









CARD DIVISION

# PASSENGER TRAIN SERVICE

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SUPPLEMENTAL  
HEARINGS

4 - JUL 23  
Copy \_\_\_\_\_ 1970

BEFORE THE

SUBCOMMITTEE ON  
TRANSPORTATION AND AERONAUTICS

*U.S. Congress, House.*

OF THE

COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 17849

A BILL TO PROVIDE FINANCIAL ASSISTANCE FOR AND ESTABLISHMENT OF IMPROVED RAIL PASSENGER SERVICE IN THE UNITED STATES, TO PROVIDE FOR THE UPGRADING OF RAIL ROADBED AND THE MODERNIZATION OF RAIL PASSENGER EQUIPMENT, TO ENCOURAGE THE DEVELOPMENT OF NEW MODES OF HIGH SPEED GROUND TRANSPORTATION, TO AUTHORIZE THE PRESCRIBING OF MINIMUM STANDARDS FOR RAILROAD PASSENGER SERVICE, TO AMEND SECTION 13(a) OF THE INTERSTATE COMMERCE ACT, AND FOR OTHER PURPOSES

S. 3706

AN ACT TO PROVIDE FINANCIAL ASSISTANCE FOR AND ESTABLISHMENT OF A NATIONAL RAIL PASSENGER SYSTEM, TO PROVIDE FOR THE MODERNIZATION OF RAILROAD PASSENGER EQUIPMENT, TO AUTHORIZE THE PRESCRIBING OF MINIMUM STANDARDS FOR RAILROAD PASSENGER SERVICE, TO AMEND SECTION 13(a) OF THE INTERSTATE COMMERCE ACT, AND FOR OTHER PURPOSES

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JUNE 2, 3, AND 4, 1970

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## ORGANIZATIONS REPRESENTED AT HEARINGS

## Association of American Railroads:

Goodfellow, Thomas M., president.

Moloney, William M., vice president and general counsel.

## Congress of Railway Unions:

Chesser, Al H., national legislative director, United Transportation Union.

Friedman, Edward D., counsel.

## Interstate Commerce Commission:

Ginnane, Robert, General Counsel.

Margolin, Edward, Director, Bureau of Economics.

Stafford, Hon. George M., Chairman.

Tuggle, Kenneth H., Commissioner.

National Association of Railroad Passengers, Anthony Haswell, chairman.

Railway Labor Executives' Association, Edward J. Hickey, Jr., general counsel.

Southern Railway System, W. Graham Claytor, Jr., president.

## Transportation Department:

Baker, Charles D., Assistant Secretary for Policy and International Affairs.

Tidd, J. Thomas, Legislative Counsel.

Volpe, Hon. John A., Secretary.

Whitman, Reginald N., Administrator, Federal Railroad Administration.

United Transportation Union, Al H. Chesser, national legislative director.

## PASSENGER TRAIN SERVICE

TUESDAY, JUNE 2, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FREIDEL. The subcommittee will be in order.

This morning we are continuing our hearings on railroad passenger service. In addition to the bills in the notice of this second stage of these hearings, H.R. 17428<sup>1</sup> and S. 3706, I want to make it clear that we are continuing to consider all of the problems which were before the House in our first session on this subject.<sup>2</sup> These include H.R. 12084, H.R. 744, H.R. 785, H.R. 3112, H.R. 521, H.R. 9168, H.R. 14170, H.R. 13347, H.R. 13352, H.R. 13832, H.R. 14661, and H.J. Res. 52.

We are at a point in time where we must take a very broad and careful look at all possible solutions to the rail passenger service crisis. I use the word "crisis" advisedly. I agree with those who have said that if we did not have a passenger train someone would have to invent one.

In the face of this, we are seeing almost daily the disappearance and downgrading of passenger service. This trend must be reversed. I think that we need to work with enthusiasm and with speed to preserve and improve our passenger train service which can and should serve the needs of the nation. To me transportation is not a question of trains or buses, trains or airplanes, trains or automobiles, our population concentration and growth is such that we need a balance of all existing modes and no doubt the innovation of new modes presently in the process of research and development.

I hope that I am joined in this view by the experts in the various modes, and I look forward to working out a positive bill which will improve the rail passenger service portion of our total transportation system.

(The text of H.R. 17849 and S. 3706 and departmental reports thereon follow:)

<sup>1</sup> H.R. 17849, introduced by Mr. Tiernan on May 27, 1970, superseded H.R. 17428. See Mr. Tiernan's statement on p. 151, this hearing.

<sup>2</sup> Hearings before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, 91st Congress, 1st session, Nov. 5, 6, 12, 13, 17, 18, 19, and 20, 1969, entitled "Passenger Train Service," Serial No. 91-31.

[H.R. 17849, 91st Cong., 2d Sess., introduced by Mr. Tiernan on May 27, 1970]

## A BILL

To provide financial assistance for and establishment of improved rail passenger service in the United States, to provide for the upgrading of rail roadbed and the modernization of rail passenger equipment, to encourage the development of new modes of high speed ground transportation, to authorize the prescribing of minimum standards for railroad passenger service, to amend section 13 (a) of the Interstate Commerce Act, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Rail Passenger Service
- 4 Act of 1970".

### I

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<sup>1</sup> H.R. 17428, introduced by Mr. Tiernan on May 4, 1970, was superceded by H.R. 17849. See Mr. Tiernan's statement on p. —, this hearing.



1 poses; and that interim emergency Federal financial assist-  
2 ance to certain railroads may be necessary to permit the  
3 orderly transfer of railroad passenger service to one or more  
4 railroad passenger corporations.

5 **§ 102. Definitions**

6 For purposes of this Act—

7 (a) "Railroad" means a common carrier by railroad, as  
8 defined in section 1 (3) of part I of the Interstate Commerce  
9 Act, as amended (49 U.S.C. 1 (3) ) other than the corpora-  
10 tions created by title III of this Act.

11 (b) "High speed ground transportation" means high  
12 speed transportation service operating on fixed guideways.

13 (c) "Secretary" means the Secretary of Transportation  
14 or his delegate unless the context in which it appears indicates  
15 otherwise.

16 (d) "Commissiou" means the Interstate Commerce  
17 Commission.

18 (e) "Basic services" means the intercity rail passenger  
19 service designated by the Secretary under title II of this Act.

20 (f) "Intercity rail passenger service" means all rail  
21 passenger service other than commuter and other short-haul  
22 service in metropolitan and suburban areas, usually character-  
23 ized by reduced fare, multiple-ride and commutation tickets  
24 and by morning and evening peak period operations, and  
25 auto-train service characterized by transportation of auto-

1 mobiles and their occupants where contracts for such service  
2 have been consummated prior to enactment of this Act.

3 (g) "Avoidable loss" means the avoidable costs of pro-  
4 viding passenger service, less revenues attributable thereto,  
5 using the methodology used in the report of the Commission  
6 of July 16, 1969, entitled "investigation of Costs of Inter-  
7 city Rail Passenger Service."

8 (h) "Regional transportation agency" means an au-  
9 thority, corporation, or other entity established for the pur-  
10 pose of providing passenger service within a region.

11 (i) "Urban corridors" means the intercity rail passenger  
12 routes between cities not more than five hundred miles apart  
13 in densely populated areas.

14 **TITLE II—BASIC NATIONAL RAIL PASSENGER**  
15 **SERVICES**

16 **§ 201. Designation of services**

17 In carrying out the congressional findings and declara-  
18 tion of purpose set forth in title I of this Act, the Secretary,  
19 acting in cooperation with other interested Federal agencies  
20 and departments, is authorized and directed to submit to  
21 the Commission and to the Congress within thirty days after  
22 the date of enactment of this Act his preliminary report and  
23 recommendations for basic national rail passenger services  
24 (hereinafter referred to as the "basic services"). Such recom-  
25 mendations shall specify those points between which inter-

1 city passenger trains shall be operated, identify all routes  
2 over which service may be provided, and the trains presently  
3 operated over such routes; together with basic service char-  
4 acteristics of operations to be provided, taking into account  
5 schedules, number of trains, connections, through car service,  
6 and sleeping, parlor, dining and lounge facilities. In recom-  
7 mending said basic services the Secretary shall take into ac-  
8 count the need for expeditious rail passenger service in all  
9 regions of the continental United States, and shall designate  
10 urban corridors within which there is need for improved  
11 passenger service to relieve congestion, and the Secretary  
12 shall consider the need for such service within the States of  
13 Alaska and Hawaii and the Commonwealth of Puerto Rico.  
14 In formulating such recommendations the Secretary shall con-  
15 sider relative levels of demand for passenger service, existing  
16 congestion and opportunities for provision of faster service,  
17 more convenient service, service to more centers of popula-  
18 tion, and/or service at lower cost, by the joint operation,  
19 for passenger service, of facilities of two or more railroad  
20 companies; the importance of a given service to the overall  
21 viability of basic services; adequacy of other transportation  
22 facilities serving the same points, unique characteristics and  
23 advantages of rail service as compared to other modes; the  
24 relationship of public benefits of given services to the costs

1 of providing them; the feasibility of installing technologically  
2 improved services and new modes; and potential profitability  
3 of the service. The exclusion of a particular route, train, or  
4 service from the basic services shall not be deemed to create  
5 a presumption that the route, train, or service is not required  
6 by public convenience and necessity in any proceeding under  
7 section 13a of the Interstate Commerce Act (49 U.S.C.  
8 13a).

9 **§ 202. Review of the basic services**

10 The Commission shall, within thirty days after receipt  
11 of the Secretary's preliminary report designating basic serv-  
12 ices review such report consistent with the purposes of this  
13 Act and provide the Secretary with its comments and recom-  
14 mendations. The Secretary shall, within ninety days after  
15 the date of enactment of this Act, submit his final report  
16 designating the basic services to the Congress. Such final  
17 report shall include a statement of the recommendations of  
18 the Commission together with his reasons for failing to adopt  
19 any such recommendations. The basic services as designated  
20 by the Secretary shall become effective for the purposes of  
21 this Act upon the date that the final report of the Secretary  
22 is submitted to Congress and shall not be reviewable in any  
23 court.

1       **TITLE III—CREATION OF NONPROFIT RAIL**  
2                   **PASSENGER CORPORATIONS**

3   **§ 301. Creation of corporations**

4       There are authorized to be created nonprofit corporations  
5 (hereinafter referred to as "corporations") to provide basic  
6 services designated by the Secretary in urban corridors and  
7 elsewhere, in a manner consistent with the overall trans-  
8 portation requirements of the region or regions where such  
9 corporations are in operation of intercity passenger service,  
10 employing innovative operating and marketing concepts so  
11 as to develop fully the potential of modern rail service in  
12 meeting the Nation's intercity passenger transportation re-  
13 quirements. The corporations will not be agencies or estab-  
14 lishments of the United States Government. Such corpora-  
15 tions shall be subject to the provisions of this Act, and to the  
16 extent consistent with this Act, to the laws of the District  
17 of Columbia relating to nonprofit corporations. The right  
18 to repeal, alter, or amend this Act at any time is expressly  
19 reserved.

20   **§ 302. Process of organization**

21       The Secretary in consultation with the Governors of  
22 States involved shall appoint not less than three incorporators  
23 for each corporation, who shall also serve as the board of

1 directors for one hundred and eighty days following the date  
2 of enactment of this Act. The incorporators shall take what-  
3 ever actions are necessary to establish the corporation, in-  
4 cluding the filing of articles of incorporation, as approved by  
5 the Secretary.

6 **§ 303. Directors and officers**

7 (a) Each corporation shall have a board of directors  
8 of not more than twenty-one members who are citizens of  
9 the United States, of whom one shall be elected annually  
10 by the board to serve as chairman. A majority of the mem-  
11 bers of the board shall be appointed by the Secretary in  
12 consultation with the Governors of the States involved for  
13 terms of four years or until their successors have been ap-  
14 pointed and qualified. Any member appointed to fill a  
15 vacancy may be appointed only for the unexpired term of  
16 the director whom he succeeds. At all times the Secretary  
17 or his representative shall be one of the members of each  
18 board of directors and at least one of such members of each  
19 corporation shall be a resident of the region served by such  
20 corporation and shall be appointed to represent exclusively  
21 the interests of passengers in that region. The Governor of  
22 each State served by each corporation shall appoint a di-  
23 rector to serve for a term not to exceed his elective term of  
24 office. At least two members of each board of directors shall

1 be elected by the rail carriers who have for consideration  
2 been relieved of their rail passenger responsibilities within  
3 the jurisdiction of such corporation under the provisions of  
4 section 401 of this Act. Pending election of the complete  
5 board of directors of each corporation four members shall  
6 constitute a quorum for the purpose of conducting business  
7 of a board.

8 No director appointed by the Secretary may have any  
9 direct or indirect financial or employment relationship with  
10 any railroad or railroads during the time that he serves on  
11 the board. Each of the directors not employed by the Federal  
12 Government shall receive compensation at the rate of \$50  
13 for each meeting of the board he attends. In addition, each  
14 director shall be reimbursed for necessary travel and sub-  
15 sistence expense incurred in attending the meetings of the  
16 board. No director elected by railroads shall vote on any ac-  
17 tion of the board of directors relating to any contract or oper-  
18 ating relationship between the corporation and a railroad, but  
19 he may be present at directors' meetings at which such mat-  
20 ters are voted upon, and he may be included for purposes of  
21 determining a quorum and may participate in discussions  
22 at such meeting.

23 (b) Each board of directors is empowered to adopt and  
24 amend bylaws governing the operation of the corporation

1 providing that such bylaws shall not be inconsistent with the  
2 provisions of this Act or of the articles of incorporation.

3 (c) Each corporation shall have a president and such  
4 other officers as may be named and appointed by the board.  
5 The rates of compensation of all officers shall be fixed by  
6 the board. Officers shall serve at the pleasure of the board.  
7 No individual other than a citizen of the United States may  
8 be an officer of the corporation. No officer of the corporation  
9 may have any direct or indirect employment or financial  
10 relationship with any railroad or railroads during the time  
11 of his employment by the corporation.

12 (d) Each corporation is authorized to issue nonvoting  
13 securities or obligations, or obtain loans, guaranteed pursuant  
14 to section 602 of this Act.

15 **§ 304. General powers of the corporations**

16 Each corporation is authorized to own, manage, operate,  
17 or contract for the operation of intercity rail passenger trains;  
18 to carry mail and express in connection with passenger serv-  
19 ice; to conduct demonstrations of possible improvements to  
20 passenger service; to own, manage, operate, or contract for  
21 the operation of high-speed ground passenger transportation,  
22 to contract for the improvement or construction of roadbed  
23 and to acquire by construction, purchase, or gift, or to con-  
24 tract for the use of, physical facilities, equipment, and de-  
25 vices necessary to rail passenger operations. Each corporation

1 shall rely upon rail carriers to provide the crews necessary  
2 to the operation of its passenger trains. To carry out its  
3 functions and purposes, each corporation shall have the usual  
4 powers conferred upon a nonprofit corporation by the laws  
5 of the District of Columbia.

6 **§ 305. Applicability of the Interstate Commerce Act and**  
7 **other laws**

8 (a) Each corporation shall be deemed a common carrier  
9 by railroad within the meaning of section 1 (3) of the Inter-  
10 state Commerce Act and shall be subject to all provisions  
11 of the Interstate Commerce Act other than those pertaining  
12 to—

13 (1) regulation of rates, fares, and charges;

14 (2) abandonment or extension of lines of railroads  
15 and the abandonment or extension of operations over  
16 lines of railroads, whether by trackage rights or  
17 otherwise;

18 (3) regulation of routes and service and, except as  
19 otherwise provided in this Act, the discontinuance or  
20 change of passenger train service operations.

21 (b) Each corporation shall be subject to the same laws  
22 and regulations with respect to safety and with respect to  
23 dealings with its employees as any other common carrier  
24 subject to part I of the Interstate Commerce Act.

25 (c) Each corporation shall not be subject to any State

1 (c) The Corporation shall not be subject to any State  
2 or other law pertaining to the transportation of passengers  
3 by railroad as it relates to rates, routes, or service.

4 (d) Leases and contracts entered into by the Corpora-  
5 tion, regardless of the place where the same may be executed,  
6 shall be governed by the laws of the District of Columbia.

7 (e) Persons contracting with the Corporation for the  
8 joint use or operation of such facilities and equipment as may  
9 be necessary for the provision of efficient and expeditious pas-  
10 senger service shall be and are hereby relieved from all pro-  
11 hibitions of existing law, including the antitrust laws of the  
12 United States with respect to such contracts, agreements, or  
13 leases insofar as may be necessary to enable them to enter  
14 thereinto and to perform their obligations thereunder.

15 § 307. Sanctions

16 (a) If the Corporation engages in or adheres to any ac-  
17 tion, practice, or policy inconsistent with the policies and  
18 purposes of this Act, obstructs or interferes with any activi-  
19 ties authorized by this Act (except in the exercise of labor  
20 practices not otherwise proscribed by law), refuses, fails, or  
21 neglects to discharge its duties and responsibilities under  
22 this Act, or threatens any such violation, obstruction, inter-  
23 ference, refusal, failure, or neglect, the district court of the  
24 United States for any district in which the Corporation or  
25 other person resides or may be found shall have jurisdic-

1 tion, except as otherwise prohibited by law, upon petition of  
2 the Attorney General of the United States or, in a case in-  
3 volving a labor agreement, upon petition of any individual  
4 affected thereby, to grant such equitable relief as may be  
5 necessary or appropriate to prevent or terminate any viola-  
6 tion, conduct, or threat.

7 (b) Nothing contained in this section shall be construed  
8 as relieving any person of any punishment, liability, or sanc-  
9 tion which may be imposed otherwise than under this Act.

10 **§ 308. Reports to the Congress**

11 (a) The Corporation shall transmit to the President and  
12 the Congress, annually, commencing one year from the date  
13 of enactment of this Act, and at such other times as it deems  
14 desirable, a comprehensive and detailed report of its opera-  
15 tions, activities, and accomplishments under this Act, includ-  
16 ing a statement of receipts and expenditures for the previous  
17 year. At the time of its annual report, the Corporation shall  
18 submit legislative recommendations for amendment of this  
19 Act as it deems desirable, including the amount of financial  
20 assistance needed for operations and for capital improve-  
21 ments, the manner and form in which the amount of such  
22 assistance should be computed, and the sources from which  
23 such assistance should be derived.

24 (b) The Secretary and the Commission shall transmit  
25 to the President and the Congress, one year following the

1 date of enactment of this Act and biennially thereafter, re-  
2 ports on the state of rail passenger service and the effective-  
3 ness of this Act in meeting the requirement for a balanced  
4 national transportation system, together with any legislative  
5 recommendations for amendments to this Act.

6 TITLE IV—PROVISION OF RAIL PASSENGER  
7 SERVICES

8 § 401. Assumption of passenger service by the Corpora-  
9 tion; commencement of operations

10 (a) (1) On or before March 1, 1971, and on or after  
11 March 1, 1973, but before January 1, 1975, the Corporation  
12 is authorized to contract with a railroad to relieve the railroad  
13 of its entire responsibility for the provision of intercity rail  
14 passenger service commencing on or after March 1, 1971.  
15 The contract may be made upon such terms and conditions  
16 as necessary to permit the Corporation to undertake passenger  
17 service on a timely basis. Upon its entering into a valid con-  
18 tract (including protective arrangements for employees),  
19 the railroad shall be relieved of all its responsibilities as a  
20 common carrier of passengers by rail in intercity rail pas-  
21 senger service under part I of the Interstate Commerce  
22 Act or any other law relating to the provision of intercity  
23 passenger service: *Provided*, That any railroad discontinuing  
24 a train hereunder must give notice in accordance with  
25 the notice procedures contained in section 13a(1) of the  
26 Interstate Commerce Act.

1       (2) In consideration of being relieved of this responsi-  
2 bility by the corporation, the railroad shall agree to pay  
3 to the corporation each year for three years an amount equal  
4 to one-third of 50 per centum of the fully distributed pas-  
5 senger service deficit of the railroad as reported to the  
6 Commission for the year ending December 31, 1969. The  
7 payment to the Corporation may be made in cash or, at the  
8 option of the Corporation, by the transfer of rail passenger  
9 equipment or the provision of future service as requested by  
10 the Corporation. The railroad shall receive common stock  
11 from the Corporation in an amount equivalent in par value  
12 to its payment.

13       (3) In agreeing to pay the amount specified in para-  
14 graph (2) of this subsection, a railroad may reserve the  
15 right to pay a lesser sum to be determined by calculating  
16 either of the following:

17           (A) 100 per centum of the avoidable loss of  
18 all intercity rail passenger service operated by the rail-  
19 road during the period January 1, 1969, through  
20 December 31, 1969; or

21           (B) 200 per centum of the avoidable loss of  
22 the intercity rail passenger service operated by the rail-  
23 road between points within the basic system during the  
24 period January 1, 1969, through December 31, 1969.

25 If the amount owed the Corporation under either of these

1 alternatives is agreed by the parties to be less than the  
2 amount paid pursuant to paragraph (2), the Corporation  
3 shall pay the difference to the railroad. If the railroad  
4 and the Corporation are unable to agree as to the amount  
5 owed, the matter shall be referred to the Interstate Com-  
6 merce Commission for decision. The Commission shall decide  
7 the issue within ninety days following the date of referral  
8 and its decision shall be binding on both parties.

9 (4) The payments to the Corporation shall be made in  
10 accordance with a schedule to be agreed upon between the  
11 parties. Unless the parties otherwise agree, the payments  
12 for each of the first twelve months following the date on  
13 which the Corporation assumes any of the operational respon-  
14 sibilities of the railroad shall be in cash and not less than one  
15 thirty-sixth of the amount owed.

16 (b) On March 1, 1971, the Corporation shall begin the  
17 provision of intercity rail passenger service between points  
18 within the basic system unless such service is being provided  
19 (i) either by a railroad with which it has not entered into  
20 a contract under subsection (a) of this section or (ii) by a  
21 regional transportation agency, provided such agency gives  
22 satisfactory assurance to the Corporation of the agency's  
23 financial and operating capability to provide such service, and  
24 of its willingness to cooperate with the Corporation and  
25 with other regional transportation agencies on matters of

1 through train service through car service, and connecting  
2 train service. The Corporation may at any time subsequent  
3 to March 1, 1971, contract with a regional transportation  
4 agency to provide intercity rail passenger service between  
5 points within the basic system included within the service  
6 of such agency.

7 (c) No railroad or any other person may, without the  
8 consent of the Corporation, conduct intercity rail passenger  
9 service over any route on which the Corporation is perform-  
10 ing scheduled intercity rail passenger service pursuant to a  
11 contract under this section.

12 **§ 402. Facility and service agreements**

13 (n) The Corporation may contract with railroads or  
14 with regional transportation agencies for the use of tracks  
15 and other facilities and the provision of services on such  
16 terms and conditions as the parties may agree. In the event  
17 of a failure to agree, the Interstate Commerce Commission  
18 shall, if it finds that doing so is necessary to carry out the  
19 purposes of this Act, order the provision of services or the  
20 use of tracks or facilities of the railroad by the Corporation,  
21 on such terms and for such compensation as the Commission  
22 may fix as just and reasonable. If the amount of compensa-  
23 tion fixed is not duly and promptly paid, the railroad or  
24 agency entitled thereto may bring an action against the  
25 Corporation to recover the amount properly owed.

1           (b) To facilitate the initiation of operations by the  
2 corporation within the basic system the Commission shall,  
3 upon application by the Corporation, require a railroad to  
4 make immediately available tracks and other facilities. The  
5 Commission shall thereafter promptly proceed to fix such  
6 terms and conditions as are just and reasonable.

7   § 403. New service

8           (a) The Corporation may provide service in excess of  
9 that prescribed for the basic system, either within or out-  
10 side, the basic system including the operation of special  
11 and extra passenger trains, if consistent with prudent man-  
12 agement.

13           (b) Any State, regional, or local agency may request of  
14 the Corporation rail passenger service beyond that included  
15 within the basic system. The Corporation shall institute  
16 such service if the State, regional, or local agency agrees to  
17 reimburse the Corporation for a reasonable portion of any  
18 losses associated with such services.

19           (c) For purposes of this section the reasonable portion  
20 of such losses to be assumed by the State, regional, or local  
21 agency, shall be no less than 50 per centum of, nor more  
22 than the solely related costs and associated capital costs less  
23 revenues attributable to such service. If the Corporation  
24 and the State, regional, or local agency are unable to agree  
25 upon a reasonable apportionment of such losses, the mat-

1 ter shall be referred to the Secretary for decision. In decid-  
2 ing this issue the Secretary shall take into account the intent  
3 of this Act, and the impact of requiring the Corporation to  
4 bear such losses upon its ability to provide improved service  
5 within the basic system.

6 § 404. Discontinuance of service

7 (a) Unless it has entered into a contract with the cor-  
8 poration pursuant to section 401 (a) (1) of this Act, no  
9 railroad may discontinue any passenger service whatsoever  
10 prior to January 1, 1975, the provisions of any other Act,  
11 the laws or constitution of any State, or the decision or order  
12 of, or the pendency of any proceeding before, a Federal  
13 or State court, agency, or authority to the contrary not-  
14 withstanding. On and after January 1, 1975, passenger  
15 train service operated by such railroad may be discontinued  
16 under the provisions of section 13a of the Interstate Com-  
17 merce Act. Upon filing of a notice of discontinuance by  
18 such railroad, the Corporation may undertake to initiate  
19 passenger train operations between the points served.

20 (b) (1) The Corporation must provide the service in-  
21 cluded within the basic system until January 1, 1975, to the  
22 extent it has assumed responsibility for such service by con-  
23 tract with a railroad pursuant to section 401 of this Act.

24 (2) Service beyond that prescribed for the basic sys-

1    ten undertaken by the Corporation upon its own initiative  
2    may be discontinued at any time.

3           (3) If at any time after January 1, 1975, the Corpora-  
4    tion determines that any train or trains in the basic system  
5    in whole or in part are not required by public convenience  
6    and necessity, or will impair the ability of the Corporation  
7    to adequately provide other services, such train or trains  
8    may be discontinued under the procedures of section 13a  
9    of the Interstate Commerce Act (49 U.S.C. 13a): *Pro-*  
10 *vided, however,* That at least thirty days prior to the change  
11 or discontinuance, in whole or in part, of any service under  
12 this subsection, the Corporation shall mail to the Governor  
13 of each State in which the train in question is operated,  
14 and post in every station, depot, or other facility served  
15 thereby notice of the proposed change or discontinuance.  
16 The Corporation may not change or discontinue this service  
17 if prior to the end of the thirty-day notice period, State,  
18 regional, or local agencies request continuation of the service  
19 and within ninety days agree to reimburse the Corporation  
20 for a reasonable portion of any losses associated with the  
21 continuation of service beyond the notice period.

22           (4) For purposes of paragraph (3) of this subsection  
23 the reasonable portion of such losses to be assumed by the  
24 State, regional, or local agency shall be no less than 50 per  
25 centum of, nor more than, the solely related costs and associ-  
26 ated capital costs less revenues attributable to such service.

1 If the Corporation and the State, regional, or local agencies  
2 are unable to agree upon a reasonable apportionment of  
3 such losses, the matter shall be referred to the Secretary  
4 for decision. In deciding this issue the Secretary shall take  
5 into account the intent of this Act and the impact of requir-  
6 ing the Corporation to bear such losses upon its ability to  
7 provide improved service within the basic system.

8 **§ 405. Protective arrangements for employees**

9 (a) A railroad shall provide fair and equitable arrange-  
10 ments to protect the interests of employees adversely affected  
11 by the following discontinuances of passenger service:

12 (1) those arising out of a contract with the corpo-  
13 ration pursuant to section 401 (a) (1) of this Act, and  
14 occurring prior to January 1, 1975; and

15 (2) those undertaken pursuant to section 404 (a)  
16 of this Act.

