth in what you say as to the public interest. However, the decision should be that if the public interest demands greater financial support of different modes of transportation, then that support should come from the entire country.

I would question the line of reasoning that the public interest would justify penalizing a shipper by not providing for him by legislation, or regulation, or whatever, the most economical business operation possible. If that business operation and the economy of it makes it tougher for a particular line of transportation to survive, then I would agree that the public interest may well dictate that the government representing all the public, might be justified in allowing a subsidy. I certainly do not think that such a subsidy should be footed by the shipping public.

Mr. FORT. This is a decision which you just must make. If the public interest lies, on the one hand, in giving the shipper the lowest possible transportation rate, but at the same time by so doing you are weakening your own creature, the regulated transportation industry, if this is the decision that you gentlemen wish to make, then that is your decision.

We would obviously hope it would be the other way.

Mr. JARMAN. Mr. Chairman, the only other comment I would make is that, as he has done a number of times in the past before this committee, Mr. Fort has made an excellent presentation of his own position on the suggested legislation. I would hope that the amendment that the Interstate Commerce Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the

various carriers for the purposes of subsection (c) of this section, will be considered by you and your organization as sufficient protection in this overall transportation field. I frankly had hoped that that would be the line of your testimony this morning.

Mr. FORT. I wish it had been, sir. The industry does feel that the addition of that amendment would be most helpful and certainly believes that if the committee should decide to act upon the bill it should be included.

Mr. JARMAN. Thank you.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Collier?

Mr. COLLIER. One question, Mr. Chairman.

I want to study this section of the act a little more closely. At the present time, as I understand it, there is no regulation of rates of motor carriers under any circumstances by the Maritime Board; is that correct?

Mr. FORT. No, sir; none at all at the present time.

Mr. COLLIER. This legislation, if it were enacted, would then in sum and substance, as I understand it, place the rate on the shipping of any commodity, whether it is shipped by water and subsequently the completion of the shipment to its destination by a motor carrier or all by water, all under the jurisdiction of the Maritime Board; is that right?

Mr. FORT. That is my understanding, sir. The rates for the water carriers which would be filed with the Maritime Board would include the charges for pickup and delivery service, let us say, and therefore, the operation of the trucks and the rates of those trucks would be under the tariffs filed with the FMB.

Mr. COLLIER. There has been repeated reference to terminal areas, and I believe I understand what a terminal area is, but just how would this be defined, in your opinion? I mean a terminal area would be exactly what, as far as the legislative definition is concerned?

Mr. FORT. The ICC has, insofar as motor carriers and as freight forwarders are concerned, already defined specifically what is a terminal area under this exemption. They have not so defined a terminal area as to water carriers or railroads. A terminal area in practical operation is just what it indicates. It may be a city. It may be somewhat larger than a city. It may be a county.

Let us take Arlington County across the river here. If a motor carrier or a railroad has a terminal in Arlington County, the terminal area might be just the county. It might include a much larger area. These are specifics which have been prescribed by the ICC in some instances.

Mr. COLLIER. You mentioned the fact that this would probably increase the volume of the so-called gray area operations in the motor carrier industry which all of us are concerned with. How, in effect, would this increase the operation? Would this bring into the motor carrier industry more of the so-called gray area operators, or would it simply increase the volume of those presently operating?

Mr. FORT. I do not mean to indicate, sir, that the operation of trucks under this exemption per se will be gray area operations. Should this bill pass the operation of the motor carriers, or water carriers would

be perfectly legal. What I am saying is that most of the gray area operations with which we are concerned, and with which the ICC, and the Senate Commerce Committee, and many others are concerned today, arise under the exemptions. The committee is intimately familiar, of course, with the agricultural exemption which allows a farmer to carry his own goods without regulation or any for-hire carrier to carry agricultural products from A to B without any regulation whatsoever. If this bill were to pass, we would have another exemption and every time you get another exemption you have a potential for more gray area operations.

There is nothing specific that I could point to and say if this bill passes this is going to be an illegal operation, but the potential is there and this is the thing which disturbs us.

Mr. COLLIER. One other question, if I might direct this to my colleague, Mr. Chairman.

Are there any figures available or any projections made that would indicate that passage of this amendment to section 202 would, in fact, reduce the cost to the shipper?