17 (b) Such protective arrangements shall include, with-  
18 out being limited to, such provisions as may be necessary  
19 for (1) the preservation of rights, privileges, and benefits  
20 (including continuation of pension rights and benefits) to  
21 such employees under existing collective-bargaining agree-  
22 ments or otherwise; (2) the continuation of collective-bar-  
23 gaining rights; (3) the protection of such individual em-  
24 ployees against a worsening of their positions with respect to  
25 their employment; (4) assurances of priority of reemploy-

1 ment of employees terminated or laid off; and (5) paid  
2 training or retraining programs. Such arrangements shall  
3 include provisions protecting individual employees against a  
4 worsening of their positions with respect to their employ-  
5 ment which shall in no event provide benefits less than those  
6 established pursuant to section 5(2)(f) of the Interstate  
7 Commerce Act. Any contract entered into pursuant to the  
8 provisions of this title shall specify the terms and conditions  
9 of such protective arrangements.

10 Final settlement of any contract under section 401(a)  
11 (1) of this Act between a railroad and the Corporation  
12 may not be made unless the Secretary of Labor has certified  
13 to the Corporation that adversely affected employees have  
14 received fair and equitable protection from the railroad.

15 (c) After commencement of operations in the basic  
16 system, the substantive requirements of subsection (b) of  
17 this section shall apply to the Corporation, and the certifi-  
18 cation by the Secretary of Labor shall be a condition to the  
19 discontinuance of any trains by the Corporation pursuant to  
20 section 404(b) of this Act.

21 (d) The Corporation shall take such action as may be  
22 necessary to insure that all laborers and mechanics employed  
23 by contractors and subcontractors in the performance of  
24 construction work financed with the assistance of funds re-  
25 ceived under any contract or agreement entered into under

1 this title shall be paid wages at rates not less than those  
2 prevailing on similar construction in the locality as deter-  
3 mined by the Secretary of Labor in accordance with the  
4 Davis-Bacon Act, as amended. The Corporation shall not  
5 enter into any such contract or agreement without first  
6 obtaining adequate assurance that required labor standards  
7 will be maintained on the construction work. Health and  
8 safety standards promulgated by the Secretary of Labor pur-  
9 suant to Public Law 91-54 (40 U.S.C. 333) shall be  
10 applicable to all construction work performed under such  
11 contracts or agreements.

12 (e) The Corporation shall not contract out any work  
13 normally performed by employees in any bargaining unit  
14 covered by a contract between the Corporation or any rail-  
15 road providing intercity rail passenger service upon the date  
16 of enactment of this Act and any labor organization, if such  
17 contracting out shall result in the layoff of any employee or  
18 employees in such bargaining unit.

19 TITLE V—ESTABLISHMENT OF A FINANCIAL  
20 INVESTMENT ADVISORY PANEL

21 § 501. Appointment of advisory panel

22 Within thirty days after enactment of this Act, the  
23 President shall appoint a fifteen-man financial advisory  
24 panel. Six members of the panel shall represent the busi-  
25 ness of investment banking, commercial banking, and rail

1 transportation. Two members shall be representatives of the  
2 Secretary of the Treasury and seven members shall repre-  
3 sent the public in the various regions of the Nation.

4 **§ 502. Purpose of advisory panel**

5 The advisory panel appointed by the President shall  
6 advise the directors of the Corporation on ways and means of  
7 increasing capitalization of the Corporation.

8 **§ 503. Report to Congress**

9 On or before January 1, 1971, the panel shall submit a  
10 report to Congress evaluating the initial capitalization of the  
11 Corporation and the prospects for increasing its capitalization.

12 **TITLE VI—FEDERAL FINANCIAL ASSISTANCE**

13 **§ 601. Federal grants**

14 There is authorized to be appropriated to the Secretary  
15 in fiscal year 1971, \$40,000,000 to remain available until  
16 expended, for payment to the Corporation for the purpose of  
17 assisting in—

18 (1) the initial organization and operation of the  
19 Corporation;

20 (2) the establishment of improved reservations sys-  
21 tems and advertising;

22 (3) servicing, maintenance, and repair of railroad  
23 passenger equipment;

24 (4) the conduct of research and development and

1           (3) servicing, maintenance, and repair of railroad  
2 passenger equipment;

3           (4) the conduct of demonstration programs re-  
4 specting new rail passenger services;

5           (5) the development and demonstration of im-  
6 proved rolling stock; and

7           (6) essential fixed facilities for the operation of  
8 passenger trains on lines and routes designated as basic  
9 services.

10 **§ 602. Guaranty of loans**

11       The Secretary is authorized, on such terms and condi-  
12 tions as he may prescribe, to guaranty any lender against  
13 loss of principal or interest on securities, obligations, or loans  
14 issued to finance the upgrading of roadbeds and the purchase  
15 by a corporation of new rolling stock, rehabilitation of ex-  
16 isting rolling stock, and for other corporate purposes. The ma-  
17 turity date of such securities, obligations, or loans, including  
18 all extensions and renewals thereof, shall not be later than  
19 twenty years from their date of issuance, and the amount of  
20 guaranteed loans outstanding at any time may not exceed  
21 \$150,000,000. The Secretary shall prescribe and collect  
22 from the lending institution a reasonable annual guar-  
23 anty fee. There are authorized to be appropriated such

1 thORIZED to be appropriated such amounts as necessary to  
2 carry out this section not to exceed \$60,000,000.

3 TITLE VII—INTERIM EMERGENCY FEDERAL  
4 FINANCIAL ASSISTANCE

5 § 701. Interim authority to provide emergency financial  
6 assistance for railroads operating passenger  
7 service

8 For the purpose of permitting a railroad to enter into  
9 or carry out a contract under section 401 (a) (1) of this Act,  
10 the Secretary is authorized, on such terms and conditions as  
11 he may prescribe, to (1) make loans to such railroads, or  
12 (2) to guarantee any lender against loss of principal or in-  
13 terest on any loan to such railroads. Interest on loans made  
14 under this section shall be at a rate not less than a rate deter-  
15 mined by the Secretary of the Treasury, taking into consid-  
16 eration the current average market yield on outstanding mar-  
17 ketable obligations of the United States with remaining  
18 periods to maturity comparable to the average maturities of  
19 such loans adjusted to the nearest one-eighth of 1 per centum.  
20 No loan may be made, including renewals or extensions  
21 thereof, which has a maturity date in excess of five years.  
22 The maturity date on any loan guaranteed, including all  
23 renewals and extensions thereof, shall not be later than five  
24 years from the date of issuance. The total amount of loans

1 **§ 702. Authorization for appropriations**

2       There are hereby authorized to be appropriated such  
3 amounts not to exceed \$75,000,000 as may be necessary to  
4 carry out the purposes of this title. Any sums appropriated  
5 shall be available until expended.

6 **TITLE VIII—MISCELLANEOUS PROVISIONS**

7 **§ 801. Adequacy of service**

8       The Commission is authorized to prescribe such regula-  
9 tions as it considers necessary for the comfort and health  
10 of intercity rail passengers. Any person who violates a  
11 regulation issued under this section shall be subject to a  
12 civil penalty of not to exceed \$500 for each violation. Each  
13 day a violation continues shall constitute a separate offense.

14 **§ 802. Effect on pending proceedings**

15       Upon enactment of this Act, no railroad may discontinue  
16 any passenger service whatsoever other than in accordance  
17 with the provisions of this Act, notwithstanding the provi-  
18 sions of any other Act, the laws or constitution of any State,  
19 or the decision or order of, or the pendency of any proceed-  
20 ing before, any Federal or State court, agency, or authority.

21 **§ 803. Separability**

22       If any provision of this Act or the application thereof to  
23 any person or circumstance is held invalid, the remainder of  
24 the Act and the application of such provision to other persons  
25 or circumstances shall not be affected thereby.

1 any person or circumstance is held invalid, the remainder of  
2 the Act and the application of such provision to other persons  
3 or circumstances shall not be affected thereby.

4 § 804. Accountability

5 Section 201 of the Government Corporation Control Act  
6 of 1945 (31 U.S.C. 856; 59 Stat. 600) is amended by  
7 striking "and (4)" and inserting in lieu thereof "(4) Fed-  
8 eral Deposit Insurance Corporation and (5)" and adding  
9 "National Railroad Passenger Corporation" at the end there-  
10 of.

Passed the Senate May 6 (legislative day, May 5),  
1970.

Attest:

FRANCIS R. VALFO,

*Secretary.*

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., June 17, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your requests for the views of the Bureau of the Budget on H.R. 17428 and S. 3706, two bills dealing with intercity rail passenger service.

The Bureau of the Budget recommends that your Committee give favorable consideration to S. 3706 rather than H.R. 17428.

Sincerely,

WILFRED H. ROMMEL,  
*Assistant Director for Legislative Reference.*

GENERAL ACCOUNTING OFFICE,  
OFFICE OF THE COMPTROLLER GENERAL,  
Washington, D.C., June 3, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of May 6, 1970, requesting our comments on H.R. 17428, the purpose of which is to provide a means for continuing necessary rail passenger service by restructuring routes and permitting railroads to be relieved of their responsibility to provide intercity rail passenger service by contracting with nonprofit corporations that will provide such service.

The bill proposes that the Secretary of Transportation submit his report and recommendations for a basic national rail passenger system of (1) urban corridor passenger service between cities not more than 500 miles apart in densely populated areas and (2) a system of long distance intercity rail passenger service of more than 500 miles. The bill would authorize the creation of nonprofit corporations to provide on routes within each urban corridor a system to fully develop the potential of modern rail service in meeting the nation's intercity passenger transportation requirements. The Secretary of Transportation would be authorized to contract for the provision of passenger service as to the basic national rail passenger system outside the urban corridor passenger system.

Under the proposed measure each corporation created to provide urban corridor passenger service would not be an agency or establishment of the United States Government but would be subject to the laws of the District of Columbia relating to nonprofit corporations. Section 803 of the proposed legislation would provide that the General Accounting Office audit the financial transactions of such corporations. See 31 U.S.C. 857.

Section 803 of the bill, in regard to accountability, places the corporations under the provisions of title II, section 201, of the Government Corporation Control Act as amended (31 U.S.C. 856). In general, title II requires an annual audit of Government corporations by our Office and a report to the Congress on the results of the audit not later than six and one-half months following the close of the corporations' fiscal year. In previous comments on similar types of proposed legislation, we have suggested that the Comptroller General should have flexibility in deciding when and how audits should be made and reports issued. We believe that similar flexibility would be appropriate in this case. We believe also that the bill should give our Office authority to review pertinent records of the railroads that receive benefits under the bill.

Section 301 provides for the creation of nonprofit corporations to provide intercity passenger service on routes within each corridor of the urban corridors passenger system. The bill, however, is silent in regard to who will determine the number of such corporations and their geographical area of authority. It would appear that the Secretary is to make these determinations but we believe that the bill should state specifically who is to make them.

Section 304 authorizes each corporation to conduct research and development related to its mission. Also, section 601 authorizes Federal grants for research and development and demonstration programs respecting new rail passenger service. The Department of Transportation is currently engaged in extensive research and demonstrations involving ground transportation under the pro-

visions of the High-Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1631). To avoid unnecessary duplication of research, we believe that section 304 should provide for the Department of Transportation's approval or coordination of the corporations' research, development, and demonstration projects.

Section 305 exempts each corporation from the provisions of the Interstate Commerce Act, State, or other law pertaining to regulation of rates, fares, and charges. It would appear, therefore, that each corporation would be free to establish rates, fares, and charges as it desired without external control or review. Because the public is dependent upon service by a common carrier, we believe it would be appropriate to provide for some form of external review and control over its rates, fares, and charges.

Section 401(a) provides that, in consideration for being relieved of its responsibility for providing passenger service by a corporation, a railroad shall pay a specific sum to the corporation either in cash or by the transfer of rail passenger equipment. The bill does not provide, however, a method for the determination of value of such equipment. We suggest that this point be clarified to avoid future valuation problems.

The term "regional authority" used in section 405(b) and (c) is not defined in the bill. It is suggested that a definition of the term be included section 102.

On page 19, line 14, it is not clear that the second section numbered 405 (which apparently should be redesignated as 406), includes provision for the discontinuance of services contracted for by the Secretary under section 402 or whether upon the discontinuance of service so contracted for the provisions of section 402 should apply.

Section 406 (which apparently should be redesignated as 407) provides for protective arrangements for employees adversely affected by certain discontinuances of passenger service. It would appear that railroad employees adversely affected by discontinuances of passenger service contracted for by the Secretary pursuant to section 402 are not covered. We suggest that the bill specifically state whether such employees are to be included in the protective arrangements provided in this section.

Sections 601 and 602 provide for Federal financial assistance to corporations, and section 701 provides emergency Federal financial assistance for railroads operating passenger service under a contract with a corporation. Each section places limitations on the total amount of available funds but no restrictions are placed on the amount of aid each corporation may receive. We believe that the bill should be modified to provide for an equitable distribution of available funds among the corporations. Such a provision would aid in the accomplishment of a national rail passenger system by providing a safeguard against initially established corporations consuming a major portion of available funds.

Section 701 authorizes the Secretary to guarantee any lender against loss of principal or interest on loans, up to a maximum amount, made to railroads who have contracted with a corporation for passenger service. We believe that the Federal Government should be compensated for its risk by prescribing and collecting from the lending institution a reasonable annual guaranty fee. This could be achieved if the following sentence were added on page 27 at the end of line 5, "The Secretary shall prescribe and collect from the lending institution a reasonable annual guaranty fee."

There appear to be several typographical errors in the text of the measure. The word "basis" on page 6, line 11, should be "basic." On page 7, line 4, there should be inserted the word "he" in place of "the." On page 14, line 21, the word "continued" should be "contained." It is believed that on page 15, line 13, the word "available" should be "avoidable" in connection with the definition of avoidable loss in section 102(g) of the Act. Also on page 15, line 19, it is believed that "401 (a) (2)" should be placed in the blank between the parentheses shown on that line. On page 19, line 14, the section should be redesignated as section 406 and on page 21, line 17, that section should be redesignated as section 407. On page 23, line 4, the reference should be to section 406 rather than 405. On line 13 of page 23, the United States Code citation should be "40 U.S.C. 333." On page 24, line 24, and page 25, line 2, the plural form "corporations" should be used rather than the singular. On page 26, line 16, the word "or" should be used instead of the first word "of." And on page 27, line 25, following the numeral 600, there should be inserted "; as amended, 70 Stat. 667." We suggest that lines 1-4 on page 28 be rewritten as follows: "by striking 'and (5)' and inserting in lieu thereof '(5)

Federal Deposit Insurance Corporation and (6)' and adding 'a corporation established pursuant to the Rail Passenger Act of 1970.'"

Sincerely yours,

R. F. KELLER,

*Assistant Comptroller General of the United States.*

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GENERAL ACCOUNTING OFFICE,  
OFFICE OF THE COMPTROLLER GENERAL,  
Washington, D.C., June 3, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of May 14, 1970, requesting our comments on S. 3706, the purpose of which is to provide a means for continuing essential rail passenger service by restructuring routes, permitting railroads to be relieved of their responsibility by contracting with a National Railroad Passenger Corporation which would provide such service, provide new or improved rail passenger equipment and strengthen controls over the discontinuance of passenger trains.

The bill would authorize and direct the Secretary of Transportation, acting in cooperation with other interested Federal agencies and department, to submit to the Interstate Commerce Commission and to the Congress his report and recommendations for a basic national rail passenger system. The bill would authorize the creation of a National Railroad Passenger Corporation to provide intercity rail passenger service, employing innovative operating and marketing concepts so as to fully develop the potential of modern rail service in meeting the Nation's intercity passenger transportation requirements.

S. 3706 provides for the establishment of a corporation, organized for profit and authorized to issue stock, with authority to contract with railroads and other agencies to provide intercity passenger service. Under the proposed measure the Corporation would not be an agency or establishment of the United States Government but would be subject to the District of Columbia Business Corporation Act. Section 803 of the bill would provide that the General Accounting Office audit the financial transactions of the Corporation. See 31 U.S.C. 857.

Section 804 of the bill, in regard to accountability, places the Corporation under provisions of title II, section 201, of the Government Corporations Control Act as amended (31 U.S.C. 856). In general, title II requires an annual audit of Government corporations by our Office and a report to Congress on the result of the audit not later than six and one-half months following the close of corporations' fiscal year. In previous comments on similar types of proposed legislation, we have suggested that the Comptroller General should have flexibility in deciding when and how audits should be made and reports issued. We believe that similar flexibility would be appropriate in this case. We believe also that the bill should authorize the Comptroller General to examine pertinent records of any railroad receiving benefits under the bill.

S. 3706 is silent in regard to the tax liability of the Corporation. As the bill provides for the creation of a profit corporation, we believe it should be modified to state the policy of the Congress on the tax liability, if any, of the Corporation.

Section 304(b) of the measure provides that after the initial issuance of stock of the Corporation is completed, the total shares of common stock of the Corporation owned by a railroad or any person controlling one or more railroads shall not exceed 33 $\frac{1}{4}$  percent of such shares outstanding. In addition section 304(c) contains a similar provision restricting ownership by a stockholder to not more than 10 percent of the shares of the preferred stock issued and outstanding. The act, however, contains no provision for adjustment or purchase of shares by the Corporation in the event that ownership exceeds the percentage limitations prescribed. It would appear that such a provision would be necessary to aid in adjusting the number of the shares of the Corporation held by a stockholder.

Section 305 authorizes the Corporation to conduct research and development related to its mission. Also, section 601 authorizes Federal grants for research and development and demonstration programs respecting new rail passenger service. The Department of Transportation is currently engaged in extensive research and demonstrations involving ground transportation under the provisions of the High-Speed Ground Transportation Act of 1965 as amended (49 U.S.C.

1631). To avoid unnecessary duplication of research, we believe that section 305 should provide for the Department of Transportation's approval or coordination of the Corporation's research, development, and demonstration projects.

Section 306 exempts the Corporation from the provisions of the Interstate Commerce Act, State, or other law pertaining to regulation of rates, fares, and charges. It would appear, therefore, that the Corporation would be free to establish rates, fares, and charges as it desired without external control or review. Because the public is dependent upon service by a common carrier, we believe it would be appropriate to provide for some form of external review and control over its rates, fares, and charges.

Section 401(a)(2) provides that a railroad in consideration of being relieved of its responsibility for providing passenger service by the Corporation shall pay a specific sum to the Corporation either in cash or, at the option of the National Railroad Passenger Corporation, by the transfer of rail passenger equipment, or the provision of future service as requested by the Corporation. The bill does not provide, however, a method for the determination of value of such equipment or service. We suggest this point be clarified to avoid future valuation problems.

Section 405 provides for protective arrangements for employees adversely affected by certain discontinuances of passenger service. It would appear that railroad employees adversely affected by discontinuances of passenger service established pursuant to section 404(b)(2) are not covered. We suggest that the bill specifically state whether such employees are to be included in the protective arrangements provided in this section.

The words "or agency" on page 27, line 16, of the bill apparently should be deleted as surplusage.

Section 701 authorizes the Secretary to guarantee any lender against loss of principal or interest on loans up to a maximum amount made to railroads who have contracted with the corporation for passenger service. We believe that the Federal Government should be compensated for its risk by prescribing and collecting from the lending institution a reasonable annual guaranty fee. We suggest that the following sentence be added on page 29 at the end of line 2, "The Secretary shall prescribe and collect from the lending institution a reasonable annual guaranty fee."

On page 30, line 6, following the numeral 600, we suggest there should be inserted "; as amended, 70 Stat. 667." Also, we suggest that lines 7-10 in page 30 be rewritten as follows: "striking 'and (5)' and inserting in lieu thereof '(5) Federal Deposit Insurance Corporation and (6)' and adding 'National Railroad Passenger Corporation' at the end thereof."

Sincerely yours,

R. F. KELLER,

*Assistant Comptroller General of the United States.*

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GENERAL ACCOUNTING OFFICE,  
OFFICE OF THE COMPTROLLER GENERAL,  
Washington, D.C., June 19, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of June 2, 1970, requesting our comments on H.R. 17849, the purpose of which is to provide a means for continuing and improving necessary rail passenger service by restructuring routes and permitting railroads to be relieved of their responsibility to provide intercity rail passenger service by contracting with nonprofit corporations that will provide such service.

The bill proposes that the Secretary of Transportation submit his report and recommendations for basic national rail passenger services specifying the points over which there should be operated intercity rail passenger service other than commuter and other short-haul service in metropolitan and suburban areas, and designating urban corridors within which there is a need for improved rail passenger service to relieve congestion. The bill would authorize the creation of nonprofit corporations to provide the basic services designated by the Secretary to fully develop the potential of modern rail service in meeting the nation's intercity passenger transportation requirements.

Under the proposed measure each corporation created to provide urban corridor passenger service would not be an agency or establishment of the United States Government but would be subject to the laws of the District of Columbia relating to nonprofit corporations. Section 804 of the proposed legislation would provide that the General Accounting Office audit the financial transactions of such corporations. See 31 U.S.C. 857.

Section 804 of the bill, in regard to accountability, places the corporations under the provisions of title II, section 201, of the Government Corporation Control Act as amended (31 U.S.C. 856). In general, title II requires an annual audit of Government corporations by our Office and a report to the Congress on the results of the audit not later than six and one-half months following the close of the corporations' fiscal year. In previous comments on similar types of proposed legislation, we have suggested that the Comptroller General should have flexibility in deciding when and how audits should be made and reports issued. We believe that similar flexibility would be appropriate in this case. We believe also that the bill should give our Office authority to review pertinent records of the railroads that receive benefits under the bill.

Section 301 provides for the creation of nonprofit corporations to provide the intercity passenger service. The bill is silent in regard to who will determine the number of such corporations and their geographic area of authority. It would appear the Secretary is to make these determinations but we believe the bill should state specifically who is to make them.

Section 304 authorizes each corporation to conduct demonstrations of possible improvements to passenger service. Also, section 601 authorizes Federal grants for demonstration programs respecting new rail passenger services. The Department of Transportation is currently engaged in extensive research and demonstrations involving ground transportation under the provisions of the High-Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1631). To avoid unnecessary duplication of research, we believe that section 304 should provide for the Department of Transportation's approval or coordination of the corporation's demonstration projects.

Section 305 exempts each corporation from the provisions of the Interstate Commerce Act, State, or other law pertaining to regulation of rates, fares, and charges. It would appear, therefore, that each corporation would be free to establish rates, fares, and charges as it desired without external control or review. Because the public is dependent upon service by a common carrier, we believe it would be appropriate to provide for some form of external review and control over the rates, fares, and charges established by the corporations.

Section 401(a) provides that, in consideration for being relieved of its responsibility for providing passenger service by a corporation, a railroad shall pay a specific sum to the corporation either in cash or by the transfer of rail passenger equipment or the provisions of future service as requested by the corporation. The bill does not provide, however, a method for the determination of value of such equipment or service. We suggest that this point be clarified to avoid future valuation problems.

It is not clear that section 405 includes provision for the discontinuance of services contracted for by the Secretary under section 402 or whether, upon the discontinuance of service so contracted for, the provisions of section 402 should apply.

Section 406 provides for protective arrangements for employees adversely affected by certain discontinuances of passenger service. It would appear that railroad employees adversely affected by discontinuances of passenger service contracted for by the Secretary pursuant to section 402 are not covered. We suggest that the bill specifically state whether such employees are to be included in the protective arrangements provided in this section.

Sections 601 and 602 provide for Federal financial assistance to corporation, and section 701 provides for emergency Federal financial assistance for railroads, operating passenger service under a contract with a corporation. Each section places limitations on the total amount of financial assistance but no restrictions are placed on the amount of aid each corporation may receive. We believe that the bill should be modified to provide for an equitable distribution of funds available for such purposes among the corporations. Such a provision would aid in the accomplishment of a national rail passenger system by providing a safeguard against initially established corporations consuming a major portion of the funds so made available.

Section 701 authorizes the Secretary to guarantee any lender against loss of principal or interest on certain loans to railroads who have contracted with a corporation for passenger service. We believe that the Federal Government should be compensated for its risk by prescribing and collecting from the lending institution a reasonable annual guaranty fee. This could be achieved if the following sentence were added on page 26 at the end of line 26, "The Secretary shall prescribe and collect from the lending institution a reasonable annual guaranty fee."

We suggest that, for the sake of uniformity, there should be a hyphen between the word "high" and the word "speed" on page 2, line 14 of the text of the bill. See page 10, line 21. Also, we suggest there should be a comma on page 6, line 12, between the words "services" and "review."

On page 21, line 1, it appears the reference to section 406 should be to 405.

On page 28, line 3, following the numeral 600 we suggest there be inserted the words ", as amended, 70 Stat. 667" and that lines 4 and 5 on page 28 be rewritten as follows:

"striking 'and (5)' and inserting in lieu thereof '(5) Federal Deposit Insurance Corporation and (6)' and adding".

This change appears necessary since the sections referred to were renumbered in section 201 of the act of July 26, 1956, 70 Stat. 667.

Sincerely yours,

R. F. KELLER,  
*Assistant Comptroller General of the United States.*

U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, June 12, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for my views on H.R. 17428, a bill to designate a national rail passenger system, to establish rail passenger corporations, to provide financial assistance therefor, and for other purposes.

I favor the goal of this bill, an improved system of intercity rail transportation, but defer to the Department of Transportation as to method of implementation.

My interest is, of course, primarily in the employee protection provisions of the bill.

The protective arrangements for employees (section 406) provides that a rail carrier must protect the interests of the employees adversely affected by discontinuance of passenger service authorized under the bill. (It appears that the section *Protective arrangements for employees* is misnumbered 406, but would actually be section 407.)

I would point out that the bill contemplates other actions and operations by the corporations and the railroads which could affect employees. These would include the use of tracks and other facilities of the railroads by the corporations (section 403), provision for new service by the corporations (section 405), and the conduct of demonstration programs and other operations by the corporations (section 601). In this regard I urge that the protective arrangements of section 406 be made available to employees affected by and actions authorized by the bill, rather than only those "affected" by "discontinuances."

Finally, I assume that the coverage under the protective arrangements provision (section 406) is substantially of the same scope as the protective arrangements provision (section 13c) of the Urban Mass Transportation Act. Any other interpretation would create difficulty in the administration of the protective arrangement in section 406.

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

Sincerely,

GEORGE P. SHULTZ,  
*Secretary of Labor.*

POST OFFICE DEPARTMENT,  
OFFICE OF THE GENERAL COUNSEL,  
Washington, D.C., June 2, 1970.

HON. HARLEY O. STAGGERS,  
Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 3706, the "Rail Passenger Service Act of 1970."

The purpose of S. 3706 is to revitalize rail passenger service in the United States. To accomplish this purpose the bill would provide for the designation of a basic national rail passenger system and the establishment of a quasi-public corporation to assume the operation of trains within the system which the railroads no longer desire to operate.

Section 305 of the bill would specifically authorize the new corporation "to carry mail and express in connection with passenger service." Section 306 provides that the new corporation would be subject to the Interstate Commerce Act except for the regulation of rates, fares, and charges and the abandonment or discontinuance of lines or routes and services. However, the rate-fixing and other provisions regarding the transportation of mail in chapter 95 of title 39, United States Code (as well as those provisions of the pending postal reorganization legislation covering surface transportation of mail) would be applicable to the proposed National Railroad Passenger Corporation. Accordingly, it does not appear that the interest of the Post Office Department would be affected adversely by the enactment of S. 3706.

It is to the advantage of the Post Office Department to have available prompt and efficient service by passenger trains and we support the goal of expanding and improving such service. However, we defer to the Department of Transportation with regard to whether S. 3706 provides the best possible method of accomplishing that goal.

If the bill is enacted it is assumed that the Department of Transportation will consult with the Post Office Department, as required by section 201, in the development of plans for the national rail passenger system.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the Committee from the standpoint of the Administration's program.

Sincerely,

Louis A. Cox,  
Deputy General Counsel  
(For David A. Nelson,  
General Counsel).

Mr. FRIEDEL. It is with great pleasure that we have as our first witness this morning the Honorable John A. Volpe, Secretary of the Department of Transportation.

**STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS; REGINALD N. WHITMAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; AND J. THOMAS TIDD, LEGISLATIVE COUNSEL**

Secretary VOLPE. Mr. Chairman and members of the committee, I appreciate very much this opportunity to appear before you to discuss the railroad passenger service problem. Rail passenger service in the United States is declining so severely in amount and quality that it may soon disappear completely unless action is taken now.

In the last 10 years, the number of intercity passenger trains has fallen from 1,500 to fewer than 500. The railroads have proposed discontinuance of many of these remaining trains. Accompanying this

overall decline in passenger service has been a generally marked deterioration in quality.

Severe deficits from passenger operations impose a serious financial burden on the Nation's railroads. This, in turn, affects their ability to provide high quality freight service. The rail passenger deficit, calculated on a solely related cost basis, has been increasing and amounted to about \$200 million in 1969. The impact of this deficit is apparent when compared to total rail net income in 1969 of only \$500 million.

The future is clear—we will surely witness the disappearance of intercity rail passenger service if we do not take positive action to avert it. I am convinced that there is a very real need for intercity passenger service and that such service can be provided on an economically self-sustaining basis. By the end of this decade, the total demand for intercity transportation service will put serious strains on our highway and airway systems. This will be particularly true in the major corridors, such as those on the west coast, in the Northeast, and in a broad band across the Midwest. These corridors traverse more than 20 States. Considering some of the potentially attractive long-haul routes, service to as many as 40 States is involved.

The Metroliner operation between New York and Washington convincingly shows that good quality rail passenger service can attract the traveling public. Over 1 million people have now ridden the Metroliner and, in 1969, between New York and Washington total rail patronage increased 46 percent over the preceding year.

Given a demand for good quality intercity rail passenger service in these corridors and over some long-haul routes, how do we go about achieving such service? I know this committee, as well as the Department, has been examining this issue intensively over the past year. There appear to be two basic choices.

One choice would be to establish some form of public subsidy which would compensate the railroads for their passenger deficits. A public subsidy program would assure the continuation of service, and possibly improve it, but only at a very high cost. As a general rule, there is little incentive to innovation in a subsidy approach. My experience has been that all we can look forward to are greater subsidies.

The other choice is to completely restructure the existing rail passenger system. This restructuring would be based on two premises. The first is that the attention and energy of the railroad industry, and more particularly railroad management, are directed more to the transportation of goods than to the transportation of people. This is not unnatural given the overwhelming predominance of their freight business both in operational and revenue terms.

The second premise is that in some markets there is insufficient demand for rail passenger service. In these markets, rail passenger service simply can no longer compete with the automobile, the bus, and the airplane. Therefore, to achieve economic viability on a system-wide basis, there has to be some paring of uneconomic routes or service.

After carefully examining the pros and cons, I concluded that, if the Government was going to do anything to meet this problem, it would be a serious mistake to do nothing more than prop up the present system with public subsidy. We must take a bolder approach and create a new structure. With sufficient capitalization, a new, quasi-

public corporation, whose only purpose is to maintain and improve rail passenger service over a more economically sensible system, has a good chance of becoming a sound and successful enterprise. This is the concept embodied in S. 3706, a bill now before the committee. The Department worked extensively with the Senate Commerce Committee in developing this bill, which passed the Senate on May 7, 1970.

I would like to review briefly for the committee how S. 3706 would work if enacted. The bill would require the Secretary of Transportation to designate a basic national rail passenger system. Within 30 days following enactment of the bill, the Secretary would have to prepare and submit to the Interstate Commerce Commission and the Congress a preliminary report designating such a system. Within 30 days thereafter, the Interstate Commerce Commission would be required to provide the Secretary with its comments and recommendations. After considering the Commission's views and within 90 days from the date of enactment, the Secretary would be required to submit to the Congress his final report designating the basic system.

The bill would create a National Railroad Passenger Corporation whose purpose would be to provide intercity rail passenger service. Shortly following enactment, the President would appoint incorporators who would serve as the Board of Directors for 180 days and take whatever actions were necessary to establish the Corporation as a going concern.

The bill would require the provision of passenger service within the basic system either by the Corporation or a railroad until at least January 1, 1975. A railroad could be relieved of this obligation only by entering into a contract with the Corporation under which the Corporation would assume responsibility for providing the service. In exchange for being relieved of its obligation, the railroad would agree to pay to the Corporation an amount up to one-half of its fully distributed passenger service deficit for calendar year 1969. If a railroad does not contract with the Corporation to relieve itself of passenger service responsibility, it may not discontinue any service prior to January 1, 1975.

It is important to note that, upon contracting with the Corporation, the railroad would be relieved of all responsibility for rail passenger service, including service performed outside the basic system. In many cases, the Corporation would discontinue the service outside the basic system for which it had assumed responsibility. The bill does provide, however for the maintenance of service outside the basic system if State, regional, or local authorities are willing to provide financial assistance to compensate the Corporation for any deficits incurred.

We would anticipate that most railroads would enter into contracts with the Corporation. This would provide the Corporation with initial capitalization of about \$200 million, which could be paid over a 3-year period, in equipment, services, or cash, at the option of the Corporation. In addition, the Secretary of Transportation would be authorized to provide \$40 million in cash to assist the Corporation in meeting initial organizational costs and for operational and other corporate purposes. The Secretary would also be authorized to guarantee loans to the Corporation up to \$60 million. Thus, the Corporation would have access to about \$300 million in capital at the outset.

Because the financial condition of some railroads might otherwise preclude participation, the bill would also authorize the Secretary to make or guarantee short-term loans to railroads for the purpose of permitting them to enter into contracts with the Corporation. These loans would bear interest at the Treasury rate and could not exceed a total of \$75 million.

Obviously, the establishment of the Corporation will not result in dramatic overnight changes in rail passenger service. The Corporation will contract with the railroads for operating crews, trackage rights, and equipment maintenance. Therefore, at the outset, it may be running many of the same trains. As a result of the consolidation of service, however, it is expected that there will be a general upgrading of the equipment in use. Immediate improvements can also be made in various passenger convenience areas such as ticketing and reservation. Over the longer run, new equipment can be purchased, roadbeds improved, terminals modernized, and other quality-of-service improvements achieved.

I do not wish to leave the committee with the impression that there are no risks in the course of action proposed in S. 3706. The rejuvenation of railroad passenger service will require a great deal of effort, dedication, and imagination. These traits have never been lacking in American enterprise, and S. 3706 provides a framework within which they can be exercised. On behalf of the administration, I strongly urge early and favorable consideration of S. 3706 by this committee and the Congress.

I realize that, in this brief statement, a very complex problem has been given a very summary treatment. I will be pleased to answer any questions the committee may have. Also, I have with me on my right, Charles Baker, our Assistant Secretary for Policy and International Affairs; to his right Reginald Whitman, our Federal Railroad Administrator; and on my left Tom Tidd, Assistant General Counsel for Legislation, all of whom are available to answer any questions the committee may have.

Mr. FRIEDEL. I wish to thank you, Mr. Secretary, for a very, very explicit statement. It brought out all of the ramifications of the bill.

One thing I would like to ask you? The \$300 million that is authorized in this bill for the Corporation, and the borrowing authority provided the railroads. Are these enough?

Secretary VOLPE. This is an estimate, Mr. Chairman. There are some who say that perhaps we might not need that much. There are others who say that we might need more. We believe it is a fair estimate and that it will be enough.

Mr. FRIEDEL. Is there any way of expanding the Corporation for additional financial aid if it is needed?

Secretary VOLPE. We would have to come back to the Congress to accomplish that. Of course, the proposed provides for the sale of stock to the public.

Mr. FRIEDEL. Stock will be sold to the public?

Secretary VOLPE. Yes.

Mr. FRIEDEL. Are there restrictions on the railroads? Can they own 50 percent or more?

Secretary VOLPE. I believe there is a restriction on the amount of stock that any particular railroad can own—33⅓ percent of the shares of common stock.

Mr. KUYKENDALL. Is there a line forming by the railroads to buy stock in passenger service?

Mr. FRIEDEL. If you give passengers improved service like the Metroliner which has increased patronage 46 percent, it will show that there is a need for a modern railroad system.

Mr. Adams?

Mr. ADAMS. Mr. Secretary, it is a pleasure to see you here. Many of us have been waiting a long time for this day to come and I want to congratulate you for putting the proposal together. We are very pleased and hope something can be reported out.

Many of us over the last year have viewed this and we have discussed before sort of a three-legged stool. You had to do something about the discontinuances. I understand in S. 3706 there is a moratorium in order to stop the going out of business of all of the passenger trains and the destruction of roadbeds, trackage, and so on, is that correct?

Secretary VOLPE. The moratorium would work as follows: those railroads who decide not to contract with the Corporation would not be able to discontinue any passenger trains until January 1, 1975. Those who do contract with the Corporation would be relieved completely of their responsibility for providing intercity passenger service, and the Corporation would be required to provide until January 1, 1975, that portion of their service which is included in the basic national system designated by the Secretary of Transportation. The Corporation would be required to operate trains outside the basic system if State or regional authorities agree to share in any deficits incurred.

Mr. ADAMS. The second part of it was giving the ICC more powers in terms of control of quality of service growing out of the Southern Pacific cases. Is that a portion of S. 3706? I think the Department before did support that position. This was in the original bills we introduced to give the ICC an authority which many of us felt they had but which they felt they were lacking.

Secretary VOLPE. Yes, this is provided for in title VIII of the bill, section 801, Adequacy of Service.

Mr. ADAMS. We would give this authority to the ICC both with regard to Corporation operations and to those railroads who chose to stay in business?

Secretary VOLPE. That is correct, and there is a fine of \$500 for each violation.

Mr. ADAMS. The third thing was—and I can't remember whether representatives of your Department were here at the time—but when we were holding hearings earlier we had testimony from one group on the designation of additional systems. My remembrance at that time was they estimated there are 6,000 passenger cars in the country and to run a national system about 1,500 or 2,000 would have to be rebuilt or refurbished.

This goes back to the question of the chairman. We had varying amounts estimated as to what this would cost. I wanted to know the basis which you or the other members of your Department had come

up with the figures here. They look a little low to me in terms of what they said.

Could you indicate to me whether you have examined that testimony and compared it to your studies or on what basis you have arrived at these figures. Otherwise, we might want to go a little higher with them.

Secretary VOLPE. Let me say, Congressman, with respect to the scope of the basic system, that in the course of preparing this legislative proposal, we have, to some extent, examined travel demands, and made some market analyses. Also, we have developed some information on revenues and costs, and some facilities and services have been checked by our Federal railroad personnel, but we still need to do a lot more work before we attempt to structure this basic national system.

As for the rolling stock, we believe there are some railroad passenger cars available today that are not being utilized or fully utilized that could be used on runs where we believe there is a substantial demand for services. In some cases, ridership has declined not because people generally do not want to ride the train, but because of the quality of the car and the quality of the service.

In other cases, there is just not the ridership potential to justify retention of the service.

So, I would say that the \$60 million the proposal provides in loan guarantees would aid in the purchase of some new equipment on those runs where a showing has been made that the public can and will utilize this service, as in the case of the New York to Washington run. In other cases existing trains can be modernized and updated and new equipment would not be required by the Corporation.

Mr. ADAMS. That is the provision that allows those that have a deficit to pay off their deficit by turning in cars?

Secretary VOLPE. That is correct.

Mr. ADAMS. I notice you are talking about designating additional systems. Many of us are well aware of the problems of the intercontinental trains and we may be down to two times a week or weekend service or a variation on that. I gather, without trying to prejudice your report, you would try to maintain some type of connection across the southern, central and northern part of the United States so that there would be some passenger train service left without trying to say how many days a week or how many trains or anything like that.

Secretary VOLPE. As you indicated, without prejudicing our case, we have to make a report and receive recommendations, but certainly that would be our aim. I think it would be fundamental as a matter of fact to a basic national system.

Mr. ADAMS. We are worried about the rights-of-ways disappearing and once gone in 10 to 15 years we would be faced with the fact of trying to replace them for as a train disappears the tracks are taken out.

Secretary VOLPE. We are aware of the necessity for maintaining these corridors for transportation purposes whether for railroad or some other mode of transportation. It is our hope we can retain these rights-of-way for transportation whether it be a railroad passenger service, or possibly what we are working on right now and what I think you will see used in the future for transcontinental service and,

in some locations, for service from airports into the city, and also for intercity operations, and that would be the tracked air-cushion vehicle.

If these rights-of-way were preserved you would not have to go out and try to obtain new rights-of-way, condemn additional properties, and so on.

Mr. ADAMS. Thank you, Mr. Secretary.

Mr. DEVINE. I think you have a copy of S. 3706.

Secretary VOLPE. Yes, I do.

Mr. DEVINE. I would invite your attention to section 401(a)(1). Is it your intention that each railroad today that operates intercity rail passenger service would be assured of being able to enter into a contract under this particular provision before there is any freeze or discontinuance of passenger trains under that amendment?

Secretary VOLPE. Yes.

Mr. DEVINE. If an amendment were felt needed to clarify that section, would you have any objection?

Secretary VOLPE. If it is not clear we have no objection to it.

Mr. DEVINE. You touch on this at the bottom of page 4 of your formal statement. I think it is important that this matter be clarified. I was impressed by the fact in your statement you say there are just two ways to go on this. One is the Government subsidy route and the other is the Corporation and I appreciate your giving us this very clear statement.

That is all I have Mr. Chairman.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. Mr. Secretary, the airport legislation just enacted by the Congress which was signed recently had a statement that the administration was to, within a period of time, approximately one year, to submit to Congress a national transportation policy. You are aware of that section, are you not?

Secretary VOLPE. Yes, I am.

Mr. DINGELL. Can you tell me how you are progressing toward that policy that you have been directed to submit to the Congress?

Secretary VOLPE. Yes, it is an exercise that I can assure you is taxing the resources of our Department in many ways. We have placed the general direction of this study in the Assistant Secretary for Policy and International Affairs, and naturally he is drawing upon other elements of the Department to help develop the report.

I can tell you that it is a much more gigantic job than I estimated originally. It is only four of five words—develop a national transportation policy—but when you start to think in terms of the amount of comprehensive planning and study that is required to develop a national transportation policy, you really have something that is a big, but I think, a very, very essential and necessary operation.

We are coming along and I am hopeful that sometime in the early fall we will have at least the basic outline of such a policy statement, and that before the end of the year we will have a completed statement.

Mr. DINGELL. As one who has called upon different departments to make this kind of study over the years, I would hope, Mr. Secretary, if you need additional time you will inform this committee so we can extend your opportunities and if you run into any problems I would hope you would advise this committee so we could see to it that your

problems were able to be met with the assistance of the Congress rather than you fighting alone out there in the dark in the agency.

Secretary VOLPE. I appreciate that comment.

Mr. DINGELL. I wish to direct my questions to the words "avoidable loss" on page 4 of the bill. You will note that following that the methodology is dependent upon the report of the Commission dated July 16, 1969, entitled "Investigation of Costs of Intercity Rail Passenger Service." Line 11. I am sorry, I am reading from the House bill. I am——

Secretary VOLPE. Page 3, subsection f, line 16——

Mr. DINGELL. The Senate bill is the same, lines 6 through 20. Are you familiar with the report, Mr. Secretary, that is alluded to at that point in the bill, published by the Commission?

Secretary VOLPE. I am aware of it only as a report and not in detail.

Mr. DINGELL. I have some very particular questions I would like to ask. If you are not prepared to answer them, I would be happy to have you so advise me and I will submit the questions to you in more precise form by letter. You may then submit them for answer at this point.

Mr. Secretary, I understand the Department of Transportation provided the funds for and contracted for the Wyer, Dick Co. to compile data for this report. Are you able to tell us the circumstances under which this contract was awarded?

Secretary VOLPE. I am not.

Mr. DINGELL. In fairness I will ask you to submit that information for the record.

It is my understanding that the original fee was \$40,000 plus certain travel expenses. However, this was open for negotiation upon completion of the study.

Was a contract ever formally executed and could you tell us when and would you submit a copy of the contract, if executed, to this committee.

Secretary VOLPE. I would be happy to.

Mr. DINGELL. Can you tell us what the final cost was to the Department of Transportation from Wyer, Dick Co. for completing this work?

Secretary VOLPE. I understand it is less than \$40,000.

Mr. DINGELL. Were competitive bids requested for this particular contract?

Secretary VOLPE. We can submit the material to you, Congressman.

(See letter dated June 26, 1970, on p. 77, this hearing.)

Mr. DINGELL. If competitive bids were not asked for, would you cite what section of the law under which competitive bids were not requested.

Secretary VOLPE. I am not talking now about this individual contract, but engineering and architectural contracts. We have, for example, authority in contracting for expert and consultant services of this type to undertake to consider various firms and then select the best qualified firm, but not on the basis of competitive bids.

Mr. DINGELL. If you have the authority to do it without competitive bids, I will be more than happy to receive a statement as to the grounds on which you waived competitive bids.

(See letter dated June 26, 1970, on p. 77, this hearing.)

Mr. DINGELL. Was any study made of the Wyer, Dick Co. before they were retained to make the study in question? I understand they, at the time, were involved in the study under retainer by two of the eight railroads, Union Pacific and Missouri Pacific. Are you aware of that fact?

Secretary VOLPE. I would not be aware of the details of that part of the operation of the administration that contracted with this organization.

Mr. DINGELL. I recognize you don't have knowledge about this specific matter, but, I am apprehensive. How can we consider a firm which is under contract to two of the railroads involved as having a completely unbiased viewpoint? It strikes me this is a rather obvious conflict of interest.

Are you able to make some comment on that at this time?

Secretary VOLPE. Based on what you have said I would look at it very closely and I will certainly give you a complete explanation of it so I can satisfy you and myself, too.

Mr. DINGELL. I understand they had been under contract by at least seven of the eight railroads involved and I would like to have your comments as to the objectivity of the study based upon that kind of intimate relationship.

(See letter dated June 26, 1970, on p. 77, this hearing.)

Mr. DINGELL. I have other questions, Mr. Chairman, but I will be happy to defer.

Mr. KUYKENDALL. It is very good to have you with us, Mr. Secretary.

In layman's terms, let's take this step by step. A particular passenger route by a railroad is losing money. They choose by a certain date to go sign the contract with the Corporation. Is this correct?

Secretary VOLPE. Yes, sir.

Mr. KUYKENDALL. Will there be a separate contract for every route, or does a railroad sign a blanket contract with the Corporation?

Secretary VOLPE. The railroad would sign a contract with the Corporation to obtain relief from its entire responsibility for the provision of intercity rail passenger service.

Mr. KUYKENDALL. May a railroad maintain on its own without any participation with the Corporation a profitable route and turn an unprofitable route over to the Corporation for the partnership?

Secretary VOLPE. It would not be able to do so.

Mr. KUYKENDALL. In other words, it is all or nothing?

Secretary VOLPE. Yes, sir.

Mr. KUYKENDALL. Why is it, Mr. Secretary, that there are no provisions in the legislation for the Corporation to discontinue? Am I correct in saying there are no provisions for the Corporation to discontinue before 1975?

Secretary VOLPE. Yes, in structing the basic national system, we can include those trains that we believe are viable, that can be made to attract passengers—even though in some cases today they might not be profitable—and exclude other trains that we feel are either duplicative or which we believe just never will be able to operate except at a great deficit.

So, in the process of establishing the basic national system, essentially, the Secretary of Transportation is given the authority to discontinue trains.

Mr. KUYKENDALL. Realistically, are you not convinced right now that we will notice some of these routes are unsavable dogs at the end of 18 months.

Secretary VOLPE. That is a question of judgment. I would say it probably would be less than 5 years, but it could be somewhat more than 18 months.

Mr. KUYKENDALL. Would you object to proper language if proper language could be arrived at to allow your good judgment and the good judgment of the corporation to prevail before 5 years? I don't like the idea of covering losses for that long if we notice something is a dog at the end of 18 months.

Secretary VOLPE. I would leave that to the House of Representatives.

Mr. KUYKENDALL. You would not object to proper language in this area?

Secretary VOLPE. I would not.

Mr. KUYKENDALL. In the matter of the appointment of the Board, would you anticipate that at the time that public ownership became over half—hopefully, it will—I don't think they will be knocking down the doors of the stock market to buy this Corporation on the front end, but let's hope that we do well, and that the Board can be over half private ownership within a few years. I mean the Corporation.

Do you not anticipate at that time that the stockholders should be allowed to appoint a majority of the Board?

Secretary VOLPE. I think that is a good point. I think it is one that perhaps the committee should consider. The only point I would make to you, Congressman, is that although in a true sense this is a non-Federal entity, nevertheless, about a third or more of its initial capitalization will be Federal funds and I think you could make a case the other way. But you are more or less placing it in the context of after a few years have gone by—

Mr. KUYKENDALL. Permissive amendment legislation.

Secretary VOLPE (continuing). That would indicate the desirability of having more private directors than directors appointed by the President.

Mr. KUYKENDALL. In the questions of the many millions of dollars of payments to be made to the railroads by the corporations and let's assume there is enough compulsion in here that the railroads will comply and it is not intended by the bill that they will not comply—I know you do not wish that the railroads where their statements look so bad suffer from a financial viewpoint here by this large payment to the Corporation. How do you feel about this?

Secretary VOLPE. That is the reason that we provided for the \$75 million of financial assistance in section 701 because we know in some cases it would be impossible without breaking completely their cash position for railroads to pay the Corporation in cash, and in some cases they might not have the type of equipment that the Corporation would want.

We don't want the Corporation to have to take over a bunch of 60-year-old cars. The \$75 million loan provision was included to permit the Secretary to assist on a short-term basis those railroads that could not provide either cash or the kind of physical assets that the Corporation would care to have.

Mr. KUYKENDALL. Do you anticipate the railroads would have any trouble expensing this payment with the Internal Revenue Service?

Secretary VOLPE. The financial experts—and I do not have too many of those, but enough, I will just hazard a guess if I may—I don't think we could answer that with a direct yes or no. There is some question about it.

Mr. KUYKENDALL. Can this Corporation go into futuristic ground transportation within its original charter, congressional mandate?

Secretary VOLPE. By way of other forms of transportation?

Mr. KUYKENDALL. In other words, can this Corporation get into production or are they limited to the passenger-carrying type of vehicle and that alone?

Secretary VOLPE. I think that the language as now drawn would probably allow them to get into an operation of a vehicle that some people might not call a railroad or railroad train and might not ride on a steel rail. My counsel tells me he believes there is sufficient latitude here that they might undertake this.

Mr. KUYKENDALL. The self-propelled passenger car would probably fall in this category, is that correct?

Secretary VOLPE. Yes.

Mr. KUYKENDALL. Where the propulsion and passenger seats are in the same vehicle.

Secretary VOLPE. Yes.

Mr. KUYKENDALL. When I first rode the Metroliner, half of the trip was smooth and half was rough. We notice the problem of tracks used every day by big freight cars. No matter how the railroads try that Big John freight train is going to beat up the tracks for passenger concerns.

Therefore, what would be the view of the Corporation with respect to the tracks?

Secretary VOLPE. They would work this out with the railroads. In some cases, they would contract with the railroads to provide a service if they felt that that railroad was capable of and would give the proper attention to it. They also would contract for maintenance.

There are other cases where they might undertake this on their own. I would hope that in most cases they would be able to contract with railroads for the operation of the trains that we would specify as well as for the maintenance of rights-of-way.

As for your Metroliner example, I might say that it is well over a half that is now fairly smooth as distinguished from about half when you last rode it.

Mr. KUYKENDALL. Mr. Chairman, I think this is terribly important. What leverage do we have here to give the Corporation the power to see that they have good tracks?

Secretary VOLPE. I think the Corporation will be like any other corporation. It will either flounder on the rocks because it provides poor service or it will prosper because it provides a better mousetrap. The only way it will make a go of it is to provide a better mousetrap.

Mr. DINGELL. Mr. Chairman, I will submit a letter to the Secretary as I had indicated requesting answers and I would like to have the record kept open for receiving both a copy of my letter to the Secretary and a copy of the Secretary's response.

Mr. Secretary, I realize I have effectively created a problem which you could not be fully prepared for this morning.

I would like to ask just this. Can you tell us what Department of Transportation staff participation was given in the study to which we are alluding?

Secretary VOLPE. The one you referred to earlier?

Mr. DINGELL. The one mentioned in the legislation. I understand there was only one staff member of DOT who participated in this and he was a GS-7 in his first year out of college and that he participated for only 15 days over a period of 15 months.

Secretary VOLPE. I would doubt seriously that any report coming out of our shop or any of our administrations, particularly the Federal Railroad Administration, would receive that kind of a cursory look at such a low level. This was under the Federal Railroad Administration and it would certainly have had the eyes and attention of either the Administrator himself or certainly his Deputy Administrator. We can also give that to you in the letter in reply.

Mr. DINGELL. I will submit a full list of questions.

Am I correct in my assumption that this bill applies only to intercity rail service and not commuter service?

Secretary VOLPE. That is correct.

(The following letter was received for the record:)

DEPARTMENT OF TRANSPORTATION,  
OFFICE OF THE SECRETARY,  
WASHINGTON, D.C., June 26, 1970.

Hon. JOHN DINGELL,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. DINGELL: Your letter of June 2, 1970, set forth a number of questions pertaining to the participation of the Department in the report and study conducted and published by the Interstate Commerce Commission dated July 16, 1970, entitled, "Investigation of Costs of Intercity Passenger Trains".

Wyer, Dick, and Company, the contractor involved in your inquiry, was selected to perform the assigned contract prior to the time I took office. The contractor was selected by the former Administrator of the Federal Railroad Administration in November 1968 with instructions to start work immediately on the basis that Wyer, Dick, and Company was the best qualified firm to perform the work.

Enclosed are responses to the specific questions raised in your letter of June 2, 1970. Further details regarding the initial selection and authorization of the contractor to proceed during the year 1968 are described in the enclosed copy of the letter dated December 31, 1969 from Acting Secretary Beggs to Chairman Staggers on the same subject.

Sincerely,

JOHN A. VOLPE, *Secretary.*

Enclosures

1. *Under what circumstances did the Department contract with Wyer, Dick, and Company for its services in preparation of the aforementioned report?*

Answer: Acting upon recommendations of the Chairman of both the Senate and House Committees on Commerce, the then Chairman of the ICC requested staff support through the former Federal Railroad Administrator. Because of staff limitations of a new Agency, the Administrator agreed to provide contractor assistance as soon as possible after November 1, 1968. The services of a contractor were to be used in structuring a study plan (instructions and forms) and after data input was received from the participating railroads, the contractor would be used to review data for completeness and accuracy and assist, where required, in drafting of a preliminary staff report. The contractor would work under the direct supervision of the ICC Task Force Chairman.

2. *What were the provisions of this contract and when was it executed? (Please furnish a copy of this contract).*

Answer: The Wyer, Dick, and Company contract was executed in two parts: The Preliminary Contract and Letter Contract. A purchase order in the amount of \$1,826 was issued to cover services rendered by Wyer, Dick, and Company from November 14 to December 12, 1968. The contractual services consisted of assisting in the study, design, and preparation of instructions and forms to obtain data from the participating carriers. Such forms were mailed December 12, 1968, and the railroads began submitting completed forms on February 1, 1969.

A Letter Contract dated February 11, 1969, was issued to Wyer, Dick, and Company, authorizing the contractor to assist the ICC in determining the acceptability, accuracy, and analysis requirements of data furnished by the railroads. Subsequent letter contracts were dated April 4, 1969, May 27, 1969 and June 28, 1969. Also enclosed is the final agreement with Wyer, Dick, and Company, on the work that was performed.

3. *What was the total expenditure by the Department to Wyer, Dick, and Company pertaining both to services and expenses?*

Answer: The total expenditure by the Federal Railroad Administration, was \$41,051.

4. *Who in the Department made the selection of Wyer, Dick, and Company?*

Answer: The former Administrator, Federal Railroad Administration, made the selection of Wyer, Dick, and Company.

5. *Were competitive bids requested with regard to these consultant services? If not, why not?*

Answer: Competitive bids were not requested because of the need to initiate and complete the study in the shortest time frame possible.