Mr. JARMAN. I would also like to refer my colleague to appendix B of the large exhibit furnished earlier in the hearing. It sets out a number of instances of comparative transportation costs on representative commodities. I will not go through them, but I will refer you to the first one which deals with bakery goods. It spells out, first, the different charges under the older system of shipping, coming out with a total of \$939.11. Then you will notice that under tariff No. 14, item 220, for the same shipment, the total cost would be \$713.77. The saving to the shipper under the containerization program is \$225.34, or 31.57 percent. There are a number of other instances of savings that would be achieved under the kind of transportation system that would be legalized by the passage of the bills before us.

Mr. COLLIER. I apologized for asking that question. I arrived late and did not have this document in front of me.

That is all, Mr. Chairman.

Mr. FRIEDEL. I would like to repeat Mr. Murphy's statement in part here. He says:

As the law now reads the Commission has the power to determine the limits of terminal areas of carriers subject to parts I, II, III, and IV of the Interstate Commerce Act. For example, see *Central Truck Lines, Inc., et al. v. Pan Atlantic Steamship Corporation*, 82 M.C.C. 395, in which the partial exemption was discussed insofar as it related to a water carrier subject to Interstate Commerce Commission jurisdiction and, in effect, fixed the terminal areas of the defendant carrier at Tampa, Jacksonville, and Miami, Fla. Accordingly, if H.R. 5978 were to be enacted without a clarifying provision, some doubt may arise as to whether the Commission would have jurisdiction to define the terminal areas of water carriers subject to the shipping acts.

They proposed this amendment (3):

The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purpose of subsection (c) of this section.

I do not know whether you are familiar with that.

Mr. FORT. Yes, I am familiar with the view of the ICC and with the amendment.

Mr. COLLIER. Thank you very much, Mr. Fort.

Mr. FORT. Thank you.

(The following letter was later received from Mr. Fort:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., July 24, 1961.

HON. JOHN BELL WILLIAMS,
House of Representatives, Washington, D.C.

DEAR MR. WILLIAMS: This letter relates to H.R. 5978 and related bills which were the subject of a hearing on July 20, 1961.

Following my appearance before the committee I explained that the American Trucking Associations, Inc., was attempting to work out an amendment to the subject bill which would overcome our objections. Such an amendment has been drafted and submitted to the proponents of the bill. As of this time we have not heard their final reaction to this language.

Our amendment would add a proviso at the end of the amendment (agreed to by all) giving the Interstate Commerce Commission jurisdiction to determine the scope of exempt terminal areas. The language suggested is as follows:

"Provided, however, That any such terminal area of any common carrier by water in interstate commerce subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, shall be no greater than the exempt commercial zone determined and prescribed under section 203(b)(8) for motor carriers subject to this part embracing the water terminus of any such common carrier by water."

This amendment would make the exemption for motor carriers and the water carrier proponents of this legislation identical.

With the inclusion of the proposed amendment, the American Trucking Associations, Inc., would have no objection to the bill. Without the amendment, however, we have no choice but to vigorously oppose the bill.

A further explanation, together with background information, is set forth in the attached paper.

It is respectfully requested that this letter and the attachment be made a part of the record.

Sincerely,

JAMES F. FORT, *Counsel, Public Affairs.*

EXPLANATION OF PROPOSED AMENDMENT TO H.R. 5978

As the committee knows, all forms of surface transportation except the deep-water carrier proponents of this bill have a terminal area exemption for the operation of trucks. The exemption is granted to the trucking industry and, in effect, grants to us the right to use noncertificated local motor carriers to perform pickup and delivery service for our account in terminal areas.

For motor common carriers this terminal area has been specifically set forth by the Interstate Commerce Commission on a set geographic basis. In other words, we may only operate trucks within a carefully defined limit. These limits are, generally speaking, the same as the commercial zone for motor carriers which is described in section 203(b)(8) of the act.