6. *What other firms were considered? What was the reason for the selection of Wyer, Dick, and Company?*

Answer: Unsolicited passenger study proposals had been received from the firms of A. D. Little, CONSAD Research, R. L. Banks and Associates, Planning Research Corporation, and Wyer, Dick, and Company. Other than Wyer, Dick, and Company the above named firms had placed heavy emphasis on market research analysis (demand).

After reviewing these proposals, the former Administrator selected Wyer, Dick, and Company as the contractor to assist the ICC task force in design of the study plan, in data analysis, and in developing parts of the preliminary report.

7. *With regard to these firms, was any consideration given or check made as to whether such firms were then on retainer to any railroad companies which might be included in the study?*

8. *Regarding the fact that Wyer, Dick, and Company was on retainer to two of the eight railroads involved in the study and has previously done work for seven of the eight railroads, why was this firm selected in view of such an obvious conflict of interest?*

After considering all available data—the former FRA Administrator selected Wyer, Dick, and Company as the firm best qualified to perform the work. Wyer, Dick, and Company was not involved in the selection of the study railroads. Practically all experts engaged in work of these kinds perform both private and governmental work. Wyer, Dick, and Company was not permitted to accompany ICC task force members on inspection trips to the two involved railroads, nor was the contractor allowed to work independently of the task group.

Questions had to be addressed such as level of track maintenance, requirements for signals, yard, and mainline trackage, locomotives and passenger cars. Therefore, it was important to select a contractor with a high degree of operations orientation, not just financial or accounting expertise. Further, a contractor with extensive experience in "avoidable cost" methodology was needed. Wyer, Dick, and Company met these qualifications, and had previously developed studies of this nature for public authority use.

9. *To what extent did the Department participate in this study, it being noted in the report that the only representative of the Federal Railroad Administration and the Department was Mr. Daniel M. Collins.*

Answer: This Department provided senior administrative support and advice throughout the initial phase of the study, i.e., participating in the selection of the study railroads, of structuring the study plan and developing the questionnaire format. The Department was represented in this effort by the Director, Office of Policy and Planning, Federal Railroad Administration and other selected senior members of his staff.

Continued liaison was also maintained between the two agencies after completion of the preliminary phase of the contract. The services of Mr. Collins were used only in the second phase of the contract, e.g., assisting the ICC in data tabulation and analysis.

10. *What was Mr. Collins' experience with the Department and what was his expertise in the field of rail passenger service?*

Answer: Mr. Collins has been with the Office of Policy and Planning, Federal Railroad Administration, since July, 1968, as Research Assistant and later as an Economist. He has a B.A. in Economics and is presently working for a Masters Degree. One of his prior assignments was to develop a report on the issue of legitimate passenger train expenses and revenues. This required a thorough review of railroad and ICC accounting practices and the methods used by various state agencies in determining cost allocation formulas.

11. *What was Mr. Collins' grade and salary at the time he participated in this study?*

Answer: Mr. Collins was a GS-5, \$5,600 per year, which is the maximum permitted for a recent college graduate without prior experience.

12. *Please advise the number of manhours expended by Mr. Collins and the dates involved during his participation in this study.*

Answer: Mr. Collins worked on this study from the latter part of March through the beginning of May 1969. The actual days were March 25 and 27; April 1, 3, 8, 10, 15, 16, 17, 22, 23, 24, and 29, and May 6 and 8. An approximate manhour figure of 120 hours was expended.

13. *Did anyone in the Department other than Mr. Collins assist in the approval of the report contents or in their compilation?*

Answer: The Director, Office of Policy and Planning was apprised of the progress of the study, of the quality of the data input, and of incidental problems associated with data refinement. No one in the Department assisted in the approval of the staff report before publication. Mr. Collins' primary responsibility was to help the ICC staff members in their tabulation of the data. Most of his effort was spent in compiling equipment retirement and depreciation statistics.

14. *Did anyone in the Department, or in the Federal Railroad Administration, other than Mr. Collins, participate in any detailed audit of financial data submitted by the eight participating railroads?*

Answer: Most of the detailed audit of data submitted by the study railroads was conducted by the ICC task force members. Other than preliminary examination of data inputs, no staff member of the Department or FRA was involved in the detailed audit of financial data.

(Telegraphic Message)

DEPARTMENT OF TRANSPORTATION,  
FEDERAL RAILROAD ADMINISTRATION,

February 11, 1970.

WYER, DICK & Co.  
Transportation Consultants,  
Upper Montclair, N.J.

(Attn. Mr. Charles C. Shannon, President).

Pending negotiations of a formal contract, you are authorized to proceed with the work to perform the necessary research on a study for the "Determination of Net Avoidable Expense (Avoidable Expenses minus Revenues) of intercity rail passenger service for nine selected railroads". It is the intent of the government to enter into a cost-reimbursement contract. Liability of the government limited to \$11,000, pending execution of a contract. This telegram, accepting your proposal and the formal contract to be negotiated, will be subject to the provisions as required by the Federal Procurement Regulations, including unlimited rights by the government to all data developed under this contract. This contract will be identified by number DOT-FR-9-0036. Please wire acceptance stating the acceptance date. Send your wire to: Department of Transportation, Federal Railroad Administration.

ROBERT L. SIKES, *Contracting Officer.*

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AGREEMENT

Wyer, Dick & Company, 250 Bellevue Avenue, Upper Montclair, N.J. 07043, hereinafter referred to as the contractor and, the Federal Railroad Administration, hereinafter referred to as the Government agreed; that, the Contractor

would perform the necessary research on a study for the, "Determination of Net Avoidable Expenses", (avoidable expenses minus revenues) of intercity rail passenger service for a number of railroads. The work to be performed by the contractor would be in accordance with the contractor's proposal dated January 22, 1969. The Government on February 11, 1969, sent the contractor a telegram, authorizing the contractor to proceed with the work stated above on a cost reimbursement basis pending negotiation of a formal contract. The formal agreement would be subject to the Federal Procurement Regulations and General Provisions dated September 1969 (attached).

The Contractor agreed to furnish the necessary facilities, materials, professional personnel and such other services as required to assist in conducting a study and/or survey, pursuant to the foregoing, and rendered the following services:

1. Assisted in conducting a study to cover eight selected railroads. The Contractor provided professional assistance to the staff task force, which was comprised of representatives of the Interstate Commerce Commission, (ICC) State regulatory agencies, the FRA, rail labor and others, herein referred to as the Committee in developing the necessary procedures and requests for data to be furnished by the railroads.

2. Upon receipt of the basic information from the carriers involved under Part I of "Investigation of the Costs of Intercity Rail Passenger Service" revised December 13, 1968, by the ICC, Contractor reviewed the data with the Committee and provided professional assistance in analyzing the data as to reasonableness and provided technical advice and assistance to the staff task force in the following areas:

I. Description of Intercity Passenger Operations

II. Operation Plan for Eliminating All Intercity Passenger Service

III. New Avoidable Expenses of Intercity Passenger Service

3. When the data in connections with Item 2, above was received and analyzed, the contractor assisted the staff task force to overcome all deficiencies found in the carriers proposals. Some of this work was accomplished in Washington, but a substantial part of it was required at investigations and meetings at the railroad company's headquarters and passenger facilities. The Contractor attended meetings with six investigations and meetings with the Union Pacific, and the Missouri Pacific railroads.

4. After the basic information has been finalized, the Contractor assisted the Committee in a complete analysis of the data.

5. With the completion of such analysis, the Contractor provided assistance in drafting those portions of the report related in Part I Sections I, II, and III described in Item 2, and was required to provide limited assistance in connection with Part II, "Other Cost Questions Relating to Intercity Passenger Service."

*Period of Performance:* All work specified herein, including the submission of the approved final report, was completed on or before July 31, 1969.

*Consideration and payment:* Upon final negotiation of the terms and conditions of the contract, the Government and the Contractor agreed that:

The Contractor shall be paid for the work and/or services to be performed under this contract in accordance with the following provisions:

*A. Daily Labor Rates:* The amounts computed by multiplying the appropriate rate, or rates, set forth below by the number of direct labor days performed, such rates shall include wages, employee fringe and pension benefit expense, general operating overhead, and profits. Fractional parts of a day shall be payable on a prorated basis. Vouchers were submitted once each month to the Contracting Officer or his designee. The contractor did substantiate vouchers by evidence of actual payment and by individual daily job timecards, and such other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this agreement, and subject to the provisions of (1) below, make payment thereon as approved by the Contracting Officer. The total labor cost will not exceed the total estimated amount of \$34,274.00.

<i>Category</i>	<i>1. Labor</i>	<i>M/D</i>	<i>Estimated M/D cost</i>
A. Chairman -----			\$300.00
B. President and executive vice president-----			275.00
C. Vice presidents-----			275.00
D. Vice presidents-----			200.00
E. Others -----			150.00
Total estimated amount not to exceed \$34,274.00			

**B. Travel and Per Diem:** The Government shall reimburse the Contractor for travel expenses incurred by the Contractor exclusively in direct performance of this agreement. However, reimbursement for transportation shall not exceed the cost of the most direct route of first class air travel or first class rail travel, if economy or tourist fare accommodations cannot be obtained. Per diem shall not exceed \$35.00 per day. Transportation by privately owned automobile was reimbursed at a rate not to exceed \$0.10 per mile in lieu of actual costs. Travel and per diem costs shall not exceed the total estimated amount of \$4,828.02.

**C. Communication:** The Government will reimburse the Contractor for communication expenses incurred by the Contractor exclusively in direct performance of this agreement. Communication expenses which shall not exceed the total estimated amount of \$123.64.

WYER, DICK & Co.  
By: C. C. SHANNON, *President.*

FINAL RELEASE

Whereas the United States of America represented by a Contracting Officer of the Federal Railroad Administration, Department of Transportation (hereinafter referred to as the "Government"), did request and authorize by telegram of 2-11-69, Wyer, Dick and Company 250 Bellevue Avenue, Upper Montclair, New Jersey (hereinafter referred to as the "Contractor") to commence a study to be titled, "Investigation of Cost of Intercity Rail Passenger Service," pursuant to the Contractor's proposal of January 22, 1969, entitled a "Determination of Net Avoidable Expenses (Avoidable Expenses Minus Revenues) of Intercity Rail Passenger Service for Nine Selected Railroads";

Whereas the Contractor by telegram of 2-14-69, did agree to perform the work as authorized by the Government's telegram of 2-11-69;

Whereas the Contractor did satisfactorily perform the work requested, as evidenced by the submission to, and acceptance by, the Government of a report entitled "Investigation of Cost of Intercity Rail Passenger Service";

Whereas the Government has agreed to pay the Contractor in accordance with the attached agreement for the work performed;

Whereas it has been determined that the total amount due the Contractor is thirty-nine thousand, two hundred and twenty-five dollars and sixty-six cents (\$39,225.66);

Whereas, the Government has paid to the Contractor the sum of \$29,196.87: Now therefore

The Government and the Contractor agree as follows:

Upon final payment by the Government to the Contractor of the balance due of ten thousand, twenty-eight dollars and seventy-nine cents (\$10,028.79), the contractor does hereby release and discharge the Government, its officers, agents, and employees from any and all liabilities arising out of the transaction described herein above with Wyer, Dick and Company.

In Witness Whereof, this release has been executed this 14th day of May, 1970.

WYER, DICK & Co.,  
By C. C. SHANNON, *President.*

CERTIFICATE

I, Samuel T. Cooke, certify that I am the Secretary of the Wyer, Dick and Co. and that C. C. Shannon, Pres., who signed this release on behalf of said corporation: that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this 14th day of May, 1970.

[Seal]

By SAMUEL T. COOKE, *Secretary.*

DEPARTMENT OF TRANSPORTATION,  
Washington, D.C., December 31, 1969.

Hon. HARLEY O. STAGGERS,

*Chairman, Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of November 6, 1969, for an evaluation of a contract awarded by the Federal Railroad Administration (FRA), Department of Transportation (DOT), to Wyer, Dick & Co., Upper Montclair, New Jersey.

Our evaluation disclosed deficiencies in the award and administration of the Wyer, Dick & Co. letter contract and purchase order, particularly the informal and undocumented procedure for the selection of the contractor, the authorization to commence work without a written contract, and the delay in formalizing the contractual arrangement. These deficiencies, which did not negate a binding contractual relationship with Wyer, Dick & Co., were brought to the attention of the Federal Railroad Administrator, and steps will be taken to prevent their recurrence.

The following comments relate to the specific questions raised in your letter:

### 1. *Involvement of FRA*

a. In response to a recommendation by Senator Warren G. Magnuson, Chairman, Committee on Commerce, U.S. Senate, the Interstate Commerce Commission (ICC) solicited staff participation of the FRA in a study of costs of intercity rail passenger service. The study by ICC was officially requested by the Chairman's letter dated October 8, 1968.

Since FRA could not supply full-time staff assistance, the former Administrator, FRA, suggested the use of an outside consultant as an alternative. The current Administrator, FRA, stated that FRA was requested by the Senate Commerce Committee Staff to provide funds for such consultant assistance because ICC did not have funds available.

b. In addition to providing funds for a consultant, FRA also furnished (1) professional advice in structuring the study plan and approach, (2) a research assistant for 15 days to assist in compilation of data, and (3) assistance in obtaining estimates of the cost of new passenger equipment.

### 2. *Selection of Consultant Contractor*

a. After agreement with ICC in November 1968, that FRA would hire a consultant to participate in the study, the former Administrator, FRA, selected Wyer, Dick & Co. as the firm best qualified to perform the work. Other contractors which were identified as having been considered were R. L. Banks and Associates; A. D. Little, Inc.; Planning Research Corporation; and CONSAD—Research Corporation.

b. Although the contract files indicate that the contractor was selected on the basis of "sole source," the former Administrator, FRA, recently indicated that the selection of Wyer, Dick & Co. was based on his experience and personal knowledge of consultant firms competent to work in this study area, and his discussions with the specific consultants mentioned above.

c. The former Administrator, FRA, further indicated that Wyer, Dick & Co. was selected in November 1968 with instructions to start work immediately and continue throughout the study period. The contractual instruments covering the Contractor's performance from this date were delayed as discussed in paragraphs 5 and 6 below.

### 3. *Independence of the Contractor*

a. Wyer, Dick & Co. was, and still is under retainer to the Union Pacific Railroad Company, and also continues to serve as consultants to Missouri Pacific Railroad Company in a litigation case. Both of those Railroads were selected for review in the study.

b. However, the FRC and ICC advised that Wyer, Dick & Co. was not involved in the selection of the railroads to be studied and did not accompany the ICC Task Force on field trips to these railroads.

c. The American Association of Railroad Superintendents (AARS) is reported to be a professional group and not a policy-making group, such as the Association of American Railroads. Also, there is no indication of an organizational connection between these two Associations. Essentially, Mr. Shannon's (President of Wyer, Dick & Co.) membership in the AARS was indicated as helping to keep him abreast of latest operating procedures and techniques. Based upon the information available, there is no evidence of a conflict of interest between his membership in AARS and his firm's participation in the study.

d. Wyer, Dick & Co. was considered knowledgeable in avoidable cost study methods because of its participation in a previous avoidable cost study of the Erie Lackawanna Railroad.

e. Regarding the Contractor's general working relationships during the study, the ICC has advised that Wyer, Dick & Co. worked under the direction of the Task Force Chairman at all times and was used only to complement the work of other individuals or associations engaged by the Commission.

#### 4. *Services of the Contractor.*

a. The specific services performed by the Contractor included (1) evaluation of the feasibility of the railroads' proposed operating plans before and after cessation of passenger service, (2) analysis of cost data, (3) participation in five field trips and (4) assistance in outlining and drafting the preliminary staff report. These services were consistent with the contractual scope of work, as subsequently confirmed by the Contracting Officer.

b. The determination of required services was apparently made prior to the issuance of the contractual commitment as indicated in a letter dated January 22, 1969. This letter was based on discussions with FRA and ICC, and outlined the Company's proposal for assisting FRA and ICC in evaluating and analyzing the data submitted by the railroads, including the need for field trips to selected railroads.

c. Although no documentation exists, the indications are that the former Administrator, FRA, determined that the services of the Company's President, Mr. Shannon, were necessary for the study, based upon the latter's participation in an avoidable cost study of the Erie Lackawanna Railroad and his strong operating background.

#### 5. *Terms of the Contract*

a. We found that the letter contract dated February 11, 1969, was not promptly superseded by a formal contract, even though all services had been completed. The lack of adequate staffing and other priority matters were the principal reasons for this adverse situation.

b. Although the letter contract dated February 11, 1969, does not reflect all of the requirements of the Federal Procurement Regulations (FRA) (e.g., definitive contract provisions, payment and reimbursement methods), the DOT General Counsel has determined that a contract was entered into under statutory authority by an authorized Contracting Officer, in a form authorized by the FPR, and, therefore, the Government is bound to the terms of the instrument.

c. As required by FPR 1-3.403, the letter contract originally specified the maximum liability of the Government as \$11,000 which was well below 50 percent of the total estimated cost level (i.e., \$30,400) recommended by the FPR. Because of the delays in negotiating a formal contract for the reasons discussed above, it was necessary to raise the limit consistent with the performance of work which was proceeding on schedule.

d. The General Counsel advises that there is no limitation on the daily rates which may be paid by the Government to an organization of experts and consultants. The per diem compensation limitation of 5 U.S.C. §3109 is applicable only to contracts with individuals [26 Comp. Con 188 (1946); 26 Comp. Gen. 442 (1946)].

e. Also, we are informed by General Counsel that there is no prohibition against Government reimbursement to the contractor of its actual expenses of reasonable travel and subsistence, nor any requirement for a specified per diem rate or maximum amount. The Contracting Officer nevertheless expects to negotiate a maximum daily travel amount of \$35 with the contractor.

#### 6. *Status of Preliminary Contract*

a. A purchase order in the amount of \$1,826.00 was issued to Myer, Dick & Co. on February 4, 1969, to cover services rendered during the period from November 14 to December 12, 1968. The reason for the retroactive contractual coverage of work performed, was apparently attributable to the lack of official notification from the former Administrator FRA, to the Contracting Officer at the time the work was authorized. The contractual services consisted of assisting in the preparation of instructions and forms to obtain data from the eight selected railroads. The forms were mailed December 12, 1968, and the railroads began submitting completed forms on February 1, 1969.

b. The work under this purchase order was completed on December 12, 1968, and final payment of \$1,326 was made on February 18, 1969. We audited the Contractor's claims for these services and found them acceptable.

#### 7. *Evaluation of Contractor's Performance*

a. The Contractor was a member of the ICC Task Force which determined the acceptability, accuracy, and analysis requirements of data furnished by the railroads. The Contractor also assisted in outlining and drafting the preliminary staff report.

b. The current Administrator, FRA, has determined that the technical conclusions contributed by the Contractor were sound.

### 8. Audit of Letter Contract

a. We had a special audit performed of amounts billed (\$39,225.66) by the Contractor for services rendered under the letter contract dated February 11, 1969. The Contractor had been paid \$20,196.87 of the amount billed.

b. The Contractor's billings were prepared on a time-and-materials basis which was approved by the Contracting Officer, and is consistent with the method of payment in the Contractor's proposal dated January 22, 1969, and the method used by the Contractor in billing other customers.

c. The auditors questioned \$1,284.35 representing billings antedating the letter contract. In addition, the auditors raised questions regarding the scope of the contractor's authorized work and the reasonableness of the personal compensation component of the billing rates. Final audit approval reflected the Contracting Officer's study and affirmative decisions on these two matters.

We will be pleased to furnish any additional information that may be required.

Sincerely,

JAMES M. BEGGS, *Acting Secretary.*

Mr. FRIEDEL. Mr. Secretary, in your statement you said the Metro-liner has increased patronage around 46 percent?

Secretary VOLPE. The total number of passengers carried between New York and Washington increased that much in 1 year. The Metro-liner carried about 1 million passengers last year. That was the reason for most of the increase.

Mr. FRIEDEL. Have you received any financial reports on whether it is now making money or losing money?

Secretary VOLPE. That particular arrangement, I think, with the amount of money they have had to spend for maintenance and the problem they had with the cars, I am sure, is still not making any money.

Mr. FRIEDEL. If there are no other questions, thank you very, very much, Mr. Secretary. You always make a fine witness and enlighten the committee.

Secretary VOLPE. I am delighted to have participated in this hearing.

(The following letter was received for the record :)

DEPARTMENT OF TRANSPORTATION,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 18, 1970.

HON. SAMUEL N. FRIEDEL,

*Chairman, Subcommittee on Surface Transportation, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: I understand that your subcommittee has scheduled S. 3706, the proposed "Rail Passenger Service Act of 1970" for executive session on Thursday morning, June 18, 1970. We have received copies of various amendments which we understand are being proposed to the subcommittee. I would like to submit to you my views with respect to those amendments which we have seen.

#### Section 201. Designation of System.

The National Association of State Regulatory Commissions (NARUC) proposes that the Secretary be required to consult with state representatives in preparing his report and recommendations for the national rail passenger system.

While I would not like to see the Secretary of Transportation burdened with a requirement that he consult with all 50 state governments, I would have no objection to a provision requiring some consultation with state governors in connection with his preparation of the preliminary report and recommendations. For example line 7 of page 4 could be amended to Insert after the comma after the word "departments" the following "and, as appropriate, the governors of the several states."

#### Section 202. Review of the Basic System.

Labor proposes that language be inserted after the word "Secretary" on line 21 of page 5 to provide for consultation by the Secretary with labor organizations in considering the Interstate Commerce Commission comments on the proposed system.

I would be opposed to this proposal. I do not believe that labor representatives should be singled out for consultation by the Secretary in connection with the Interstate Commerce Commission comments on the proposed basic system.

## TITLE III.—CREATION OF A RAIL PASSENGER CORPORATION

Section 303. *Directors and Officers.*

Labor recommends that language be inserted after the word "representative" on lines 22 and 23 of page 7 to provide for representation on the board by an employee representative. NARUC also proposes that one of the board members appointed by the President be a state representative.

We must not forget that this Corporation is intended to be a private profit-making common carrier within the meaning of section I(3) of the Interstate Commerce Act, and that to the maximum extent practicable, representation on the board should be directed toward successful private common carrier operations rather than representation of particular interest groups. While I have not expressed objection to the present language providing for one consumer representative, for the reason noted above I would be strongly opposed to any enlargement of this concept of placing particular interest groups on the board.

Section 305. *General Powers of the Corporation.*

The Association of American Railroads proposes that lines 20 through 23 of page 12 be revised to make clear that the Corporation's authority to carry mail and express is not plenary but is incidental to its authority to carry passengers.

We have no objection to this clarification.

Labor proposes that the second sentence of the section beginning on line 1 of page 13 be amended to read as follows:

"The Corporation shall rely upon railroads to provide the employees necessary to the operation and maintenance of its passenger trains and to the performance of all services and work incidental thereto."

I would be opposed to this amendment. It is true that the bulk of the labor costs connected with passenger operations involve crews and that the present language of the section provides for the use of crews. I would be opposed to any enlargement of this concept, however, to reach all maintenance and shop work. It is expected that the Corporation will for the most part use carrier shops and maintenance facilities. It should not be required at all times to do so, however. I do not believe that the Corporation should be burdened with all of the existing practices and requirements of the carriers. I think it would be too severe a burden given its slender resources. Accordingly, I would oppose the amendment.

Section 306. *Applicability of the Interstate Commerce Act and Other Laws.*

Labor proposes that subsection (b) of section 306 be revised to spell out more clearly those particular statutes dealing with employee rights and benefits. We would have no objection to such more elaborate exposition of the particular statutes being referred to in the subsection.

Section 307. *Sanctions.*

Labor proposes that subsection (a) of section 307 be amended to make sanctions available not only against the Corporation but against all railroads. It also proposes that any person adversely affected or grieved, including employee representatives, be permitted to seek relief.

Sanctions are normally imposed by the Government. Consequently, I would be opposed to permitting "any person" to seek enforcement of section 307. I would have no objection, however, if the section were revised to permit employee representatives, as well as employees adversely affected, to seek equitable relief.

With respect to inclusion of all railroads within the reach of the section, it should be noted that existing statutes apply to them. To an extent the Corporation is exempt from such statutes or statutory requirements. Consequently, I am not sure that it would be necessary to make sanctions applicable to any railroad. This is particularly so here where such sanctions expressly reach "any action, practice, or policy." The Corporation has a quasi-public character in many respects and the scope of the sanctions with respect to it is appropriate. There is no comparable situation, however, with respect to railroads generally.

## TITLE IV.—PROVISION OF RAIL PASSENGER SERVICES

Section 401. *Assumption of Passenger Service by the Corporation; Commencement of Operations.*

The Association of American Railroads proposes that paragraph (1) of subsection (a) of section 401 be revised to make clear that all railroads operating intercity rail passenger service must be given the opportunity to contract with

the corporation to be relieved of their intercity passenger service responsibilities. The revised language is as follows:

"On or before March 1, 1971, the Corporation is authorized to contract and upon written request therefor from a railroad shall tender a contract to relieve the railroad, from and after March 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract and upon written request therefor shall tender a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is executed."

We would have no objection to the proposed paragraph. I would like to suggest here that the language on line 22 of page 16 referring to "any other law" be conformed to similar language on lines 1 and 2 of page 14 by insertion of the words "state or" after the word "any" on line 22 of page 16. Otherwise the provision may be construed later as not being applicable to state law, thereby defeating its purpose.

The Association of American Railroads proposes that a new paragraph (B) be inserted in lieu of the present paragraph (B) of section 401(a)(3). The stated purpose of the proposal is (1) to clarify that trains outside the basic system connecting designated points within the system would not be included within the formula, and (2) to make clear that trains within the system connecting nondesignated points to designated points or to other nondesignated points would also be outside the formula.

We have no objection with respect to the first aim of the amendment. We oppose the second, however. Trains outside the system were not intended to be covered by the formula and the AAR amendment is, accordingly, correct with respect to them. It is our understanding, however, that all trains within the system, even though they may connect intermediate points with designated points or with other intermediate points, are intended to be included within the formula. We would be strongly opposed therefore to the elimination from the formula of these trains within the system. Accordingly, I would suggest that the AAR proposal be revised as follows:

"(B). Two hundred percentum of the avoidable loss of the intercity rail passenger service operated by the railroad during the period January 1, 1969, through December 31, 1969, covering all intercity service over the routes between those points between which the Secretary, under section 201 and 202 of Title II of this Act, has specified that intercity passenger trains shall be operated within the basic system."

"The AAR also proposes that the last sentence of subparagraph 2 of section 401(a) be deleted and that language be substituted therefore which would give carriers the option of (1) taking stock equivalent in par value to their payments to the Corporation or (2) treating the amount of the payment as an operating expense. In the latter case it is intended that the payment would thereby become deductible as an expense for tax purposes. The language proposed is as follows:

"Such payments shall be treated by the railroad as railway operating expenses in the year in which made unless, by notice in writing to the Corporation within thirty days after execution of a contract with the Corporation pursuant to this section, the railroad elects to receive common stock of the Corporation in an amount equivalent in par value to its payments, in which case such payments shall be treated by the railroad as capital expenditures."

We have no objections to the proposed language and would favor its adoption by the committee.

#### Section 402. *Facility and Service Agreements.*

The AAR proposes that the second sentence of subsection (a) of section be amended as follows:

On page 19, line 22, substitute a comma for the period and add the following new language:

"and the rights of the corporation to such services or to the use of tracks or facilities of the railroad or agency under such order or under an order issued under paragraph (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission."

The stated purpose of the amendment is to provide carriers with an option to stop providing service or facilities in the event payment of the compensation fixed by the Commission is not made.

We would have no objection to the adoption of this amendment. It would be unrealistic to expect carriers to incur expenses and to continue to provide services in the event that the corporation were unable for any reason to meet its obligations.

**Section 404. Discontinuance of Service.**

The AAR apparently has alternate amendments proposed with respect to section 404 (a). The first would simply conform the language of the section to the amendment proposed with respect to section 401 (a) (1). We would have no objection to it.

The alternate proposed amendment, however, would remove the moratorium with respect to discontinuances and allow all trains outside the basic system to be discontinued under section 13(a) proceedings.

We would be opposed to this proposal. The moratorium should be preserved.

**Section 405. Protective Arrangements for Employees.**

Labor proposes amendments with respect to employee protective provisions. S. 3706 now provides that the Corporation shall be subject to the employee protective provisions of subsection (b) of section 405 in connection with train discontinuances from the basic system. Such protective agreements shall include:

1. Preservation of rights, privileges and benefits including continuation of pension rights and benefits to employees under existing collective bargaining agreements.

2. Continuation of collective bargaining rights.

3. The protection of individual employees against a worsening of their position.

4. Assurances of priority of reemployment, and

5. Paid training and retraining programs.

It is also provided that such provisions shall in no event be less beneficial than those established pursuant to section 5(2)(f) of the Interstate Commerce Act.

In my opinion these protective provisions constitute comprehensive protection for employees.

Labor proposes, among other things, that subsection (c) of section 405 be revised as follows:

"(c) After commencement of operations in the basic system, the Corporation shall provide fair and equitable arrangements to protect the interests of employees affected by the following discontinuances or changes in its services, operations or methods:

(1) those undertaken pursuant to section 404(b) (2) or (3) of this Act; and

(2) those arising out of structural or personnel reorganizations or consolidations or other changes in the management or operations of its services.

Such protective arrangements shall include the substantive requirements in subsection (b) of this section, as determined by the Secretary of Labor. The certification by the Secretary of Labor that the interest of employees affected have received fair and equitable protection from the Corporation shall be a condition to such discontinuance or change."

The proposed amendments appear to raise serious ambiguities which could cause an inordinate burden on the Corporation's limited resources in attempting to respond to public service needs. I am opposed to any proposal which places additional burdens on the Corporation than those already proposed by the bill.

I would like to repeat my support for rail passenger legislation. I urge prompt action by the Committee. My staff and I will be available for consultation in connection with any aspects of my comments.

Due to the limited time available, we have not had the opportunity to obtain Bureau of the Budget clearance of this letter.

Sincerely,

JOHN A. VOLPE, *Secretary.*

Mr. FRIEDEL. Our next witness is the Honorable George M. Stafford, Chairman of the Interstate Commerce Commission.

**STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY KENNETH H. TUGGLE, COMMISSIONER; EDWARD MARGOLIN, DIRECTOR, BUREAU OF ECONOMICS; AND ROBERT GINNANE, GENERAL COUNSEL**

Mr. STAFFORD. Mr. Chairman, to begin, I have with me Chairman Tuggle of Division 3, a man who has been with us for a number of years. We also have Mr. Ginnane, our general counsel, and Mr. Margolin, who is Director of the Bureau of Economics.

The commission is always pleased to have the opportunity to appear before you—today, we are exceedingly pleased, indeed, because the proposals before you offer a means toward a solution to the Nation's passenger train situation.

We know full well the hard problem this committee and Congress must deal with in this matter, because we share it in full measure. As we said when we appeared before you November 17, 1969, the public seeks a change in policy—we seek a change in policy—the carriers now seek a change in policy. And as evidenced by our mail from Capitol Hill, so do many Members of Congress. The only question is what that policy shall be.

Today, legislation is presented for consideration that embodies not only a change, but a new direction. We realize that it may not be the only solution or even the ideal one, but it would preserve a basic system of intercity rail passenger service, and provide a means for determining how much and what kind of service the public really wants and is willing to support. The establishment of a unified, national system of railroad passenger service as here proposed is a practical device for achieving those objectives, and we therefore recommend its adoption.

The two bills before you differ in degree, not substance. Both provide for the designation of a basic national rail passenger system and the establishment of one or more quasi-public corporations to assume the operation of passenger trains no longer sought to be operated by the railroads. The railroads contracting with the Corporation or corporations would be relieved of their responsibilities for rendering intercity rail passenger service, but certain obligations, such as supplying crews and permitting the use of tracks, would remain.

S. 3706 would establish only one corporation to operate service over the basic system prescribed by the Secretary of Transportation. In contrast, H.R. 17428 would establish a number of corporations, each one to operate in a separate so-called urban corridor of 500 miles or less, the essence of the basic system under this bill. The Secretary is also required to recommend some long-distance service, and is authorized to provide it by contract with available carriers, but there is no obligation on him to do so.

Thus, under H.R. 17428, two distinct elements are at odds with the fundamental purpose requiring Federal action in this area. First, having several corporations, each one primarily oriented upon a locality, is inconsistent with our major objective; namely, a national network linking all areas of the Nation. We recognize that different areas of the Nation will require service that varies from other areas—

that corridors will require service that varies from noncorridors. Nevertheless, the keystone of this legislation is a national policy to provide a network of rail passenger service covering the entire Nation. For that reason we support S. 3706 because it does specify such policy in clear and unmistakable terms.

It would be most unfortunate, in our opinion, if at this point, when we are apparently near a breakthrough, that improved service might be restricted in any manner in any section of this Nation. We believe the new techniques and the new management organization with the motivation of providing services most desired by the public is needed not only in the corridors, but in the Nation at large.

The second element we call attention to in H.R. 17428 that we believe is at odds with the fundamental purposes here is the notion that a multiplicity of corporations can somehow do the job better than one corporation. Hand in hand with a national policy should come one central agency equipped with the management talent, authority, initiative, and resources to meet the problem on a wide scale. We have seen the results of the performance of numerous carriers in passenger service since the birth of the industry. Some have been good, some not. The same is true today. What we need for tomorrow is a uniform quality of service—and I mean outstanding service, equal or better than our best today—available throughout the Nation. One corporation, in our view, is the best means to assure that we will receive this type of service because it offers the hope for technology, marketing skills, planning, and resources so necessary to develop a system of modern, efficient passenger trains for the future.

Though, as we mentioned, the two bills differ only in degree, we believe the measure of difference is significant for the reasons stated, and therefore urge that S. 3706 be adopted.

At the same time, there are a few amendments to this bill which we wish to present in an effort to improve it. Under Sections 403(c) : New Service, and 404(b)4 : Discontinuance of Service, where there is a dispute between the corporation of any State, regional, or local agency regarding the apportionment of losses for service conducted in excess of the basic system, the matter is to be referred to the Secretary for decision. We believe these sections should be amended to substitute the Commission for the Secretary. Disputes arising between the corporation and the railroads, for example, are to be referred to the Commission under section 401(a) (3), and it seems both consistent with such provisions and in accord with our general responsibility under the Interstate Commerce Act that a dispute of such nature as would involve financial matters between the Corporation and a Government agency would be referred to the Commission.

Under Section 405: Protective Arrangements for Employees—we recommend an amendment to provide that the provisions of section 5(2) (f) of the Interstate Commerce Act be the standard for fair and equitable arrangements to protect the interests of any present rail employees affected by the institution of service by the Corporation. The carriers, employees, and their labor organizations are familiar with the requirements of the act in this respect, and have gained considerable experience with it. Likewise, our administration of this section has resulted in judicial review of our decisions, with precedent

established thereby. Considering all these circumstances, we believe such amendment should be made to insure that the desired goals are achieved in the most suitable and efficient manner.

We also favor an amendment to Section 601: Federal Grants—to provide some measure of funds for the railroads to relieve their passenger operating losses until such time as the corporation becomes operational.

Such amendment, we believe, is of particular importance in light of section 802 of the bill which provides that no discontinuances whatsoever may be made upon enactment of this bill other than in accord with its terms. In practice, this will mean no discontinuances between the date of enactment and March 1, 1971, when the corporation is slated to begin operation. There are now pending before the Commission discontinuance proceedings in various stages of processing which involve approximately 140 trains. Proposals of the Penn Central alone involve about 80 trains, the largest of these being its proposal to discontinue all of its long-haul east-west service.<sup>1</sup> Enactment of S. 3706 prior to our decision would mean that this carrier, like all others, must continue to operate the trains through next March at a considerable financial loss. Their experience in operating passenger trains is no different than other carriers,<sup>2</sup> with the exception that Penn Central conducts a larger portion of the total intercity service. For the reasons stated we believe it would be highly desirable to provide the suggested amendment.

Finally, we believe an amendment to section 801 should be made to delete the reference to "health" of passengers as a basis for regulations to be issued by the Commission dealing with adequacy of service. We do not by any means consider the health of passengers as unimportant. However, such jurisdiction is already lodged in the Surgeon General of the United States, and that is where we are convinced it should remain.

In conclusion, we wish to reiterate our support for S. 3706. Intercity rail passenger service is fast disappearing. If it is to be saved, immediate Federal aid is needed. During the last 10 years we have expressed our concern to the Congress from time to time and we have made numerous recommendations which we thought would alleviate the mounting crisis. With the early adoption of S. 3706, it is our earnest hope that at long last we are beginning a comeback in this critical area for the future of our Nation's transportation system. Time will, of course, be the mark of our progress, but the first step must be made, and we ask that it be taken here.

Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Stafford. It is always a pleasure to have you appear before our committee.

Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman. I recognize that I will have to submit to Chairman Stafford a letter asking certain questions with regard to the study entitled "Investigation of Costs of Intercity Rail Passenger Service" referred to at page 3 of the Senate bill and page 4 of the House bill and would ask permission at this time that

<sup>1</sup> F.D. No. 26106 Penn Central Transportation Discontinuance of 34 Passenger Trains.  
<sup>2</sup> See Report on Investigation of Costs of Intercity Rail Passenger Service, July 16, 1969.

my letter together with Chairman Stafford's response be inserted in the record at the appropriate point. I assume that is all right with the Chair.

(The following letter was received for the record:)

INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, D.C., June 22, 1970.

HON. JOHN D. DINGELL,  
*House of Representatives,*  
*Washington, D.C.*

DEAR CONGRESSMAN DINGELL: This will reply to your letter of June 2, 1970, inquiring into certain aspects of the rail passenger cost study of July 19, 1969. For your convenience, I have restated your questions with our responses immediately following:

(1) Did the Commission in any way participate in the selection of the consulting firm—Wyer, Dick and Company—for use in assisting in preparation of the aforementioned study? If so, to what degree?

The offer of a consulting firm with knowledge of the operational side of railroad passenger service was made by the Federal Railroad Administration to aid the Commission in its study. The actual firm was selected and employed by the Federal Railroad Administration. The Commission accepted the offer of this choice from the FRA after reviewing passenger cost studies made by five firms including Wyer, Dick and Company. However, the Commission was primarily responsible for requesting and obtaining the participation of other consultants in the study, including members of state regulatory agencies, labor, the Association of American Railroads, FRA, and the National Association of Railroad Passengers.

(2) Is it not true that the staff task force of the Commission which participated in this study was headed by Mr. Richard E. Briggs, who was then assigned to the Office of Commissioner Tierney?

Yes.

(3) What was Mr. Briggs' grade level, salary and dates of employment at the Commission?

Mr. Briggs was a GS-15, earning \$22,300 per annum at the time of his resignation. He was employed at the Commission from December 26, 1961, through December 9, 1969, except for period from June 12, 1964, through March 3, 1965.

(4) Upon leaving the Commission in December 1969, with whom did Mr. Briggs become employed, in what capacity and at what salary?

Mr. Briggs has been employed as a senior policy analyst for ASTRO (America's Sound Transportation Review Organization). This group was engaged by the Association of American Railroads for a special project to develop recommendations for the railroad industry in a balanced transportation system. We do not have knowledge of his present salary.

(5) Appendix D-3 of the study indicates that a detailed analysis was made by the Commission of railroad statistical submissions in a series of field investigations. Please advise the extent of such field investigations by your staff and the man-hours expended in each instance, exclusive of travel.

The railroads' statistical presentations were made in two submissions: (1) the operational plans showing the savings in equipment, labor, property and materials which could have been made on the complete elimination of intercity passenger service by 1968, and (2) the changes in expenses and revenues which would result from such a cessation. The carriers' first submission were received in February and their second submissions were received in mid-March.

In preparation for the field trips, approximately 1,200 man-hours were expended by ICC employees to review the adequacy of the submissions. Another 450 man-hours were contributed by members of seven state regulatory agencies in Washington. The representatives of Wyer, Dick and Company spent about 270 man-hours to develop specific areas for field examinations.

The actual conduct of the field investigations commenced on March 24, 1969, and concluded on April 11, 1969. All field teams were in charge of an ICC employee. All eight railroads were visited during this period. About 310 man-hours of work were involved in these visits, exclusive of travel time. Approximately 224 man-hours were turned in by ICC employees, and the

remainder by members of Wyer, Dick and Company. Representatives of labor were requested to participate in these examinations, but were unable to do so because of the large delegation which was believed necessary for this type of undertaking. The following number of man-hours were devoted to the various roads:

1969	Railroad	ICC man-hours	W-D man-hours	Total
Mar. 24 to 26.....	Illinois Central.....	14	14	28
Mar. 27 to 28.....	Southern Railway System.....	46	28	74
Mar. 30 to Apr. 1.....	Union Pacific.....	44	-----	44
Apr. 1 to 3.....	Great Northern.....	22	13	35
Apr. 2 to 4.....	Missouri Pacific.....	23	-----	23
Apr. 6 to 8.....	Seaboard Coast Line.....	40	-----	40
Apr. 8 to 11.....	Santa Fe.....	20	17	37
Apr. 9 to 10.....	C. & O.-B. & O.....	15	15	30
Total.....	-----	224	87	311

The time shown does not include: field examinations made by some state regulatory members; follow-up work on certain problems revealed in the field examinations; analysis of the comments of field investigators; and incorporation of views expressed by labor and other groups who also examined the carriers' submissions and the ICC staff's findings.

The scope of the field investigations covered an examination of all major accounts and such other items as were necessary. Review comprehended underlying worksheets to the carriers' presentations, accounting and costing records, methods of separation of expenses within accounts between freight and passenger-train service, investigation of the involvement of property and rolling stock in passenger and freight service, special carrier studies of personnel and costs relating to passenger service, annual reports of the carriers to the ICC, prior audits, rail mail operations, and business travel by railroad employees.

Each investigating team had available a critique of the railroads' claims based on the following types of analysis:

- (1) Checks against standards established in previous cost studies;
- (2) Checks against past and present carrier reports to the ICC;
- (3) Checks on the accuracy of operational plans by Wyer, Dick and Company, state regulatory representatives, FRA and the ICC;
- (4) Comparison of proposed savings with operating statistics and characteristics;
- (5) Development of costs from analysis of manpower and property; and
- (6) Equipment needs for trains operated in 1968.

Potential deficiencies noted by state regulatory representatives were discussed with them after the field investigations.

(6) The study as published by the Commission purports to set forth the estimated savings which the participating railroads would have achieved had they discontinued during the year 1968 all of the then existing passenger train service. Is it not true that Chairman Stagers actually specifically requested repeatedly in correspondence with the Commission that the study determine and incorporate what actual savings had been achieved by the railroads in prior discontinuances which had been approved by the Commission?

Yes. After the study was inaugurated, Chairman Stagers did request that the Commission investigate savings achieved in past passenger train discontinuances.

(7) On July 28, 1969, after a series of correspondence between Chairman Stagers and the Commission, then Chairman Virginia Mae Brown wrote Chairman Stagers advising that a report would be transmitted to him in approximately two months, this report pertaining to his original request as set forth in the prior question. Has this report even been submitted by the Commission?

No.

(8) If not, when will such a report be transmitted to Chairman Stagers?

We anticipate submission of the report to Chairman Stagers by July 10, 1970.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

Mr. DINGELL. I assume you are familiar with that report.

Mr. STAFFORD. I am familiar with the report up to a point. That was under the guidance of former Commissioner Tierney.

Mr. DINGELL. I understand one of the prime contributors was the Association of American Railroads and they submitted the format in which the study was carried out.

Mr. STAFFORD. We studied eight railroads.

Mr. DINGELL. I understand again that the Wyer, Dick which made the study, was, at the time of the study, under contract to two of the railroads involved, Union Pacific and Missouri Pacific and had done work for seven out of the eight railroads that were involved in the study. Am I correct?

Mr. STAFFORD. I don't know whether it is correct about the contract with the railroads, but it is true, I believe, they all participated in our study.

Mr. DINGELL. It is also a fact that the American Association of Railroads that coordinated the information called for subsidy for money losing passenger trains.

Mr. STAFFORD. It is true, they have supported this.

Mr. DINGELL. Is it not also a fact that Mr. Richard E. Briggs who left the Commission several months after the report was published and was effectively the principal coordinator for the ICC left the Commission to accept a responsible position with the Association of American Railroads?

Mr. STAFFORD. It is my understanding that Mr. Briggs works for the AAR.

Mr. DINGELL. I understand that this study was supposed to have been put together in response to communication from Chairman Staggers of this committee and from Chairman Magnuson of the Senate Commerce Commission. Am I correct on that?

Mr. STAFFORD. That is right.

Mr. DINGELL. Mr. Chairman, I have a series of items of correspondence between Chairman Staggers, dated October 15 and a number of others going on up through September 3, 1969, and in fact, going into 1970 that I would like to have inserted in the record at this point.

Chairman Staggers' direction follows:

It would be my hope in the process of such investigation the Commission would ultimately lay to rest the issue of how much the railroads actually lose in conducting passenger service operations. Such a service if conducted immediately would be helpful to the House Interstate and Foreign Commerce Committee in considering legislation during the 91st Congress.

This was to Chairman Tierney. There was another letter from Chairman Staggers—

Mr. FRIEDEL. May I ask if this has to do with the present legislation?

Mr. DINGELL. This has to do with the nature of the study and whether it is responsive to the direction given by the chairman of this committee. I note very interestingly—I think this is quite important—that Chairman Brown finally on July 28, 1969, communicated to Chairman Staggers and the second to last paragraph of the letter in the record and I ask unanimous consent that it be inserted.

This is correspondence between the chairman of the full committee, the chairman of this committee, not of this subcommittee, dealing with the study which was supposed to have led to the creation of this document. We are going to spend \$300 million of the taxpayers'

money subsidizing the railroads. I want to be sure it is done on the basis of a sound study and I am not satisfied at this point.

Mr. FRIEDEL. I would ask that you get permission from Chairman Stagers.

Mr. DINGELL. This is a public document. It has a great deal to do with this legislation. It is from the public files and records of this committee.

Mr. FRIEDEL. I would prefer to get permission from Chairman Stagers before you insert his letter.

Mr. DINGELL. If that is the only problem, if I can't get unanimous consent I will sit here and read the whole mess into the record. We can proceed in an easy fashion—in a graceful fashion—and let me put these in the record or we can sit here while I read them. I am fully agreeable to being reasonable.

Mr. FRIEDEL. What I am trying to get clear is if you are trying to bring in other activities of the committee.

Mr. DINGELL. I am prepared to read the letters.

Mr. FRIEDEL. Without objection the correspondence will be placed in the record at this point.

(The correspondence referred to follows:)

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., June 10, 1970.

Mr. W. E. WILLIAMSON,  
Clerk, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR ED: Please note the enclosed correspondence between Chairman Stagers and several other chairmen of the ICC. I have discussed the matter with Chairman Stagers and have his approval and the approval of his committee. It should be appropriate to say it is to be inserted at the appropriate point in the transcript of the record on H.R. 17489 and S. 3706.

I am sure you will see to it the correspondence is inserted in the proper chronological order.

With every good wish,

Sincerely,

JOHN D. DINOELL,  
Member of Congress.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C., October 15, 1968.

Hon. PAUL J. TIERNEY,  
Chairman, Interstate Commerce Commission,  
Washington, D.C.

DEAR MR. CHAIRMAN: I have noted with interest recent remarks of the Chairman of the Senate Commerce Committee in the Congressional Record of October 8, 1968, regarding the decline of the Nation's rail passenger service.

Unfortunately, the Commission's legislative proposals set forth in the well considered and forthright "Report on Intercity Rail Passenger Service—1968" and introduced by me as H.R. 18212 were not acted upon in the 90th Congress before final adjournment. Nevertheless, the House Interstate and Foreign Commerce Committee believes that the matters discussed in the Commission's report concerning the Nation's need for an adequate, balanced national passenger system require resolution.

It is clear that the quantity and quality of rail passenger service within the Nation is rapidly declining. Effective programs to reverse this decline must soon be developed and implemented. It therefore seems to me that Senator Magnuson's call for the Commission to continue its constructive efforts in conducting an investigation of the costs of rail passenger operations and the means by which such expenses should be met has great merit.

It would be my hope that in the process of such an investigation the Commission could ultimately lay to rest the issue of how much the railroads actually lose in conducting passenger service operations. Such a study, if commenced immediately, will be of considerable value to the House Interstate and Foreign Commerce Committee in its consideration of appropriate legislation during the 91st Congress.

I therefore endorse and commend to the Commission this request and trust that it will be met with favorable and prompt action.

Thanking you, and with kind personal regards, I am

Sincerely yours,

HARLEY O. STAGGERS,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, D.C., October 18, 1968.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Thank you for your letter of October 15 supporting the recent proposal of Senator Magnuson and the Senate Commerce Committee, that the Commission conduct a study of the actual costs of intercity rail passenger service and the means by which such costs can be met or reduced.

On behalf of the Commission, I affirmatively responded to the Senate Commerce Committee request on October 16. For your complete information, a copy of my letter to Senator Magnuson is enclosed.

As my letter indicates, since the cost data specifically attributable to the curtailment of the passenger service operations is not currently maintained by any public or private body on a comprehensive or uniform basis, it is unlikely that answers to all questions involved in this issue can be developed. However, the Commission does believe that the initial phase of such a study can produce helpful information for the 91st Congress within a period of approximately six months by concentrating on those areas that can be completed within present budgetary and time limitations. The Commission will in the very near future initiate appropriate consultations with the Department of Transportation, the National Association of Regulatory and Utility Commissioners, carriers and labor representatives. We will, of course, keep you and the staff of your Committee advised of these activities.

In order to adequately complete this undertaking, the Commission may require additional resources. In this eventually, it would be my hope that your Committee could lend its considerable support with the appropriate congressional and executive offices to see to it that adequate funding is made available.

Again, Mr. Chairman, on behalf of the Commission, permit me to express our deep appreciation for the continued trust and cooperation of the members and staff of your Committee.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C., October 28, 1968.

HON. PAUL J. TIERNEY,  
*Chairman, Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN TIERNEY: I thank you for writing me as you have done regarding your initiation of a study of the cost of operation of passenger service in which, among other things, you are going to seek to determine just what the increment or out-of-pocket costs may be. In such connection I assume that you will study the various applications for discontinuance of passenger trains which have been processed by the Commission, and to which the Commission has given its assent, for the purpose of ascertaining whether the savings which were claimed

would result from each discontinuance actually were achieved by the railroad making such claims.

Sincerely yours,

HARLEY O. STAGGERS, M.C.,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., November 5, 1968.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
Washington, D.C.*

DEAR CHAIRMAN STAGGERS: You have inquired whether or not the Commission contemplates a review of the savings actually achieved by carriers through the elimination of passenger trains in comparison with the projected savings for those trains considered in discontinuance cases under Section 13a of the Act.

Although the precise outline for the entire study will not be completed until additional meetings are held with participants, some attempts will be made to develop the actual savings for carriers which have completely eliminated passenger service in the recent past. The extent and ultimate value of this probe will be determined, in large part, by the reliability of available information on the changes which followed the elimination of the carriers' passenger operations.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., November 7, 1968.*

HON. PAUL J. TIERNEY,  
*Chairman, Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN TIERNEY: I acknowledge your letter of November 5 replying to my letter to you of October 28 regarding your proposed study of the incremental or out-of-pocket costs of railroad passenger service.

Your letter indicates that some attempt will be made to develop the actual savings for carriers which have completely eliminated passenger service in the recent past. This, of course, is not completely the thrust of my letter of October 28 for my inquiry there was the extent to which you would examine into the actual realization of the savings claimed in the applications filed with you for the elimination of specific passenger trains.

Your letter states: "The extent and ultimate value of this probe will be determined, in large part, by the reliability of available information on the changes which followed the elimination of the carrier's passenger operations."

This, of course, is the nub of the matter, that is the reliability of the information which has been furnished to you as to the savings claimed by the carriers in their argument for the discontinuance of certain passenger trains. I simply cannot conceive of a study by the Commission effectively encompassing this subject without considering being given to whether the claims made to you on the record were actually realized by the carriers. It would seem to me that your own procedures would require the development of this information.

Sincerely yours,

HARLEY O. STAGGERS, M.C.,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., December 2, 1968.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Your letter dated November 7, 1968, regarding the Commission's study of the incremental or actual costs of railroad passenger service points out one of the critical areas of this study—the reliability of cost data.

Please be assured that the Commission will examine most closely all the information furnished to it by the carriers and other active participating groups during the course of the study. Within the limited time available for this study, we intend to evaluate independently the data supplied to us in various ways, including on the spot field reviews.

Any improved techniques developed by the Commission's staff in analyzing and evaluating the data considered by us in the course of the study will be incorporated where appropriate into the continuing responsibilities of the Commission.

We shall, of course, continue to keep you, the members of the Committee and its staff currently advised of developments in this important undertaking.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., December 30, 1968.*

HON. PAUL J. TIERNEY,  
*Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN TIERNEY: This will acknowledge your letter of December 2 in response to my earlier inquiry regarding the Commission's study of the actual costs of railroad passenger service.

While I appreciate the information contained in this letter, I think that it still begs a definite response to my inquiry of October 28 and repeated in my letter of November 7, following your letter of November 5, as to whether or not the study which you are making of actual costs will include an appraisal of whether the savings claimed by railroads at the time they applied to you and you permitted the discontinuance of specific passenger trains, were realized by such railroads.

Sincerely yours,

HARLEY O. STAGGER, M. C.,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., January 14, 1969.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: This responds to your letter of December 30, 1968, to former Chairman Tierney which relates to the Commission's investigation of intercity passenger service.

You ask if the study will include an analysis of the actual savings achieved by the railroads through the elimination of specific trains compared to the cost savings claimed in discontinuance proceedings before this Commission. To a limited extent, the Commission will attempt to determine achieved savings for certain selected types of costs which were attributed by the carriers and/or the Commission to the operation of specific trains that were later discontinued. However, this review will concentrate on those trains that represented the last intercity service of particular carriers.

Any historical analysis of this type faces substantial problems in ascertaining the reliability of carrier presentations, particularly when the carriers were not required to maintain precise operational and financial records on the changes resulting from discontinuances. An analysis of the last trains of carriers, while restricted in scope, mitigates some of the difficulties inherent in trying to determine if particular savings were achieved and why they were or were not achieved.

The entire Commission investigation will cover only some aspects of the intercity passenger train problem. It is limited in scope, time and resources. Hopefully our efforts will pave the way for more comprehensive action on the entire problem, such as was envisioned in H.R. 18212, which was considered by the House Committee on Interstate and Foreign Commerce in the 90th Congress. The major focus of the present study is to develop a realistic estimate of the annual net available expenses which selected intercity carriers incurred as a result of

providing intercity service during 1968. In short, we are trying to estimate the avoidable losses of a current level of service rather than the savings achieved by eliminating a service that no longer exists.

The Commission hopes to have its findings completed by the end of the fiscal year. Prior to the completion of this investigation, consideration will be given to the feasibility of instituting past discontinuance reports by the carriers when a discontinuance case is decided. The information would be presented according to Commission requirements that would facilitate accurate analysis, and the Commission could review the submitted savings data on a relatively current basis. The selected use of such a procedure would be employed to provide information for the employment in future discontinuance cases.

Sincerely,

VIRGINIA MAE BROWN,  
*Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., January 24, 1969.*

HON. VIRGINIA MAE BROWN,  
*Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN BROWN: This will acknowledge your letter of January 14 regarding my previous correspondence with Chairman Tierney relative to the Commission's examination of what actually took place in the saving of expenses claimed by the railroads at the time they applied to you for the discontinuance of certain passenger trains.