In the instant situation we are confronted with a peculiar situation. The city of Los Angeles has two exempt commercial zones specifically prescribed for the motor carrier industry. One encompasses the harbor area and the other, the city area. Thus a motor common carrier having authority from the ICC to operate to Los Angeles has no authority to serve the harbor area outside the city limits as this is not within the Los Angeles commercial zone and thus not within the terminal area for a motor carrier. If such a carrier has freight destined for the harbor zone he must make arrangements with another certificated carrier to carry the freight. This is a standard arrangement exactly like the interchange of rail freight.

Should this hypothetical motor carrier make such an arrangement, then he would file tariffs covering this procedure with the ICC and they would be subject to regulation by that agency.

Today the steamship line operating in interstate commerce into Los Angeles has no exemption to operate trucks anywhere. The Matson Navigation Co., however, has published a tariff which includes pickup and delivery anywhere in what they describe as a "terminal area." This terminal area includes both commercial zones designated by the ICC for motor carriers. Thus the steamship line is seeking, not uniformity, but an exemption greater than that afforded to motor carriers.

Not only is Matson seeking a greater exemption but it is also seeking to furnish motor carrier service in interstate commerce that will be subject to the jurisdiction of the Federal Maritime Board. Enactment of H.R. 5978 is simply saying to the ICC, "Here is motor carrier service in interstate commerce, but we don't think this is something that you need to be concerned about so we will give jurisdiction here to the Federal Maritime Board instead." While it is not our intention to be critical of the Federal Maritime Board, it is our view that that agency is not properly equipped to regulate motor carrier service. The Federal Maritime Board is neither familiar with motor carrier rates nor with the competitive situation in the motor common carrier field.

The motor carrier industry has been concerned about this situation for several years and suits are now pending before the ICC and the FMB which challenge the present Matson practices in the Los Angeles area. There is precedent for the proceedings. In *Consolidated Freightways, Inc.-Extension-Seattle*, 74 M.C.C. 593, 595, the ICC said: "Thus local pickup and delivery service performed for any line-haul carriers subject to the act are exempted from regulation, but such services performed for line-haul carriers not subject to the act are still not exempt regardless of their limited scope but, rather, are subject to regulation under part II."

It should be obvious from the foregoing that the Matson Co. is seeking by this legislation to legalize a practice which is subject to very considerable question at the moment.

If this be the reason, then what are the alleged gains which necessitate passage of this bill?

Much was said at the hearing about the benefits of the container operation in which the steamship companies are engaged. Cheaper rates and better service were held out to be the answer.

It is the position of the American Trucking Associations, Inc., that Matson is seeking by this bill to preserve a monopolistic practice which is not in the public interest. It is not unlike the position of the railroads in their fight to gain the right to control and operate independent trucklines. Their argument has historically been that removal of present safeguards will mean cheaper and better transportation. Congress has always wisely rejected this on the grounds that the alleged benefits are far outweighed by the threat of a transportation monopoly in railroad hands.

Our additional amendment, set forth above, has but one goal—to place regulation of motor carriage for these steamship companies when performed outside of commercial zones under the ICC. We do not say that Matson must give up its present practices but we do say that their regulation—insofar as motor carrier service between commercial zones is concerned—should be under the ICC.

Our amendment would create complete equality between the motor carriers and the steamship companies. Both would, under our proposal, have exactly the same exemption.

The amendment has as its intent and purpose a directive to the ICC that there shall be no motor carrier service in interstate commerce between commercial zones without ICC control. We would urge that you direct the ICC not to abandon to the FMB its statutory function of regulating for-hire motor carriage regardless of for whom it is performed.

The American Trucking Associations, Inc., still feels that there should be no further exemptions from the act. We certainly see no need for this amendment to apply to operations such as those from Puerto Rico which have been conducted without such an exemption for many years. The committee should understand that the motor common carrier industry stands ready to fulfill its common carrier obligation to carry freight for steamship companies or any other shipper. We see nothing to be gained by this legislation except a further deterioration of the motor common carrier industry.

However, with the amendment proposed, the bill would not be opposed.

Mr. FRIEDEL. We have one more witness and I understand a brief statement. We will call Mr. Maloney, representing the AAR.

**STATEMENT OF WILLIAM M. MALONEY, GENERAL SOLICITOR,
ASSOCIATION OF AMERICAN RAILROADS**

Mr. MALONEY. Mr. Chairman, my name is William M. Maloney. I am general solicitor for the Association of American Railroads.