I note that to a limited extent you will attempt to verify whether certain such savings were achieved, but apparently are confining this to the last trains which were discontinued. Obviously this type of information is substantially different from that which would be developed in connection with the discontinuance of certain trains with passenger service still being maintained by the applying railroad.

I regret exceedingly that the Commission is making no effort to ascertain whether the claim for savings in the applications which have been filed before it these past 10 years were actually realized by the applying carriers.

Sincerely yours,

HARLEY O. STAGGERS, M. C.,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., July 16, 1969.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Transmitted herewith is the report entitled "Investigation of Cases of Intercity Rail Passenger Service," which responds to the request in your letter of October 15, 1968.

The investigation analyzed eight intercity rail passenger systems: the Santa Fe, the C&O-R&O, the Great Northern, the Illinois Central, the Missouri Pacific, the Seaboard Coast Line, the Southern Railway System, and the Union Pacific. These systems provided more than 40 percent of the nation's noncommuter rail passenger miles in 1968. While the results of this investigation cannot be used to pinpoint the burden of intercity passenger service provided by the other railroads, the results for the study carriers' operations give every indication that most of the other intercity passenger service, except for high frequency operations in such places as the Northeast Corridor, is also in serious financial condition.

The purpose of the investigation was to determine what the eight systems would have eventually saved if they had not operated the amount of passenger service provided in 1968. The concept of avoidable costing was employed as a realistic measurement of these savings. In effect, it also portrays the burden which the carriers' remaining operations had to absorb in 1968 and an estimate of how much increase in revenues would have been necessary to bring intercity rail passenger operations to a breakeven point.

In 1968, the eight passenger systems studied would have eventually saved, before income taxes, \$118 million more in expenses than they would have lost in

revenues. For every \$1.00 in revenues that these carriers, as a group, would have lost by not operating any intercity passenger service in 1968, they would have avoided \$1.88 in expenses. For the Santa Fe, C&O-B&O, Great Northern and Missouri Pacific, the savings per dollar of revenue lost would have been virtually the same—\$1.80, \$1.82, \$1.83 and \$1.82, respectively. The Southern Railway System and Union Pacific would have saved more—\$2.42 and \$2.08. The Illinois Central and Seaboard Coast Line would have saved less—\$1.45 and \$1.68. The estimated savings were based on actual expenditures, passenger traffic levels and operating conditions which existed in 1969.

The study carriers also could have recouped \$69.2 million in net salvage from the facilities and equipment that would no longer be needed to provide the December 1968 quantity of passenger service. Reinvestment of this salvage capital would provide an estimated \$4.2 to \$6.6 million annual return to the carriers.

The investigation also ascertained the cash drain to these carriers created by the expenses of operating the 1968 level of passenger service. (Cash drain represents the loss in funds available for capital investment and dividends.) The total annual cash drain was estimated at \$61 million. Differences between the savings in expenses of \$116 million and the cash drain were attributable, principally, to the elimination of depreciation, which is a noncash item, and the added income taxes which would have to be paid on the more profitable remaining service of the carriers.

Due to various employee protective agreements, the carriers would not be able to achieve full cash savings immediately. If all the passenger service were discontinued at one time, the projected cash drain would be reduced by \$24.3 million in the first year, \$44.8 million by the third year, \$32.0 million by the fifth year and \$52.1 million by the tenth year.

Last year the Commission submitted its views on the condition of intercity rail passenger service to the Congress. We noted that the rapid decline in intercity rail service during the past two decades had accelerated sharply in 1967. During 1968, intercity passenger miles decreased 20 percent from 1967—the largest relative decline in any year since the post World War II era.

Revenue of intercity passenger trains have dropped even more dramatically than the quantity of service from 1966 through 1968. Intercity coach revenues decreased nearly \$78 million, or 24 percent; sleeping and parlor car revenues declined by over \$35 million, or 43 percent; mail revenues dropped more than \$171 million, or 57 percent, and express revenues dropped almost \$41 million, or 65 percent.

The past year has only substantiated our opinion that significant segments of the remaining intercity service, except for rail service in high density population corridors, such as the Northeast Corridor, will not survive the next few years without a major change in Federal and carrier policies. In June, 1968, there were approximately 500 regular intercity trains providing service. Today, there are less than 500 intercity trains in scheduled service. A number of the last trains which are still operating have been proposed for discontinuance because of increasing losses. Approximately 50 of the remaining intercity trains are presently involved in discontinuance proceedings before this Commission.

We continue to believe that the paramount requirement for establishing an adequate national policy for noncorridor intercity rail passenger service is a broad evaluation of what rail service is required by the public for medium and long distance trips outside of major population corridors, how much the provision of that service will cost, and what Federal assistance is necessary to provide that required level of service.

Unless a study similar to the one recommended by this Commission last year and introduced as S. 3861 and H.R. 18212 in the 90th Congress is begun immediately, intercity rail passenger service in this country appears destined to be reduced even more drastically in the next two years. We cannot overemphasize the need for immediate action if a minimal network of passenger service is to be preserved, and massive capital outlays for equipment avoided.

In view of the need for prompt resolution of this problem and the mounting losses to the carriers, we urge that such a study be completed in no less than twelve months and that, in the interim, more restrictive provisions be placed on the discontinuance of the last remaining passenger trains on intercity rail routes in operation today. Relief from operating losses of other trains would still be possible under the present discontinuance procedures, except for those last trains which are shown to be required by the public.

We also support those additional changes in Section 18a of the Act which were contained in the legislation proposed by the Commission in 1968.

A bill to accomplish the above recommendations has been recently introduced in Congress as H.R. 12084. This bill is similar to S. 3861 and H.R. 18212, which were considered in the last Congress. In addition, we are also forwarding the views of the Association of American Railroads, Railway Labor Executives' Association, National Association of Regulatory Utility Commissioners and the National Association of Railroad Passengers on the means of reducing the costs of intercity rail passenger service, which are included in the report as Appendix F. While the replies of these groups indicate some support for such means as tax relief, reduced labor costs, Federal capital assistance, and lower terminal costs, which would improve the present situation, they also recognize that the preservation of some minimal level of intercity service will require even greater commitments on the part of the government and the carriers.

Under the present law, the carriers cannot be required to continue the operation of trains which constitute unreasonable financial burdens. Government subsidies or other forms of substantial Federal aid may well be necessary to continue the operation of intercity passenger trains. Should the public need for such service warrant retention of these trains that cannot be operated without significant losses, we would support a program of Federal aid to the carriers. The first step, however, is to find out what service the public needs and how much that level of service would cost.

Sincerely,

VIRGINIA MAE BROWN, *Chairman.*

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., July 17, 1969.*

HON. VIRGINIA MAE BROWN,  
*Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN BROWN: This acknowledges your letter of July 16 enclosing copy of a report prepared by the Commission entitled "Investigation of Costs of Intercity Rail Passenger Service." The investigation analyzes eight intercity rail passenger systems: the Santa Fe, the C&O-B&O, the Great Northern, the Illinois Central, the Missouri Pacific, the Seaboard Coast Line, the Southern Railway System, and the Union Pacific.

It appears that the data represent the amount of expenses which each carrier states it would have saved had it not operated passenger service during the year 1968.

While your report, of course, is informative to a degree, it is not fully responsive to the request made in my letter to you of October 15, 1968, and emphasized and repeated in further letters thereafter to former Chairman Tierney dated October 28, November 7 and December 30, 1968.

As I wrote to him, it seemed to me that a probe of the character contemplated by you into the costs of railroad passenger service to be valuable must include consideration of what savings actually had been accomplished by those carriers that had been discontinued either complete passenger service or certain individual trains. As I set out in those successive letters, I felt that it was most essential to determine what savings actually had been achieved compared with the savings that had been represented to you would be obtained by such discontinuances. I see nothing in this report which gives such information.

Sincerely yours,

HARLEY O. STAGGERS, *Chairman.*

INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., July 28, 1969.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: In reference to your letter dated July 17, 1969, the Commission is continuing to study the estimated savings which several carriers achieved as a result of the discontinuance of their last remaining rail passenger service. The problems inherent in such a historical inquiry, as noted in my letter to you of January 14, 1969, are substantial.

I expect that a more complete report on our efforts in this area should be transmitted to you in approximately two months.

Sincerely,

VIRGINIA MAE BROWN, *Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., August 7, 1969.*

HON. VIRGINIA MAE BROWN,  
*Chairman, Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN BROWN: I have given a little study to your Investigation of Costs of Operating Passenger Service by Eight Railroads, which you submitted to me on July 16, and find that I am somewhat confused by the exhibits which you offer as the basis and reasoning upon which you reach your conclusion that intercity passenger service will not survive the next few years without a major change in carrier policy.

One exhibit for instance would seem to indicate that the problem is the need for a major change in the Commission policy.

Your table on page 54 which sets forth the dollar savings which you have found six railroads would experience as the result of the elimination of certain net avoidable costs if they were completely to abandon passenger service seems to imply that at least as to five (the sixth being rather insignificant in passenger business) of these railroads, they would save much more today if they were to go out of the business than they would have saved had they gone out of the passenger business in 1966! The table seems to indicate that this would be the effect even though there has been a remarkable reduction in the number of passenger train miles operated (your table says dollars but I think you mean miles) in this 2-year period. Presumably most of this reduction occurred as the result of applications over which you had authority.

How can these things be inasmuch as I should think you could not have permitted the discontinuance of these trains without there having been a finding that there would have been a substantial savings in costs? This table would seem to indicate that this was not true and you must have been grievously misled in the analysis of the data which were presented to you at the time that you granted these discontinuances.

Inasmuch as this is an appalling conclusion, if it be true, I should appreciate your discussion of whether or not this interpretation of your own table is correct.

Sincerely yours,

HARLEY O. STAGGERS,  
*Chairman.*

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INTERSTATE COMMERCE COMMISSION,  
*Washington, D.C., August 25, 1969.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Your letter, dated August 7, 1969, requests an interpretation of the presentation appearing on page 54 of the Commission's recent report entitled "Investigation of Costs of Intercity Rail Passenger Service."

You are correct in stating that the figures in columns 3 and 4 are train miles rather than dollar amounts.

The data contained in Table 23 (and the discussion on the preceding page) show, as you note, that the potential savings per train mile (excluding the revenues and expenses of mail) from the discontinuance of rail passenger service by six of the study carriers were greater in 1968 than they were in 1966. For five of the six railroads, the total potential savings for all passenger trains were greater despite reductions in train miles.

The figures shown in columns 1 and 2 of the table are net figures—avoidable expenses less passenger revenues. For the six carriers as a group, the 1966-68 period showed the following decreases:

1. passenger revenue excluding mail dropped 39.6 percent;
2. avoidable expenses related to those revenues declined only 18.7 percent; and
3. train miles decreased 29.7 percent.

During the two-year period, the expenses of operating passenger trains increased more than 10 percent as a result of wage increases, higher material costs, and greater fringe benefits. If the 1968 expenses per train mile are adjusted to eliminate these price increases, three of the six carriers had lower avoidable expenses per train mile than they did in 1966. And as a group, the total adjusted avoidable expenses declined 26.9 percent compared with a decrease of 29.7 percent in train miles.

The most significant reason for the increasing losses was the decline in revenues on the remaining trains. For example, The Great Northern reduced its passenger train service by only 5.6 percent from 1966 to 1968, yet its passenger miles declined 17 percent and coach revenues decreased over 15 percent during the same period. All six carriers received less revenue per train mile in 1968 than they did in 1966 despite fare increases that averaged nearly 6 percent for the country as a whole. The continuing decline in patronage in trains has also been observed in the vast majority of discontinuance cases before this Commission.

You suggest that the data contained in the table do not indicate that the discontinuance of a number of trains has relieved the carriers of substantial burdens. The data contained in the table and the underlying statistics were not designed to show the savings from discontinuances, nor do they indicate that the carriers failed to achieve substantial savings. The data do suggest, however, that the overall costs of the remaining service to the carriers are continuing to mount primarily as a result of a loss in patronage on the remaining trains and price increases.

Sincerely,

VIRGINIA MAE BROWN,  
*Chairman.*

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C., September 3, 1969.*

HON. VIRGINIA MAE BROWN,  
*Chairman, Interstate Commerce Commission,  
Washington, D.C.*

DEAR CHAIRMAN BROWN: This will acknowledge your letter of August 25 in response to my request of August 7 for an interpretation of the presentation appearing on page 54 of your recent report entitled "Investigation of Costs of Inter-city Rail Passenger Service."

This table shows that despite a substantial reduction in passenger train miles between 1966 and 1968, 5 of the 6 carriers set forth in the table had a greater potential savings in absolute dollar amounts from the abandonment of all passenger service in 1968 than they would have had in 1966.

I note your statement that the data contained in the table and the underlying statistics were not designed to show the savings from discontinuance nor do they indicate that the carriers failed to achieve substantial savings.

As I have written to you before, it seems to me most important that in the setting out of a record of your stewardship for these past ten years of the authority granted to you to permit the discontinuance of passenger trains, you have some kind of indication of whether or not the savings that were claimed would result from the discontinuance of trains actually were achieved.

Sincerely yours,

HARLEY O. STAGGERS, M.C.,  
*Chairman.*

Mr. DINGELL. I expect that a more complete report will be transmitted to you within 2 months. This is dated July 28, 1969, in which Chairman Brown advised Chairman Staggers that the report that we are discussing was not responsive to the request of Chairman Staggers.

Mr. FRIEDEL. What is the date?

Mr. DINGELL. July 28.

Mr. STAFFORD. I believe, Mr. Chairman, on that question of this last report you are talking about which I believe dealt in a smaller area—

Mr. DINGELL. It dealt with Chairman Staggers and Chairman Magnuson requesting how much was saved on each discontinuance of a railroad train that was authorized. That report was never submitted to the two committees. As a matter of fact, in response to that you have submitted instead a document which deals with what it would have cost each one of these railroad lines—what they have saved by discontinuing entirely their passenger service; am I correct?

Mr. STAFFORD. That is true.

Mr. DINGELL. So, you are not responsive to the request of Chairman Staggers or the request of Chairman Magnuson. This all refers to the study that is referred to.

Mr. STAFFORD. May we submit our replies to you?

Mr. DEVINE. I think this is the same study that is referred to on page 3 of the bill, line 19, report of the Commission of July 16, 1969, entitled "Investigation of Costs of Intercity Rail Passenger Service."

Mr. FRIEDEL. All right.

Mr. ADAMS. In your bill on page 5 and 6, you indicate you want an amendment to section 601 to pay for additional discontinuances between now and March 1, 1971.

Mr. STAFFORD. The losses for continuance of those trains.

Mr. ADAMS. My remembrance is this bill has been in effect since 1958, this discontinuance bill—

Mr. STAFFORD. That is true.

Mr. ADAMS. We have gone down from over 500 passenger trains to under 500?

Mr. STAFFORD. That is the reason that section was written by the Congress to enable railroads to get rid of those passenger trains that were losing money.

Mr. ADAMS. My understanding of it is that we have practically decimated the passenger system already, and I am wondering why you feel that we shouldn't just go ahead with the moratorium now and try to pick up these losses or let the railroads pick them up later. It seems to me if they were that bad they would have gone in the 10 years we have been working on discontinuances.

Isn't that correct?

Mr. STAFFORD. The policy decision rests with you gentlemen, of course, but I had particularly in mind, as I said, the problems right now with the great number of passenger trains that are before the Commission for discontinuance. A decision will be made somewhere within the period of time that you gentlemen may be making a determination on this legislation, and if we do not make our final decision prior to the time this bill becomes effective, then whether they are losing money or not, they will be required to continue operating regardless of any loss. This is what I was trying to direct my comments to.

Mr. ADAMS. I am deeply concerned about this. When all of this started to come to a head last year, first the *Southern Pacific* case on the quality of service and then the discontinuance, many of us proposed a moratorium at that time. Some of them before the committee date back to September and some go back as far as July. The

discontinuance of east-west service by the Penn Central was announced considerably after we came forward with the moratorium bill.

I am worried that the urgency of this bill is if we don't get some bill through, all passenger train service is going to terminate or be discontinued by your Commission before we can ever get at it.

Mr. STAFFORD. By law.

Mr. ADAMS. What is your time period after discrimination notices are filed that you have to make a decision as to whether or not the train has to continue to run?

Mr. STAFFORD. It could amount to 6 months from the date they are filed.

Mr. ADAMS. This FD 62106 that you refer to, page 5, that discontinues all service for the Penn Central which, as I remember, effectively wipes out all passenger service in the Northeast and up to Chicago. When was that filed?

Mr. STAFFORD. I believe it was filed at such a date that our decision would become effective in October.

Mr. ADAMS. In other words, if you have not decided to keep those on by October of this year all of the passenger service by the Penn Central in the Northeast and going out to Chicago terminates, is that correct?

Mr. STAFFORD. That would be correct if the Commission were to make that kind of a decision.

Mr. ADAMS. I am not trying to prejudge your decision, but I have the problem of trying to explain in the House of Representatives what the urgency is for the passage of this type of bill.

Mr. STAFFORD. If it were decided those trains could come off, that decision would be made in October, so it is quite urgent that you take action.

Mr. ADAMS. As I remember under that bill, even if you decide that it stays on, you can only keep them on for 1 year, isn't that correct?

Mr. STAFFORD. That is correct.

Mr. ADAMS. No matter what happens a year from October unless we change the law, it is all over in that area for passenger service?

Mr. STAFFORD. Yes.

Mr. ADAMS. Your power runs out at the end of the year and they could take them off unless we pass some kind of a law. Is that correct?

Mr. STAFFORD. The General Counsel advises me that the jurisdiction reverts to the States. Therefore, at the end of the year, they would have to come back again and we would go through the whole discontinuance process again.

Mr. ADAMS. So, you can hold them if you can get the States to require it, too.

You mention also on the last page of your statement that you think there should be an amendment to section 801 to delete the reference to regulations on health. This is the second part of what I referred to with Secretary Volpe as the three-legged stool, the moratorium, and the power to regulate.

You say the Surgeon General has control over health. We remember the *Southern Pacific* case which brought up this spate of bills.

One was no dining car service and very inadequate type cafeteria car service.

Mr. STAFFORD. I am speaking only to the health part, not the adequacy part. There was a difference between your opinion and the Commission opinion about whether we had the power over quality of service. We have asked for it. We would be delighted to have that part.

But the Surgeon General now has the authority in the health part.

Mr. ADAMS. Don't you think your Commission in terms of quality of service should also be able to have some regulatory power on how they feed people on these trains?

Mr. STAFFORD. This is beyond the expertise of the Commission at this time.

Mr. ADAMS. Who is watching the food supply.

Mr. TUGGLE. The Surgeon General is authorized and required by laws to inspect the dining cars and cooking facilities and things of that kind. They provide that kind of service now and provide an annual report.

Mr. ADAMS. How many people do they have out there riding those trains.

Mr. TUGGLE. I do not know.

Mr. ADAMS. In that case there was no report by the Surgeon General as to the adequacy of food service.

Mr. TUGGLE. He makes several thousand inspections a year.

Mr. ADAMS. On a spot basis.

Mr. TUGGLE. I don't know.

Mr. ADAMS. If you don't want the word "health" in here, what are you going to put in there to give you power to say you are going to feed people if you carry them on a train? You have to feed them something of sufficient quality.

Mr. STAFFORD. I think that can be done with our having the adequacy of service. It could include dining cars and all of those facilities if you in the Congress so direct.

Mr. ADAMS. In other words, you want us to come up with a word that is not the word "health" but does give you the right to regulate the quality of food?

Mr. STAFFORD. Yes; we believe the Surgeon General is particularly equipped for the study of the health matters within this.

Mr. ADAMS. What about the quality of food? I am talking about something simple. I don't care about your inspecting the facility, but just the fact that there be some food on the train.

Mr. STAFFORD. I have been advised by my staff now that the word "comfort" in the bill is broad enough to cover all of that.

Mr. ADAMS. That would include feeding people?

Mr. STAFFORD. Yes, sir.

Mr. FRIEDEL. There being no further questions, I want to thank you and the committee now stands adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 11:30 a.m., the subcommittee adjourned to reconvene at 10 a.m., Wednesday, June 3, 1970.)



## PASSENGER TRAIN SERVICE

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WEDNESDAY, JUNE 3, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building. Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will now come to order.

This is a continuation of the hearings on rail passenger service. Before we go into the proceedings, I would like to recognize the Honorable Jake Pickle, Congressman from Texas.

Mr. PICKLE. Thank you, Mr. Chairman. I have a family visiting with me here in Washington today and tomorrow and they are from Weimar, Tex., a unique little community on the Southern Pacific line in Texas, and they are in the room and I would simply like to have the privilege of presenting Mr. and Mrs. David Collick, from Weimar, Tex.

Mr. FRIEDEL. Mr. and Mrs. Collick, we welcome you here and stay as long as you want. You will find these hearings interesting. This is a very, very important bill.

Our first witness will be Mr. Thomas M. Goodfellow, president of the Association of American Railroads.

### **STATEMENT OF THOMAS M. GOODFELLOW, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY WILLIAM M. MOLONEY, VICE PRESIDENT AND GENERAL COUNSEL**

Mr. GOODFELLOW. Good morning, Mr. Chairman, Congressman Pickle. I have with me William Moloney, our vice president and general counsel.

I feel that we ought to apologize a little bit for getting our testimony in so late last evening but, as you all will hear in the testimony later, we have been talking with not only the Department of Transportation, but the two labor organizations about the amendments that we think will help this bill.

This bill is terribly important so we thought we ought to talk as long as we could. I think we have had a good rapport with both the Department and the labor unions. I think they understand what we want and I think most of the things I will talk about are workable.

To go on with my prepared statement, my name is Thomas M. Goodfellow. I am president of the Association of American Railroads and

I am appearing here in general support of S. 3706, the Rail Passenger Service Act of 1970.

Your time for these hearings is limited so I will not repeat the testimony presented before this subcommittee last November by me and by five railroad presidents indicating the need of the passenger carrying railroads to be relieved of the burden imposed by the heavy deficit incurred in operating passenger service. When this bill passed the Senate, the Association of American Railroads issued a statement saying that S. 3706 "seems to offer an acceptable approach for coping with a difficult and pressing problem." The restraint apparent in that endorsement stems from the fact that we believe there is need for a number of changes which will materially improve the bill. It will be my purpose to present these recommended changes to you and explain why we think they are necessary and desirable.

Section 401(a) (1) should be amended as follows:

Page 16, lines 10-14, strike the first sentence and substitute the following:

On or before March 1, 1971, the Corporation is authorized to contract and upon written request therefor from a railroad shall tender a contract to relieve the railroad, from and after March 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract and upon written request therefor shall tender a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is executed.

This amendment is necessary to assure that all railroads operating intercity rail passenger service shall be given the opportunity to contract with the Corporation to be relieved of their intercity rail passenger service responsibilities and to fix specifically the date upon which the railroad will be so relieved.

We understand that this proposal is entirely consistent with the concept of the bill and the intent of its authors.

Section 401(a) (3) (B) should be amended as follows:

Page 17—Strike all of lines 21-24 and substitute the following:

(B) 200 per centum of the avoidable loss of the intercity rail passenger service operated by the railroad during the period January 1, 1969 through December 31, 1969, between those points between which the Secretary, under Sections 201 and 202 of Title II of this Act, has specified that intercity passenger trains shall be operated within the basic system.

The purpose of this amendment is to insure that there shall not be included the avoidable loss on service between two points that are both in the basic passenger system but between which the Secretary has not specified there should be service, that is, a railroad operates service between points A and B, between C and D and between B and C. The Secretary specifies service between points A and B and between C and D as parts of the basic system but not the service between points B and C. The amendment is intended to exclude the avoidable loss of service between B and C as part of the avoidable loss under this alternate formula. Similarly, if there was in existence local service between A or B in the above example and some intermediate point X, and points A to X or B to X had not been designated as points between which service should be rendered, the avoidable cost of local service between A and X or B and X, which was not part of through service from A to B, should not be included in applying this alternate formula.

Turning now to section 402(a), we suggest on page 19, line 22, that you substitute a comma for the period and add the following:

And the rights of the Corporation to such service or to the use of tracks or facilities of the railroad or agency under such order or under an order issued under paragraph (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission.

This is to give the carrier an option to stop providing the service or facilities he was ordered to provide in the event the payment of the compensation fixed by the Commission is not paid. The language in the bill gives rise to the possible interpretation that the carrier's only remedy is to bring an action to recover the amount owed. The remedy assured by this amendment is no more than the law of contracts would accord any contracting party and there is no reason why a party contracting with the Corporation shouldn't have this protection.

One of our more important amendments is the one to amend section 404(a). On page 21, strike all of lines 7-19 and insert the following:

(a) No railroad which has been formally tendered a contract with the Corporation pursuant to Section 401(a) of Title IV of this Act and has failed or refused to enter into such contract with the Corporation may, prior to January 1, 1975, discontinue any intercity rail passenger service operated by such railroad between those points between which the Secretary, under Sections 201 and 202 of Title II of this Act, has specified that intercity passenger trains shall be operated within the basic system, the provisions of any other Act, the laws or constitution of any state, or the decision or order of, or the pendency of any proceeding before, a federal or state court, agency, or authority to the contrary notwithstanding. Other intercity rail passenger service operated by such railroad may be discontinued under the provisions of applicable state law or section 13a of the Interstate Commerce Act. Upon filing by such railroad of a notice, application or petition of or for such discontinuance, the Corporation may undertake to initiate passenger train operations between the points served.

This amendment will limit the freeze for nonjoiners to the intercity service between the points in the system between which the Secretary has specified trains shall be operated. Other intercity trains are not covered by the freeze and with respect to them the carrier can follow the same procedures for discontinuance as it can today.

This may not be what the framers of the bill intended, but it is clear that they did not intend the freeze to extend as far as the present language of the bill would carry it. We understand the authors of the bill intended the bill to apply only to intercity rail passenger service and therefore the words "intercity rail" would have to be inserted before the word "passenger" in lines 9 and 14. However, we feel that even if so amended, the bill would be too restrictive, and unfairly so.

If the Secretary has not found that a particular service should be in the national system, how can the Congress possibly justify compelling a carrier to continue a service without regard to whether it is required to public convenience and necessity or pays its way—particularly when the Secretary, by its omission, has found that such service is not required in the national system. We are not suggesting that the carrier be permitted to automatically discontinue service not included in the system, but only that the carrier be permitted to proceed under applicable law in the normal way and without even the benefit of a presumption of no public convenience and necessity which logically and naturally would flow from being omitted from the system. I say "logically and naturally" because had the carrier seen fit to enter into a contract with the Corporation, the very same nonsystem service would have been

eligible for discontinuance without any proceeding under section 13a but merely upon giving the required notice. Surely, if that result is in the public interest it is difficult to see how the completely opposite result could also be in the public interest.

Perhaps an example would make the point clearer. Suppose a carrier is operating a train between points not included in the system at an out-of-pocket loss of \$500,000 a year and also operates several first-class trains between points designated by the Secretary as part of the system, also at a loss, and that carrier concludes that it does not want to enter into a contract with the Corporation to be relieved of its entire responsibility as a common carrier to render all intercity passenger service. Instead of applauding, or perhaps even rewarding, such an attitude so in keeping with the spirit of the free enterprise system, the Congress, under S. 3706 as passed by the Senate, would say "No, you must be punished and made to run your unprofitable trains outside of the system for the next 4 years without any possibility of relief." Thus, money that could be saved and could be applied to making even better the service in the system or the freight service for the benefit of shippers is forcibly sent down the drain.

My lawyers tell me this is probably unconstitutional as a deprivation of property without due process or the payment of just compensation. If we wished to be obstructionists we would not be here proposing to correct what may be an unconstitutional defect in the bill. But what you are trying to do here, in the main, is surely in the public interest and we think your good sense will tell you that this feature of the bill requires the change I have suggested.

I might say at this time that the Southern Railway will offer an amendment, a substitute or an alternative amendment tomorrow along this same line, and we would certainly accept that amendment instead of ours if the Congress or if this subcommittee so decided.

We have one other matter which has come to our attention since our testimony on these matters was written, and that is some question has arisen as to whether this passenger corporation would compete for mail with other forms of transportation—rail, truck, air, et cetera. We believe or at least we are told that this is not the intent of the Corporation. But we are somewhat fearful that they might decide to compete with the other various forms of transportation.

So, we would like to see an amendment following the word "mail" on line 22, page 12, which would just say after the word "mail," "at rates not less than those prescribed by the Interstate Commerce Commission."

I come now to a series of rather simple amendments relating to the protective arrangements for employees in section 405. We have discussed these amendments with representatives of railroad labor and the Department of Transportation. As I said before, they understand our position and we understand their position and I think we are essentially in complete understanding.

Mr. FRIEDEL. And in accord, too.

Mr. GOODFELLOW. Generally in accord. There are several things the Department prefers. That is not to say we completely agree. In this section we would like to amend page 23, line 11, after the word "of" insert the words "intercity rail."

This is to avoid the application of this section to commuter service.

Amend section 405 (b) as follows:

Page 24, strike lines 10 through 14 and substitute the following:

No contract under Section 401(a) (1) of this Act between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees fair and equitable protection from the railroad.

No one has been able to explain to us when "final settlement of any contract under section 401(a) (1)" would take place and it was thought that no one could object if the wording was changed to give the Secretary of Labor authority to pass upon the adequacy of the protective labor conditions in advance of the time the Corporation contracted with the railroad.

Amend section 405 (c) as follows:

Page 24, line 16, after the comma and before the word "the" insert the word "all."

This is merely a technical clarifying amendment.

Amend section 405 (d) as follows:

Page 25, lines 7-11, strike the last sentence of section 405 (d) and substitute in lieu thereof the following:

Provided, however, that wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

This amendment eliminates the provision making applicable health and safety standard provisions by the Secretary of Labor under Public Law 91-54 as no one seemed to feel that it was particularly appropriate.

The language added is to insure the nonapplicability of the Davis-Bacon Act to work performed by railroad employees.

The final amendment I want to submit to you is an amendment to the Internal Revenue Code and is designed to permit a participating railroad, for tax purposes and at its election, to deduct as an ordinary and necessary business expense any payment whether in cash, goods, or services made to the Corporation pursuant to a section 401 contract.

If treated as an expense, any proceeds received by redemption or taxable disposition of the stock will be treated as ordinary income to the extent of any deduction previously taken. I am not familiar with the intricacies of tax law but I am told that what we are seeking is not unlike the treatment allowed certain expenses incurred by purchasers of stock issued by the Federal National Mortgage Association. I can only say that acquisition of the Corporation's stock under the terms of this bill is a far cry from the ordinary purchase of stock by way of investment in an arm's length transaction. I think what we suggest is reasonable and we hope the committee and the Congress will also.

The amendment is attached to my statement as appendix A.

Mr. Chairman, I appreciate the opportunity of appearing before this committee on this important legislation. I urge adoption of the amendments I have suggested and speedy passage of S. 3706.

I will be followed by some labor witnesses and I want you to know we have gone over their amendments and we are essentially in accord with them as they will be presented.

(Appendix A to Mr. Goodfellow's statement follows:)

*Section 805*

Subchapter B of Chapter I of the Internal Revenue Code of 1954 is amended by adding to Part VIII the following provision:

Section 250. Certain payments made to the National Railroad Passenger Corporation.

(a) Treatment as expenses.—A common carrier by railroad within the meaning of Section 1(3) of the Interstate Commerce Act may, at its election (made in accordance with regulations prescribed by the Secretary or his delegate), treat payments, whether in cash, goods or services, made to the National Railroad Passenger Corporation pursuant to a contract entered into under the provisions of Section 401(a) of the Rail Passenger Service Act of 1970 (— U.S.C., sec. —), as ordinary and necessary business expenses in the year in which such payment is made. Expenditures so treated shall be allowed as a deduction.

(b) If a railroad makes the election provided in subsection (a) of this section, any subsequent distributions in redemption of its stock by the National Railroad Passenger Corporation or any proceeds derived from taxable dispositions of such stock shall be treated as ordinary income to the railroad in the year in which any such distributions or proceeds are received, to the extent of deductions previously claimed under sub-section (a) of this section.

Subchapter O of Chapter I of the Internal Revenue Code of 1954 is amended by adding to Part II the following provision:

Section 1016(a): . . . (23) for amounts allowed as deductions for expenditures incurred under Section 250 (relating to certain payments made to the National Railroad Passenger Corporation), and resulting in a reduction of the taxpayer's taxes under this subtitle.

*Reasons for the Amendments.*—Presently the railroad industry is utilizing its resources in an effort to upgrade its transportation equipment and roadway. Both the Treasury Department and the Congress have provided tax incentives for railroads in furtherance of the industry's efforts to modernize and expand its transportation facilities. The purpose of this amendment is totally consistent with this policy.

Further, Congress has already seen fit to provide a deduction for a capital contribution in circumstances similar to those under the provisions of the proposed bill. Presently the Federal Income Tax Law [§162(d)] allows initial purchasers of stock issued by the Federal National Mortgage Association to deduct as ordinary and necessary business expense paid or incurred during the taxable year the excess of the issuance price over the market value of FNMA stock on the date of issuance. The reason for this provision is that FNMA subscribers are in a sense compulsory subscribers since sale of their mortgage paper to FNMA is conditioned on the acquisition of FNMA stock. Similarly, under the bill the railroad is a compulsory subscriber since otherwise it is prohibited from discontinuing any, and even under our own amendments much, of its intercity passenger train service until after January 1, 1975, and must continue to bear the losses therefrom. It is submitted that this established Congressional policy should be equally available to permit railroads to deduct their payments as ordinary and necessary business expenses.

Mr. FRIEDEL. If I can digest briefly what some of your amendments propose what do you want to do with the moratorium about discontinuing the passenger trains?

Mr. GOODFELLOW. I have not said anything about any moratorium, Mr. Chairman. What we are trying to avoid is the freeze if you do not accept a contract after this law goes into effect.

I think the moratorium Mr. Stafford spoke of yesterday was essentially the moratorium that would keep train taking off before them. We have not said anything about that in this testimony, because we don't want to muddy the waters.

The Commission recommended some relief to you on that yesterday. What we are really concerned about is if a railroad wants to operate its own trains as a contractor that way, in effect operate its own trains and not have to have the Corporation take them over, we don't think

they should have their other trains frozen. That is what we are trying to say.

Mr. FRIEDEL. You say on page 4 in your last paragraph:

If the Secretary has not found that a particular service should be in the national system, how can the Congress possibly justify a carrier to continue service without regard to whether it is required by public convenience and necessity or pay its way?

Mr. GOODFELLOW. This would apply to the train that is not a part of the system. It is very possible to have a train go from Chicago to San Francisco and that would be the train designated in the system.

This same railroad might have a train that ran from some point on that line to another point up into the mountains or up into the country some place. But the Secretary would not make that a part of the system. You have the branch line with a train going up to the country which is not in the system, but the transcontinental train is in the system.

The railroad decides the price is too high to join the system, but we will continue to run the train. They run that transcontinental train but under this law, because they did not sign the contract, they are not allowed to take on the branch line train.

If they joined the Corporation, the branch line would practically automatically come off.

Mr. FRIEDEL. They would get a refund for the losses.

Mr. GOODFELLOW. We would not get any refund, no.

Mr. FRIEDEL. If you signed a contract with the corporation and there were any losses on that passenger run, then you would be refunded for the losses, would you not?

Mr. GOODFELLOW. The corporation would assume the losses.

Mr. MOLONEY. I think it is important to realize the railroad is paid nothing by the corporation under section 401 (a). All of the payment under that contract is money going from the railroad to the corporation—no reimbursement to the railroad.

Mr. GOODFELLOW. The only thing the railroad gets reimbursed for is actual cost of service, train crews, train crews or ticket agents or anything like that.

As Mr. Moloney pointed out, in order to join the corporation and sign a contract, you are required to make a contribution for which you get stock.

Mr. FRIEDEL. If you don't enter into the contract and want to run a particular passenger train that would be part of a national system and you would run it by yourself there would be no reimbursement.

On the other hand, if you are running a train which is losing money and you enter into a contract with the corporation, is there any reimbursement there at all?

Mr. GOODFELLOW. It is the corporation's train and we are relieved of the responsibility of that train.

Mr. FRIEDEL. Your last amendment about the Internal Revenue is not within our jurisdiction.

Mr. GOODFELLOW. I appreciate that has to be worked out with Ways and Means. We are hoping you will work it out.

Mr. DINGELL. I followed your statement with interest, Mr. Goodfellow. I must confess this bill seems to have considerable merit. Let me ask you this question: What is there in S. 3706 or H.R. 17849

which will require upgrading of passenger service to assure that the passenger service that is afforded the people, if either of these pieces of legislation is passed, will be modern, fast, convenient, and of the highest quality?

Mr. GOODFELLOW. I don't know that there is anything written in the bill except that the corporation is charged with doing just that. It is not spelled out, but they are charged with running the best possible service because this is what they have said, the sponsors of the corporation, that this will be a good railroad passenger corporation and we will run fine trains and we think we will get people to ride trains again.

Mr. DINGELL. What is there that will guarantee that these trains will move between points at speeds approximating, say, 150 to 200 miles an hour which is within the state-of-the-art? Is there anything in the bill requiring that?

Mr. GOODFELLOW. To run that fast; no.

Mr. DINGELL. What assurances are there that the roadbed and the trackage on which these trains will be run will be maintained so that they can safely provide high-speed service.

Mr. GOODFELLOW. If the Corporation so decides the trains will run at 150 miles an hour, the roadbed will be maintained for that operation at the Corporation expense.

Mr. DINGELL. What in the bill says that?

Mr. MOLONEY. I think, Congressman Dingell, the answer to the question you are asking lies in this area: The Secretary under this bill has the authority to designate the points where passenger service shall be performed and to specify the service characteristics of that operation—scheduling, train concept, diners, sleepers, parlor cars, and scheduling includes hours of departure, time over the road, and having specified that the bill imposes an obligation on the Corporation to perform that as the minimum service for 5 years.

There you find the specification and there you find the direction to the Corporation to perform these specified services.

Also, there is provision in here for the financing for the expenditure of money on maintenance of ways where it is necessary to spend that money in order to accommodate the operation that will be conducted by the Corporation.

Mr. DINGELL. There is another matter that troubles me about this bill. What is there in this piece of legislation that would assure that money expended for upgrading the roadbed to assure the kind of roadbed that is needed for really fast, high-speed service between two points wouldn't be immediately dissipated by running heavy freight trains over the same track and dissipating and eliminating the benefits by so doing?

I see a peril here, if we, through the Corporation, spend a lot of money to upgrade the tracks, not long thereafter the railroads will increase the rate, frequency, speed of the freight trains with the result that the roadbed will get right back in the same shape it was before and expenditures made to upgrade roadbeds for rapid passenger service will be gone.

What protection is there in either of these bills for that kind of protection?

Mr. MOLONEY. There is no particular provision for the condition you describe. It is a condition that must prevail, where a facility is used jointly for both freight and passenger service.

Mr. DINGELL. Is there any requirement that there be a sharing of the costs and freight service would be paid for out of railroad funds as opposed to Corporation funds?

Mr. MOLONEY. No, sir.

Mr. DINGELL. Does that appear to be a fair requirement?

Mr. MOLONEY. First, you would have to establish there is the benefit in your question.

Mr. DINGELL. Is it not fair to assume there would be such a benefit?

Mr. MOLONEY. Not necessarily, no.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Goodfellow, you said that the representative of the employee organizations apparently showed you some of the amendments they were going to offer and you were in general accord. Are they in accord with the amendments you have suggested in your testimony?

Mr. GOODFELLOW. I think several of them are connected but I think they are different amendments.

As I recall it, a good many of them are in this same area as described.

Mr. PICKLE. If this Corporation is established and both high speed trains and freight trains continue to run over these tracks, is it fair to say that continued use of these tracks by the haulage of freight will constantly downgrade the tracks in the present system?

Mr. GOODFELLOW. Congressman, I think this is a problem that has been met for many years in joint facility contracts by railroads. Generally, the contract in a joint facility, and this is what this would be, a jointly used facility, is based on the number of ton miles.

So, if a railroad was going to run a lot of heavy tonnage, this would certainly be taken into consideration when the contract for the sharing of the maintenance of way expenses was considered. The speed of the freight trains and the speed of the passengers is another thing that would affect the tracks and this would have to be taken into consideration before the agreement was written. I would have to assume in each one of these cases where a train travels over a piece of track that is used by the Corporation's passenger trains and freight trains, a very careful contract will be written so the expenses of maintenance are shared properly.

If the passenger trains run 150 miles an hour and we are still to run heavy coal trains over them, from my experience we will have a little problem of maintenance, but we can do it and the costs can be fairly shared.

Mr. PICKLE. Under the present conditions, the railroads own the roadbeds and right-of-ways.

Mr. GOODFELLOW. That is right.

Mr. PICKLE. If the Corporation were formed and we were furnishing this intercity passenger service, if repairs need to be made or a new roadbed has to be constructed, at whose expense would that be made?

Mr. GOODFELLOW. I think if any changes are to be made, taking the roadbed first, if we reduced any grade or curvature to accommodate a high-speed train, I think the Corporation should pay for that.

If the track is to be upgraded from what it is so that the Corporation can run its trains at a higher speed, then I think this is a matter for negotiation. I don't think we can sit here and say that one rule will cover all of those situations.

Mr. PICKLE. I think it will go to the heart of the whole problem in time though. What is going to happen to these roadbeds? If the Corporation spends its money to improve the roadbeds, then under the present conditions they still belong to the railroads?

Mr. GOODFELLOW. That is correct.

Mr. PICKLE. I think you are going to end up with an entirely different system than we have now if railroad service is ever going to be effective we have to have a different kind of approach. If that is so, we will not be using the present rail system as we understand it now.

So, we reach the problem if we do require new roadbeds, whose property will it be?

Mr. GOODFELLOW. I don't think I can sit here and answer that question generally for the United States. I would assume if a line were built between two cities, it would belong to the Corporation. If you are going to change a curve in an existing line, I don't see how the Corporation could own that.

We are anxious to have this Corporation be successful, and I don't think that any of the railroads are going to try to take advantage of it.

Mr. PICKLE. You have two main concerns. One, though you did not use the word moratorium, you don't think you ought to be required to put a freeze on all passenger service if it is not within the system. Of course, we have the problem if we had enough money we could make this bill nationwide in character and set up a corporation that would cover the entire United States and we would not have this problem. That is not the approach we would like. It cannot be that broad or would you like to see it nationwide?

Mr. GOODFELLOW. I thought it was. It does not cover every passenger train. I have not seen the Secretary's system. I don't know that it has been made yet.

Mr. PICKLE. I have not seen the system. Though it is nationwide in character in different points, it does not cover every system or else you would not be concerned about a freeze in points that are not covered under the system.

Yet, we have the problem that unless we do hold the line somewhere, there is not much point in trying to retain a system that is going to die by the time we get ready to put it into effect, so this is the practical problem.

In order to save passenger service, we have to find some kind of answer to it.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Goodfellow. It is always a pleasure to have you here.

Our next witness is Mr. Al H. Chesser, national legislative director, United Transportation Union.

**STATEMENT OF AL H. CHESSER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION, ALSO REPRESENTING THE CONGRESS OF RAILWAY UNIONS; ACCOMPANIED BY EDWARD D. FRIEDMAN, COUNSEL**

Mr. CHESSER. Mr. Chairman, I have with me Mr. Edward D. Friedman, who is our counsel and a member of the law firm of Bernstein, Alper, Schoene & Friedman.

For the record, Mr. Chairman and members of the committee, my name is Al H. Chesser. I am the national legislative director of the United Transportation Union. I appear today on behalf of not only my own union but also the Congress of Railway Unions.

The Congress of Railway Unions is a federation of the chief executives of five railroad labor organizations. The affiliated organizations are:

United Transportation Union; Brotherhood of Railway, Airline and Steamship Clerks; Brotherhood of Maintenance of Way Employees; Hotel and Restaurant Employees and Bartenders International Union and Seafarers International Union.

These organizations collectively represent approximately 75 or 80 percent of the organized railroad employees in the country.

We join with all others in the railroad transportation community to give our wholehearted support to this bill.

Perhaps the most significant thing about the legislation is that it has total recognition and support, regardless of party or position in the industry or in the economy. The birth pains of the Senate passed bill, S. 3706, were long and arduous. But in the past month or so, all elements within the administration, within the Congress, and within the industry came together to produce and support an historic measure which, more than any other proposal, promises to revive in this country a first class, modern rail passenger transportation system in the 11th hour of its decline.

The problem of the passenger transportation crisis is so well known that there is no need for me or for anyone to belabor the elements of which it is composed. We all know that action is long overdue and that time is essential. We can now reasonably expect that prompt and immediate steps will be taken to enact a bill into law and to start the procedure by which we will renew and restore our national rail passenger transportation network.

There is no disagreement with the proposition that our passenger transportation system is out of balance. Each of us has experienced in one way or another the crowded and dangerous high speed highways and expressways, the congestion in the air corridors, highlighted by the warnings of dangers from the air traffic controllers, the crowded airports, and more generally the uncertainties of air and automobile intercity travel, particularly for short runs.

We know too well the story of the progressive deterioration of rail passenger service with its poor schedules, poor equipment, poor service, and even poorer treatment of the traveler.

We know that there are few, if any, who are not deeply concerned about the shrinkage of intercity passenger trains, close to the vanishing point—a reduction of more than 97 percent during the past four decades. All of us share the concern that, unless something is done, rail passenger services in the United States will disappear altogether.

The bill would reverse this trend. The restoration of a safe, efficient, comfortable high speed national rail passenger system will, under the terms of this bill, become a matter of prime national passenger transportation policy with important implications for our national environmental and safety programs.

There is no need for further elaboration or discussion. The problems and programs are thoroughly understood by all who are involved with the legislation.

The Senate gave consideration to the bill reported by its committee, a substitute supported by a bipartisan group and to the separate ideas of Senators Pell and Kennedy. There emerged the Senate passed bill, S. 3706. We therefore urge this subcommittee to support S. 3706.

I should like to confine the balance of my comments to a few provisions of S. 3706 which appear to be somewhat ambiguous and which therefore, in our judgment, require clarification. We have prepared proposed amendments with explanations on these items, and I understand that our proposals have been made available to the members of the subcommittee. I should therefore like to refer to them briefly and to answer any questions which any of the members may have on any of these proposals.

The first of these suggestions, which we have marked proposed amendment No. 1, would amend section 202 of S. 3706 to require the Secretary of Transportation to consult with the representatives of the railroads and their employees before he takes final action in establishing the basic national rail passenger system.

The designation of the basic rail passenger system is at the heart of the bill. Passenger service excluded by the Secretary from this basic system will clearly be vulnerable to discontinuance petitions by the railroad under the proviso to section 401(a)(1) of the bill. The labor organization have a deep-seated and well-established interest in the maintenance of these systems and have always had standing to be heard in any proceeding affecting them. The new procedures in this bill for defining the basic transportation network somehow overlooked this clear interest of the labor organizations representing railroad employees who are directly affected by the inclusions and exclusions in the system to be developed.

The proposed amendment would simply require the Secretary to consult with representatives of the railroads and of the railway labor organizations before taking final action.

The second of the proposed amendments would amend section 303 (a) to provide for at least one employee representative on the Corporation's Board.

That would be one of the eight appointed by the President.

The bill as drawn establishes a quasi-public Corporation with a board of directors which includes representatives of the railroads, of the shareholders, of the public, and of the consumers. The only one missing is a representative of the employees, and we feel this must be an oversight and should be repaired.

The third proposed amendment would amend section 305 to develop more fully the thought that the Corporation will either take over or use, to the extent possible, all operating and nonoperating railroad employees who have been employed in the passenger train service. This is the intention of this provision, as expressed by Senator Prouty in the debate on the bill in the Senate, but the provision, as now drafted, appears to be limited to operating crews and must for that reason be clarified to insure the coverage of the nonoperating employees.

The fourth proposal would make it clear that the Railway Labor Act, the Railroad Retirement Act, the Railroad Retirement Tax Act, the Railroad Unemployment Insurance Act, and the various other employment standards and safety acts covering railroads and their

employees would apply to the National Railroad Passenger Corporation in exactly the same manner as these statutes apply to railroads. This is clearly the intention of section 306(b) at line 22 of page 13 of the bill as now drawn. You will note, however, that the bill uses the phrase "laws and regulations with respect to safety and with respect to dealings with its employees" to cover this point, and we think that the language falls short of the mark.

While the Railway Labor Act would without question be covered by this phrase, there may be some problems of interpretation with respect to the coverage of the Railroad Retirement Act, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act. These acts provide essential guarantees to railroad employees, and the amendment is, we feel, required to insure that these rights will not be prejudiced.

The fifth proposed amendment is directed to several problems that arise with respect to the sanctions provided in section 307. As drafted, enforcement appears to be available only against the Corporation. Obviously, the obligations provided for the railroads need to be enforced too. Secondly, we would put labor practices and labor agreements on the same footing with other obligations. And we feel that the available remedies should include damages and attorneys' fees where appropriate and not be confined to the traditional remedies peculiar to equity courts.

The next four proposals deal with the protective arrangements for employees under section 405 of the Senate passed bill. These protective provisions are drawn literally from their counterparts, the Urban Mass Transportation Act of 1964 and the High Speed Ground Transportation Act of 1965, and follow the same policy stated in those acts. In adapting the protective provisions in the other transportation laws, it appears that there may have been some slippage, and our proposals will, we think, make the necessary corrections and adjustments.

In our first one, Proposed Amendment No. 6, we would eliminate the word "adversely" in the first sentence of the section, appearing on page 23 at line 10 of S. 3706. The bill as drawn requires the railroad to provide "fair and equitable arrangements to protect the interests of employees adversely affected" by certain actions in consequence of the bill. The word "adversely" does not appear in the Urban Mass Transportation Act or the High Speed Ground Transportation Act, and we feel that its introduction here might somehow be "adverse" to the interest of the employees which the bill intends to protect.

The fact is that Senator Prouty, one of the principal authors of the bill, explained during the debates that these provisions are "far more liberal" than their counterparts in the existing legislation. Yet the introduction of the word "adversely" seems to narrow the scope of the interest to be protected. We suggest that the word be dropped in order to bring the provision in line with provisions in the Urban Mass Transportation Act and the High Speed Ground Transportation Act.

Our Proposed Amendment No. 7 is also a clarifying amendment. It suggests certain language additions to section 405(a) (1) to insure that any railroad discontinuances of passenger service, whether they result from the service being taken over by the Corporation or from its being excluded from the basic system, will give rise to the obligation to protect the interests of the affected employees fairly and equitably.

Our Proposed Amendment No. 8 covers the point already discussed with respect to the use of the word "adversely" in section 405 (a) of the bill covering the obligations of the railroads. Section 405 (b) at line 13 of page 24 simply refers back to the obligations established by section 405 (a).

Our Proposed Amendment No. 9 would impose upon the National Railroad Transportation Corporation corresponding responsibilities for protective arrangements as are imposed upon the railroads in the first paragraph of section 405. However, since the scope of the impact of the Corporation's operations is broader than discontinuances, the obligation to furnish protection is stated with appropriate breadth. For example, jobs may be downgraded or eliminated as a result of structural or personnel reorganizations or consolidations or as a result of other changes in the service or in the operations or methods of the Corporation.

Certainly, it was the intention of section 405 (c) dealing with the responsibility of the Corporation that all affected employees should be protected, but we feel that there are ambiguities in the section as now written and that the specific obligations of the Corporation should be enumerated.

In connection with 405 (c) let me deviate from our testimony. An amendment was suggested yesterday by the Chairman of the Interstate Commerce Commission when he testified.

On page 4 of his testimony regarding protective arrangements for employees he says:

We recommend an amendment to provide that the provisions of section 52 (f), the Interstate Commerce Act, be the standard of fair and equitable arrangements to the parties.

Now, with friends like this we don't need any enemies. Obviously, this was a gratuitous attempt to deprive employees of protection here which the carriers have agreed to. It has been the policy of the Congress for 10 to 12 years and it is now embodied in the first Urban Mass Transit Act.

Yet, at this late date, and I say this really does date the Interstate Commerce Commission because they just turned back the clock about 15 years. So, we would certainly ask that the committee shelve this amendment requested by the Interstate Commerce Commission.

Our final proposals would increase funds which would increase the size of the grant and guarantees for the program.

We feel that the figure of \$10 million specified as seed money for the Corporation is totally inadequate and may jeopardize the success of the whole program.

We also feel that the figures of \$60 million for the loan guarantees and \$75 million for emergency financial assistance in sections 602 and 701 are short and should be increased to \$100 million for guaranteed loans and \$300 million for emergency assistance.

Mr. Chairman and members of the committee, if this legislation is enacted and if this scheme reached through this legislation fails in any manner, this country will have a real problem in transportation, because if this fails, I do not think anyone can judge how many years it will be before there is another scheme arrived at.

This money is certainly inadequate. I think we have to be realistic enough to notice that we have to have a good system with good first-

class equipment, with a good roadbed, with good schedules and good service. We know by experience without this it fails, and we cannot have this unless the funds are adequate to support this legislation.

(The proposed amendments referred to follow:)

CONGRESS OF RAILWAY UNIONS

S. 3706

PROPOSED AMENDMENT NO. 1

Amend Section 202 as follows:

On page 5, line 21, insert after the word "Secretary", "after consultation with the representatives of the railroads and with labor organizations duly authorized to represent railroad employees".

*Purpose.*—Amendment would require the Secretary of Transportation to consult with the representatives of the railroads and of their employees prior to his final action in establishing the basic national rail passenger system.

*Explanation.*—The pivotal point of the bill is the development of a basic national rail passenger system by the Secretary of Transportation to provide the framework for the restoration and renewal of a regional and national rail passenger transportation network. Passenger service excluded from the basic system as defined by the Secretary is clearly vulnerable to discontinuance actions by the railroad under Section 13a of the Interstate Commerce Act. The railway labor organizations have a deep seated and well established interest in being heard on actions of the kind to be taken by the Secretary. They, along with the railroads, should for this reason be given an opportunity to participate in the procedures for the formulation of the basic plan.

The amendment would accomplish this by insuring that the Secretary will provide the representatives of the railroads and of the employees with an opportunity to comment on the plan prior to his final decision thereon.

PROPOSED AMENDMENT NO. 2

Amend Section 303(a) as follows:

On page 7, line 23, strike out the period and insert in lieu thereof the following: "and at least one such member shall be an employee representative."

*Purpose.*—To insure that the employees will have a voice in the actions taken by the Board of Directors.

*Explanation.*—The Corporation is quasi-public in nature. Under the terms of the bill, as drawn, the Board of Directors will include members representing the railroads, the shareholders, the public and the consumer. It seems altogether appropriate that the employees should also have a seat on the Board.

PROPOSED AMENDMENT NO. 3

Amend Section 305 as follows:

On page 13, line 2, strike out "crews" and insert in lieu thereof "employees".

On page 13, line 3, insert after "operation" the following: "and maintenance".

On page 13, line 3, strike out the period after "trains" and insert in lieu thereof the following: "and to the performance of all services and work incidental thereto."

*Purpose.*—This is a clarifying amendment.

*Explanation.*—The purpose of the part of Section 305 to which the proposed amendment is directed is to require the Corporation to give employment preference to those railroad employees who are engaged in performing all services incidental to the operation and maintenance of passenger service. The existing provision appears to be ambiguous since it sounds in terms of "crews necessary to the operation" of the trains and thus seems to be limited to operating employees alone. The debate in the Senate points up the fact that all operating and non-operating employees, who are involved with the operation of the passenger service, will be taken over or used by the Corporation to the extent that Corporation engages in the operation of the passenger service. The amendment would clarify this and would also insure that the Corporation would rely on the railroads to provide operating and non-operating crews to the extent that the railroads engage, by contract, in the actual operation of the service.