You have already mentioned the letter that Mr. Gregory S. Prince, executive vice president and general counsel of the association, wrote to the chairman of the subcommittee.

The position of the railroad industry is stated in that letter. I have listened very carefully to the testimony of Commissioner Murphy for the Interstate Commerce Commission and it seems to me that the position set forth in our letter is almost identical with the position taken by the Interstate Commerce Commission, that with this amendment giving the Interstate Commerce Commission exclusive jurisdiction to prescribe and define terminal areas, the railroad industry has no objection to these bills. I have heard some mention here this morning, however, of language proposed by the Department of Commerce.

I wish to make clear that our letter does not concern itself in any way with that proposal by the Department of Commerce because I have not seen the proposal. I have no idea really, of what it is or what it would do, so I would ask the committee to keep that in mind in considering the letter.

I am also a little bit perturbed about the implication that might be derived from Mr. Fort's statement that this proposed legislation, even if amended as the Interstate Commerce Commission and the railroads suggest that it be amended, would in effect constitute a broadening of exemptions. I am sure that this committee is aware of the fact that the railroads are very much opposed to the broad exemptions that exist in the act today, and that we have been before the members of this committee and the members of the Senate committee in an effort to repeal many, if not all, of those exemptions, so I would not have any implication arise from our position on this bill that we are in favor of exemptions.

On the contrary, I would like to explain to the committee that in our reasoning in reaching the conclusion that we did as to our position on this bill, we do not consider that section 202(c) is really an exemption. It is referred to even in testimony here today as a partial exemption. In actuality, what we believe it to be is a question of whether you are going to have piecemeal regulation of railroad operations, which include motor carrier operations within terminal areas, and regulate one part of it under part I and one part of it under part II of the Interstate Commerce Act, and Congress decided that they would not do that and they would regulate the entire railroad setup, the line haul and the terminal operation, under part I. We consider that our terminal operations under part I do not lie in the field of exempt transportation and that really what we have here is in substance the same question for the water carrier subject to the Shipping Act and that, if we are correct in our interpretation of this bill, their terminal operations would be regulated under the Shipping Act.

I believe that is all, Mr. Chairman.

Mr. FRIEDEL. Here is a letter we have from the Secretary of Commerce containing the amendment reported by Mr. Murphy:

The Commission shall have exclusive jurisdiction to determine and prescribe limits of terminal areas of the various carriers for the purpose of this section 202(c).

It also has three other amendments:

(1) By inserting after the word "commerce" on line 7, page 2, the words "as defined in the Shipping Act, 1916."

They want that included.

(2) By inserting after the word "carrier" on line 2, page 3, the words "by water";

(3) By inserting after the word "commerce" on line 2, page 3, the words "as defined in the Shipping Act, 1916, and."

This will be inserted in the record.

(The letter of the Secretary of Commerce was inserted with the other reports and appears on p. 2.)

Mr. FRIEDEL. Do you understand those amendments?

Mr. MALONEY. Mr. Chairman, I understand the language of the amendments. I certainly have not had time to think them through and see whether they represent any substantial change from the concept of the original bill.

Mr. FRIEDEL. We will keep the record open for a couple of days and if you have any objections, let us know, and if you concur with them, let us know.

Is Mr. Fort here yet?

Mr. FORT. Yes, sir.

Mr. FRIEDEL. Do you have any proposed amendments?

Mr. FORT. Not at this moment, sir.

Mr. FRIEDEL. If you do, the record will be open for a couple of days and maybe you can get together and decide something so we all will be happy.

Mr. FORT. That is possible.

Mr. FRIEDEL. Mr. Jarman?

Mr. JARMAN. Our understanding is that these amendments that we are now discussing are simply clarifying amendments and I believe you will so find them to be on further study.

Mr. CHAIRMAN. I think Mr. Maloney has made a contribution to the record in bringing out the fact that we talk about exemptions, we might give the impression that we mean total exemption from ICC jurisdiction and regulation. As you well stated, it simply means exemption from a certain portion of the act. Jurisdiction and regulation is retained under another section of the ICC Act. The jurisdiction and regulation of the water carriers under the proposed legislation would be similarly retained in the Federal Maritime Board. There is no real exemption from regulation of any part of the transportation program that we have under discussion.

Mr. MALONEY. Mr. Jarman, I had not intended to make an oral statement and the only thing that caused me really to do this was I wanted to make it clear, in the railroads saying that we have no objection to this bill, if amended as the ICC proposes, that I did not want any implication that by not objecting to this bill we were by any means in favor of exemptions, and it was for that reason that I made the little statement that I did.

Mr. JARMAN. I understand, and as I said, I think your comments add to the record. I think they make it abundantly clear that there is no real exemption from regulation involved. It is simply an exemption from a particular part of the act, but the coverage is retained in other parts of the act.

Mr. MALONEY. Yes, sir.

Mr. JARMAN. Thank you.

Mr. SCOTT. Mr. Chairman, with your permission, sir, by keeping the record open, we will have an opportunity also to comment on any subsequent introductions into the record.

Mr. FRIEDEL. Yes, sir.

Our colleague, the Honorable Edward A. Garmatz, of Maryland, must attend a meeting of his own committee and is unable to testify here. Accordingly, without objection, we will insert his statement at this point in the record.

(The statement referred to follows:)

STATEMENT OF HON. EDWARD R. GARMATZ, THIRD DISTRICT, MARYLAND

Mr. Chairman and members of the committee, due to a meeting of the Coast Guard Subcommittee which could not be postponed and of which I am chairman, it will not be possible to appear personally to testify in behalf of my bill, H.R. 6624, to amend section 202(c) of the Interstate Commerce Act.

The Federal Maritime Board has accepted for many years water carrier tariffs applicable to offshore domestic trades which name single factor rates, including pickup and delivery service by motor vehicle. Therefore, it would be consistent with the longstanding policy that motor carrier operations within terminal areas are to be regulated as part of the line-haul carriage to which they are incidental, if section 202(c) of the Interstate Commerce Act were amended as in H.R. 6624 and other bills on the subject, which you are considering this morning.

With the addition of our two new States, it seems logical that the exemption in section 202(c) should apply to those States also, as well as the 48 contiguous States.

The Interstate Commerce Commission has recommended that a clarifying paragraph be added, as follows:

"(3) The Commission shall have exclusive jurisdiction to determine and prescribe the limits of terminal areas of the various carriers for the purposes of this section 202(c)."

This is perfectly agreeable to me and I suggest that the bill be amended accordingly. I urge the approval of this legislation.

(The following material was received for the record:)

SEATTLE, WASH., July 18, 1961.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.:*

Reference to House bill 5978 which comes before House subcommittee for hearing on Thursday, July 20. As a common carrier steamship operator serving the Territory and now the State of Alaska for over 65 years, we feel the proposed legislation is constructive and desirable from standpoint established common carriers serving the noncontiguous areas of Alaska, Hawaii, and Puerto Rico. We respectfully urge its favorable consideration by your committee.

ALASKA STEAMSHIP CO.,
MELVILLE MCKINSTRY.

TERMINAL TRANSPORT CO., INC.,
Atlanta, Ga., August 4, 1961.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.*

MY DEAR CONGRESSMAN HARRIS: By means of this letter Terminal Transport Co., Inc., desires to express its vigorous opposition to H.R. 5978 unless the bill shall be amended to provide that any exempt area prescribed "shall be no greater than the exempt commercial zone determined and prescribed under section 203(b) (8) for motor carriers subject to this part, embracing the water terminus of any such common carrier by water."

Terminal Transport Co., Inc., is a duly certificated motor common carrier operating between Chicago, Ill., and Miami, Fla., and serving intermediate points. At the present time, and for some time past, we have worked in connection with water carriers in providing a coordinated water-land service. Passage of H.R. 5978 without the above amendment would enable the water carriers to establish extensive terminal areas within which they could provide their own motor carrier services and thus eliminate our participation in the traffic movement.

Your efforts to have the bill amended as set forth above will be greatly appreciated.

Very truly yours,

BURTON C. KINNEY,
Vice President, Traffic.

Mr. FRIEDEL. If the committee has no further business, the meeting is adjourned.

(Whereupon, at 11:30 a.m., the subcommittee adjourned.)