## PROPOSED AMENDMENT NO. 4

Amend Section 306(b) as follows:

On page 13, line 23, insert after "and with respect to" the following: "the representation of its employees for purposes of collective bargaining, the handling of disputes between carriers and their employees, employee retirement, annuity and unemployment systems and other".

*Purpose.*—This is a clarifying amendment.

*Explanation.*—The bill as drawn is designed to insure that the Corporation will be in no different position from any other carrier with respect to obligations under the Railway Labor Act, the Railroad Retirement Act, the Railroad Retirement Tax Act, the Railroad Unemployment Insurance Act, the House of Service Act and other employment standards and safety acts covering railroads and their employees. It is felt that the phrase "dealing with its employees" while covering these various statutory rights and obligations, is somewhat ambiguous and requires clarification.

## PROPOSED AMENDMENT NO. 5

Amend Section 307(a) as follows:

On page 14, line 16, after "Corporation" insert "or any railroad".

On page 14, lines 19–20, strike out "(except in the exercise of labor practices not otherwise proscribed by law)".

On page 15, lines 2–4, strike out "in a case involving a labor agreement, upon petition of any individual affected thereby," and insert in lieu thereof the following: "of any person adversely affected or aggrieved thereby, including the representatives of the employees of any railroad or of the Corporation".

On page 15, line 4, insert after "equitable" the following: "or other".

On page 15, line 4, after "relief" insert the following: "including damages as well as reasonable attorney's fees as part of the costs of such action".

On page 15, line 5, after "terminate" insert the following: "or as compensation for".

*Purpose.*—To provide a legal remedy to any aggrieved person including the duly authorized representatives of the employees of the railroads and of the Corporation for any violations of the Act by the Corporation or by any railroad.

*Explanation.*—The Corporation acting as common carrier by railroad should be in no different position from other carriers, and should be subject to the usual legal processes for any legal wrongs which it might commit. Whatever legal remedies which may have been available to employees and their representatives to enforce obligations of the railroads should be maintained intact with respect to any actions taken by the Corporation after it assumes the responsibilities of the carriers under the provisions of this bill.

Sanctions should also be available to enforce the obligations of the railroads.

The parenthetical clause on page 14, lines 19–20 "(except in the exercise of labor practices not otherwise proscribed by law)" is unclear and appears to serve no useful purpose and it is suggested that the clause should be deleted.

## PROPOSED AMENDMENT NO. 6

Amend Section 405(a) as follows:

On page 23, line 10, strike out "adversely".

*Purpose.*—This is a clarifying amendment. The purpose is to eliminate any possibility that the word "adversely" will be interpreted to narrow the scope of employee interests sought to be protected.

*Explanation.*—The protective provisions in this section are drawn literally from the comparable provisions in the Urban Mass Transportation Act of 1964 and the High Speed Ground Transportation Act of 1965 and are designed to serve the identical policy expressed in these laws. Senator Prouty explained during the debate that these provisions are "far more liberal" than the prototype provisions in the acts referred to. The employee interest described in the predecessor laws, however, do not contain the word "adversely" and this term should therefore not be imported into this bill. It seems clear that the drafters did not intend to narrow the scope of the provisions by the use of the word. No purpose is served by its introduction and its use may entail some risks. The amendment will bring the provision into line with the protective provisions of the Mass Transit Act and the High Speed Ground Transportation Act and will insure that the purpose of broadly defining the interest to be protected will be carried out.

## PROPOSED AMENDMENT NO. 7

Amend Section 405 (a) as follows:

On page 23, line 13, after "Act," insert the following: "whether such service is undertaken by the Corporation or is excluded from the basic system,".

*Purpose.*—This is a clarifying amendment.

*Explanation.*—The protective arrangements for employees provided by this section are modeled after the Urban Mass Transportation Act of 1964 and the High Speed Ground Transportation Act of 1965. Senator Prouty, one of the authors of the bill, explained that this section contains protective labor provisions that are far more liberal than anything provided in existing law. The intention of the section is to provide fair and equitable arrangements to protect the interest of any employee whose employment is in any way affected by the revitalized passenger transportation program under the bill.

This purpose would appear to be achieved by the provision in Section 405 (a) (2) with respect to the discontinuance of any passenger train service by a railroad after January 1, 1975 but there is some ambiguity with respect to the impact of Section 405 (a) (1) as written. The amendment would make it clear that any employee affected by a takeover of passenger service under Section 401 (a) (1) would have the full protection of Section 405: for example those employees of a passenger service who, although the service may be taken over by the Corporation, are nonetheless not employed by the Corporation. Clarification is needed to assure that the protection is extended to all employees who may be displaced. The amendment would insure this result.

## PROPOSED AMENDMENT NO. 8

Amend Section 405 (b) as follows:

On page 24, line 13, strike out "adversely".

*Purpose.*—This is a clarifying amendment.

*Explanation.*—See proposed amendment No. 6.

## PROPOSED AMENDMENT NO. 9

Amend Section 405 (c) as follows:

On page 24, line 16, strike out the clause beginning with "the substantive requirements of subsection (b)" through to the end and insert in lieu thereof the following: "The Corporation shall provide fair and equitable arrangements to protect the interests of employees affected by the following discontinuances or changes in its services, operations or methods:

"(1) those undertaken pursuant to section 404 (b) (2) or (3) of this Act; and

"(2) those arising out of structural or personnel reorganizations or consolidations or other changes in the management or operations of its services.

Such protective arrangements shall include the substantive requirements in subsection (h) of this section, as determined by the Secretary of Labor. The certification by the Secretary of Labor that the interest of employees affected have received fair and equitable protection from the Corporation shall be a condition to such discontinuance or change."

*Purpose.*—This is a clarifying amendment.

*Explanation.*—It is the stated purpose of the section to provide broad and liberal protection to all employees who may be affected by the development of the new rail transportation program. Section 405 (a) defines the obligations of the railroad and section 405 (c) defines the obligations of the Corporation. There appears to be no intention to distinguish between the obligations of the railroads in this respect from those of the Corporation.

The bill as drafted does not clearly indicate that these obligations are parallel. The proposed amendment would conform Section 405 (c) to Section 405 (a) to insure uniformity of coverage as to discontinuances.

It also would make it clear that any dislocation of the Corporation's employees resulting from changes in service, operations, or methods would be covered by the section. It is felt that this is needed since the Corporation, unlike the railroads, will have the continuing obligation to provide rail passenger service.

## PROPOSED AMENDMENT NO. 10

Amend Sections 601, 602, 701 and 702 as follows:

On page 26, line 15, strike out "\$40,000,000" and insert in lieu thereof "\$100,000,000".

On page 27, line 22, strike out "\$60,000,000" and insert in lieu there "\$100,000,000."

On page 28, line 2, strike out "60,000,000" and insert in lieu thereof "\$100,000,000".

On page 29, line 2, strike out "\$75,000,000" and insert in lieu thereof "\$200,000,000".

On page 29, line 5, strike out "\$75,000,000" and insert in lieu thereof "\$200,000,000".

*Purpose.*—To provide ample funding.

*Explanation.*—It is essential to the success of the new national rail transportation system to insure that it is adequately funded. It is felt that the authorizations in the bill fall short of this goal. There is some suggestion that these figures may have been understated as a result of a clerical error. In any event, the authorization of \$100,000,000 of seed money for the operations of the Corporation and of \$100,000,000 for the loan guarantee and of \$200,000,000 for the emergency financial assistance is essential.

Mr. CHESSEY. I would like to make a couple of other comments about the testimony of the Chairman of the Interstate Commerce Commission.

The first is found at page 4 of the Chairman's testimony of yesterday dealing with the discontinuance of service. He suggests that where there is a dispute between the Corporation and any State, regional or local agency regarding the apportionment of losses for service conducted in excess of the basic system that the matter be referred to the Secretary for decision. That is in the bill.

But he says they believe that this should be amended and the substitute be made that it be referred to the Commission instead of to the Secretary.

We feel the Interstate Commerce Commission in the last 75 years has had their chance and they have failed and they have failed miserably. They have not been before this committee before asking for changes, devising some scheme whereby we might have an adequate transportation system. So, they came here yesterday as sort of a "me too" amendment scheme to be recorded in the record.

So, we think they have had their chance and the bill should remain as it is. Let us have some new blood and some new thoughts and we think it will have a better chance of working.

At page 5 of the Chairman's statement—

Mr. FRIEDEL. You are referring to the Chairman of the Interstate Commerce Commission?

Mr. CHESSEY. Yes, sir, he refers to section 301 to provide some measure of funds to relieve the railroad of their passenger operation losses until such time as the Corporation becomes operational.

We think at least if you take this away there would be no incentive, probably, to join the Corporation. If a carrier will be able to receive a subsidy for its operation, then there might not be any reason to have a corporation.

In other words, we would use that scheme instead of the provisions in S. 3706.

Then on page 5 further down, the Chairman of the Interstate Commerce Commission in his testimony says:

There are now pending before the Commission discontinuance proceedings in various stages of processing which involve approximately 140 trains.

Proposals of the Penn Central alone involve about 80 trains, the largest of these being its proposed discontinuance of all of its long-haul east-west service.

In caps he says:

Enactment of S. 3706 prior to our decision would mean that this carrier like all others must continue to operate the trains throughout next March at a considerable financial loss.

Now, Mr. Chairman, if this is not prejudging all of the cases pending before that Commission at this time, then I just don't know what I am talking about. Here he states it in plain English that anybody can understand. How can he know?

They are in the process now of hearings. In the Eastern part of the United States, they had 2 weeks of hearings to start off here in Washington. They will probably have another 2 or 3 weeks of hearings. They have not seen the evidence. The Chairman of this Commission, the examiners have made no recommendations, yet he says they are going to operate at a considerable loss.

We would like to know, how does he know this? This has been going on for a long, long, time at the Interstate Commerce Commission.

Mr. FRIEDEL. I do not have his statement before me. Did he say "it?"

Mr. CHESSE. No, Mr. Chairman, he did not say "if." I also would like to furnish this to the subcommittee for the record. The Commission, by petition from Attorney MacDougall who is an interested party in the case, has already received a petition seeking disqualification of the Interstate Commerce Commission on these cases on account of conferences and pre-conferences they have had with Penn Central management prior to these hearings.

Mr. FRIEDEL. If there is no objection the petition will be included in the record at this point.

(The petition referred to follows:)

Before the Interstate Commerce Commission

(Finance Docket No. 26106)

PENN CENTRAL TRANSPORTATION COMPANY DISCONTINUANCE  
OF 34 PASSENGER TRAINS

PETITION SEEKING DISQUALIFICATION OF THE INTERSTATE COMMERCE COMMISSION

Comes United Transportation Union, by its East/West Legislative Committee, and petitions the Interstate Commerce Commission that the agency disqualify itself from passing upon the proposed discontinuance of the involved 34 passenger trains, for the reason that the Commission, as outlined in an affidavit of Chairman George M. Stafford, executed March 13, 1970, convened on February 24, 1970 for the purpose of receiving a report from Mr. Stewart T. Saunders, Chairman of the Board of Directors of the Penn Central Company, and Mr. Paul A. Gorman, President of the Penn Central Company, as to the problems and achievements resulting from the merger of the former Pennsylvania Railroad Company and New York Central Railroad Company.

After the meeting, William A. Lashley, V.P. for Public Relations, was directly quoted in the February 25, 1970 issue of the *Washington Evening Star*:

"They discussed with the commission their concern over whether or not the Congress was going to do anything this year about any federal assistance for inter-city passenger service. They just laid it on the line that Penn Central can no longer afford, or no longer has the resources to provide first-class passenger services without some help."

On March 4, 1970, Penn Central publicly announced that it would shortly file its notice to discontinue virtually all of the railroad's East/West passenger train service, other than that via the so-called water-level route of the former New York Central between New York, N.Y. and Buffalo, N.Y.

The February 24, 1970 meeting was an improper ex parte communication between the Commission and the officials of Penn Central. In *Sangamon Valley Television Corp. v. United States*, 269, F. 2d 221, 224 (1959), the court said:

"Interested attempts 'to influence any member of the Commission . . . except by the recognized and public processes' go 'to the very core of the Commission's quasi-judicial powers . . .'".

While the practicalities of modern-day regulation may in some instances make intimate contacts desirable, the closed-door meeting of the Commission with Penn Central officials, ten days before the carrier's public announcement of the mass train discontinuances, vitiates any potential Commission action.

Under these particular circumstances, petitioner has no recourse other than to request that the Commission make a full report and disclosure of the matter to the Congress, so that Congress may take appropriate action by means of special legislation to constitute an impartial tribunal before which this passenger discontinuance case may be heard.

Respectfully submitted.

THOMAS P. SHEARER,  
*Pittsburgh, Pa.*  
ROBERT C. TYLER,  
*Columbus, Ohio.*

JOHN DONEGAN,  
*Syracuse, N.Y.*  
(Attorneys for United Transportation Union).

Of Counsel:  
GORDON P. MACDOUGALL,  
*Washington, D.C.*

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of April, 1970, served a copy of the foregoing personally upon counsel for Penn Central Transportation Company.

GORDON P. MACDOUGALL.

APPENDIX A

In the United States District Court for the District of Columbia

AFFIDAVIT OF GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION  
WASHINGTON,  
*District of Columbia, ss:*

GEORGE M. STAFFORD, being duly sworn, deposes and says:

1. That he is the Chairman of the Interstate Commerce Commission, having served in that capacity since January 1, 1970.

2. That the Interstate Commerce Commission is the agency charged with the obligation to enforce the provisions of the Interstate Commerce Act, 49 U.S.C. § 1, *et seq.*, under which the franchises, rates and finances of the Nation's railroads are regulated.

3. That he presided at a conference of the members of the Commission on Tuesday, February 24, 1970, convened for the purpose of receiving a report from Mr. Stewart T. Saunders, Chairman of the Board of Directors of the Penn Central Company, and Mr. Paul A. Gorman, President of the Penn Central Company, as to the problems and achievements resulting from the merger of the rail lines, approved by the Commission in *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 475 (1966), sustained 389 U.S.

4. That the discussion between Messrs. Saunders and Gorman and the members of the Commission at no time included the matters under consideration in I.&S. Docket No. 8486, *Vegetables and Melons Transcontinental Eastbound*, or in the related proceeding, Docket No. 35231, *Petition for Rejection of Supplements*.

5. That a report and order of the Commission, Division 2, was approved in the *Vegetables* case on February 25 and served on March 11, 1970, requiring the cancellation on or before April 13, 1970, of the schedules of rates and charges considered in that proceeding, the operation of which has been postponed until March 15, 1970.

6. That under the Commission's General Rules of Practice, 49 C.F.R. § 1100.101, petitions for reconsideration may be filed as a matter of right.

7. That the Ad Hoc Committee on Consumer Interests, a protestant in the *Vegetables* case, has not filed a petition for reconsideration and in no other way has brought to the attention of the Commission any alleged irregularities in the decision of that case.

Dated this 13th day of March, 1970, at Washington, D.C.

GEORGE M. STAFFORD.

Sworn to before me this 13th day of March, 1970.

MARY G. STYER,  
Notary Public.

#### APPENDIX B

[From the (Washington, D.C.) Evening Star, Feb. 25, 1970]

### PENN CENTRAL, ICC DISCUSS RAILROAD'S FINANCIAL WOES

(By Stephen M. Aug)

The board chairman and president of the Penn Central Co. met privately for nearly two hours yesterday with members of the Interstate Commerce Commission to discuss, among other things, the railroad's unhappy financial situation, it was learned today.

One of those present, ICC vice chairman Dale W. Hardin, in answering a reporter's questions, said of the financial picture presented: "It wasn't healthy."

ICC Chairman George M. Stafford said in an interview that Penn Central officials had sought the meeting. Although meetings between railroad officials and commissioners are not uncommon, Stafford said that in the three years he has been an ICC member, this was the first time he had met with Pennsy officials.

#### COMMISSION CONCERNS

The meeting apparently was not only a one-way recital of problems by Pennsy Board Chairman Stuart T. Saunders and its new president, Paul A. Gorman. Stafford indicated the commission had several concerns. These included:

Serious service problems in New England last December during which deliveries of such vital commodities as coal and liquified petroleum gas were delayed. Pennsy officials blamed heavy snow and subfreezing temperatures.

Questions as to whether Penn Central was considering converting railroad assets into cash for investments in more profitable nontransportation businesses.

#### PENNSY ACCOUNT

William A. Lashley, vice president for public relations, said the meeting—which he described as "informal"—was the first opportunity the company had to introduce Gorman to the ICC. Gorman went to Penn Central last December from Western Electric Co., where he was a vice president.

"They discussed with the commission their concern over whether or not the Congress was going to do anything this year about any federal assistance for inter-city passenger service. They just laid it on the line that Penn Central can no longer afford, or no longer has the resources to provide first-class passenger services without some help," Lashley said.

Lashley did not attend the meeting, but he understood the condition of the railroad was discussed.

On financial matters, Lashley reported, "They said, 'Sure, things are very tough indeed,'" but they outlined some of the organizational steps Gorman had planned.

"One of the things they covered was the fact that under present circumstances Penn Central Co. (the holding company) is subsidizing the Penn Central Transportation Co. (the railroad) very heavily, and that a lot of the income from non-railroad assets that are in the transportation company . . . is being poured right into sustaining railroad operations," Lashley added.

Stafford said his impression of the meeting was "of course they are having some difficulties. Their new president seems to be getting a good grasp on the thing. And I came away with the feeling that he didn't go up there to see any railroad go under, and he assured me there was no thought whatsoever of taking from the railroad for the other industries" (nontransportation subsidiaries).

He added: "They talked about their financial structure. They weren't talking like any outfit that was ready to go into what you would call receivership. They

pointed out what their problems were—yes, they are having problems right now—and they wanted us to hear what their plans for the future are.”

Penn Central's earnings plummeted last year to \$4,388,000 from \$86,961,000 in 1968. The railroad alone reported a 1969 loss of \$56,328,000, compared with a 1968 loss of \$5,155,000.

Mr. CHESSEY. The Chairman of the Interstate Commerce Commission has also said in his testimony that they believe an amendment to section 801 should be made to delete the reference to health of passengers as a basis for regulation to be issued by the Commission dealing with adequacy of service. He states:

We do not by any means consider the health of passengers unimportant. However, jurisdiction is already lodged in the Surgeon General of the United States, and that is where we are convinced it should remain.

Mr. Chairman, now this may be, but I think this committee should take a long look at this. I think we should know for sure. I have never known of the Surgeon General or any of his representatives to inspect the food or the sanitation on a passenger train.

Mr. FRIEDEL. The staff was instructed yesterday to find out how they check and how often, whether the food is checked and so on.

Mr. ADAMS. I did not quite get your comment. Was it your comment that you have not seen the Surgeon General out looking at food on these trains or that you had seen his people out looking?

Mr. CHESSEY. We looked into this sometime ago, some years ago, because we thought there should be some kind of authority here to do just what you say, Congressman Adams. We were advised by HEW and counsel there that they did not have this authority. To the best of my knowledge, and I will stand corrected if I am wrong, but to the best of my knowledge I have never known of the Surgeon General or one of his representatives inspecting a passenger train for those reasons, for its food service or any other sanitary facilities. I think we should know without doubt.

Mr. FRIEDEL. We have instructed the staff to check into this.

Mr. CHESSEY. I wish to thank the committee for extending to me the privilege of appearing before it to express the views of the labor organizations which I represent. The comments which I have made are for the most part technical, but nonetheless we feel that the amendments which we have suggested are necessary in order to avoid some of the uncertainties in coverage which we otherwise might risk.

The bill represents, in our judgment a monumental legislative effort and carries with it the great hope that health will finally be restored to this most important part of our economy.

Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Chessy. You have made a very clear-cut statement and I think the committee is just as concerned as you are. Some legislation is needed and needed fast.

You heard Mr. Goodfellow recommend three or four or five amendments. Are you in agreement with those amendments?

Mr. CHESSEY. As Mr. Goodfellow mentioned, there was a meeting with our attorneys and I am not familiar with exactly all of those amendments. I think we were in agreement with most of them as I understand it.

There was one that we did not quite agree with. In their testimony it was page 23, line 11, after the word "of" insert the words "inter-city rail."

Maybe this just needs some clarification. There certainly has got to be some language either in the bill or the legislative history, when we talk about intercity rail and commuter service and what do we mean by cross-country service or longer than 200 or 300 miles.

I do not think you can measure this by exact mileage but between two important cities might be 500 miles if they decide that this system would be instituted.

Now, would that refer to intercity or would it have some other definition? This is our reason for calling that to your attention.

Mr. FRIEDEL. In your statement on page 10 you state:

We also feel that the figures of \$60 million for the loan guarantees and \$75 million for emergency financial assistance in Sections 602 and 701 are short and should be increased to \$100 million for guaranteed loans and \$300 million for emergency assistance.

Do you have anything to back that up, why is it that you think that much money is necessary?

Mr. CHESSER. I am advised and I recall this now. My statement should read \$200 million instead of \$300 million.

Mr. FRIEDEL. Is there any way you can substantiate why this should be increased?

Mr. CHESSER. Yes, as I said a moment ago, Mr. Chairman, this is going to cost a great deal of money. I think we know that. I think everybody who has had a hand in this legislation realizes that. We just think the money that is in this bill is inadequate.

For just a moment, let us compare this with the kind of money that this Government is spending every day on airlines and the airports. It is a tremendous amount. They are just about what we would say, filled up. Even the airways between here and New York and some other cities are filled up.

Now, let's quit spending a little bit of money here and let's put it over here where it is really needed, where we can handle some people, a lot of people if the facilities were there and would use this service.

Mr. FRIEDEL. You also say you feel the figure \$40 million specified as seed money for the Corporation is totally inadequate. But you do not recommend what it should be. It is on page 10, the next to the last paragraph.

Mr. CHESSER. It should be \$100 million.

Mr. FRIEDEL. \$40 million to \$100 million?

Mr. CHESSER. Yes, sir.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

I am glad Mr. Chesser that your organization and the AAR seem to be in general agreement with the bill before us. At least we are in the area where we can work out probably the differences or the details and produce a bill. I think we have a problem still in the area of discontinuance of trains but it is more of a national problem perhaps than in the system itself.

I think I am in general agreement with most of the amendments you have offered just as I think the AAR are reasonable in their approach. I do feel, though, that it ought to be commented on on page 4 of Mr. Stafford's testimony on which you commented upon with reference to these discontinuances. That section of the bill to which he had reference would talk about the apportionment of services between points on the system.

You made a point that if there was a dispute between either the Corporation or the State and the regional or local agencies regarding the apportionment of losses that this matter would be referred to the Secretary for decision. They wanted to have the Commission and you, of course, do not agree with that.

I think we have to have an agency that can properly say to us as a committee that the losses are  $x$  in nature and we must rely on the ICC generally for a lot of this information. I am not sure that it still ought not be referred to the committee or the Secretary or at least it ought to be provided in there after consultation with the ICC, the decision would be left to the Secretary.

Would you be agreeable to the approach after consultation with the ICC?

Mr. CHESSEY. Of course, in the first instance and the first thought we had was that the Commission, we think, has done a miserable job here. If they want to be helpful, I think they had better change their accounting system that they have had since the inception of the Commission about 75 or 80 years ago.

I am not so sure that they have the expertise there to do what this bill calls for. If they have, they have not exercised it very well.

Mr. PICKLE. Who has that expertise?

Mr. CHESSEY. I don't think anyone has at the present time. I think they could have.

Mr. PICKLE. They could have and they should have.

Mr. CHESSEY. I will agree with you that they should have.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Mr. Chessy, I have one question. You criticized Mr. Stafford's proposed amendment where he said he felt there should be an amendment to provide the provisions of section 5(2) (f) of the ICC for standard and fair and equitable arrangements to protect the present interests of rail employees. I do not have the section before me, so I do not know what the controversy is.

Mr. CHESSEY. My first complaint is, he is trying to play a little game here. It is very obvious that it is the intent of the Commission or speaking for the Commission, it was the intent to take away some job protection for the employees.

Mr. ADAMS. Do you mean section 5(2) (f) which you mentioned had been superseded by something else? I am just trying to find out what had happened and what the controversy was over that section.

Mr. CHESSEY. Section 5(2) (f) has been in the Interstate Commerce Commission Act for a long, long time. It is minimal as far as job protection is concerned. In other words, it is so minimal that it is just a little bit better than nothing.

On page 23 under section 405, Congressman Adams, under the protective arrangements for the employees is where it expands on 5(2) (f) of the Interstate Commerce Act.

Mr. ADAMS. In other words, you just don't want an amendment in there which limits the present operating relationships between railroads, which would be in this case the Corporation, and the employees to the provisions of 5(2) (f) ?

Mr. CHESSEY. Yes. The reason this is so obvious, 5(2) (f) is in this bill on page 24, line 6. It is already here. He is talking about an amendment. So, this is the very reason.

Mr. ADAMS. You mean the minimal requirements of 5(2) (f) are met on page 24 so his amendment is not necessary?

Mr. CHESSEY. It is not only not necessary, but I would hope this committee would not let him rob us of something which is really ours here.

Mr. ADAMS. Thank you, Mr. Chessy. I have no further questions, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Chessy.

Our next witness is Mr. Edward J. Hickey, Jr. of Mulholland, Hickey & Lyman, general counsel for the Railway Labor Executives' Association.

You may proceed, Mr. Hickey.

#### **STATEMENT OF EDWARD J. HICKEY, JR., GENERAL COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION**

Mr. HICKEY. Mr. Chairman and members of the subcommittee, my name is Edward J. Hickey, Jr. I am a member of the firm of Mulholland, Hickey & Lyman with offices at 620 Tower Building, Washington, D.C., and am general counsel for the Railway Labor Executives' Association in behalf of which I appear here today in support of S. 3706 with certain amendments which we propose for your consideration.

The Railway Labor Executives' Association is composed of the chief executive officers of 14 national and international railway labor organizations and the Railway Employes' Department, AFL-CIO. For the record, I should like to identify these organizations. They are: American Railway Supervisors' Association; American Train Dispatchers' Association; Brotherhood of Locomotive Engineers; Brotherhood of Railroad Signalmen; Brotherhood Railway Carmen of the United States & Canada; Brotherhood of Sleeping Car Porters; International Association of Machinists & Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers; International Brotherhood of Electrical Workers, International Brotherhood of Firemen & Oilers; International Organization of Masters, Mates & Pilots; National Marine Engineers' Beneficial Association; Railroad Yardmasters of America; Sheet Metal Workers International Association.

All of these organizations and the other standard railway labor organizations which will testify before this committee through their association, the Congress of Railway Unions, have conferred through their attorneys and are in agreement on the amendments which should be incorporated within this bill by the House before it is passed by the Congress.

You will note that as I proceed with the statement, although our characterizations and reasons will differ in expression, but the amendments which we seek are identical to the amendments on which Mr. Chessy has already spoken because of this conference, with one exception that applies peculiarly to the organizations which we represent and on which he did not speak.

We have one additional amendment, but our others are the same amendments, same language. We did this deliberately because we felt at this hour it was highly important if it were at all possible for all of us to get together and to try to agree so that we could come before

this committee and present you with a package on which we were in complete accord.

We not only did this with the other labor organizations, but, as I will explain in the next portion of my statement, we did it with everybody else that we could talk to whom we felt was a party in interest because we thought it was of critical importance to be able to say that it was possible to do so.

As I have indicated, we have also conferred with the representatives of the Nation's railroads who have indicated they are in agreement with our proposed amendments with the exception of one relating to legal sanctions for violation of the proposed law. To my knowledge none of the parties in interest scheduled to appear before this committee is in opposition to the amendments which we urge for your favorable recommendations.

I wrote my statement for presentation to the committee before I was aware of the statements by the Interstate Commerce Commission to which Mr. Chesser has already called your attention. In view of the Commission's position I suppose that the reference to "no party in interest" in my prepared statement may need some alteration. However, I am not sure alteration is called for because I do not understand that the Commission is "a party in interest" with regard to the problems of us and the railroads in connection with employee protection.

It is true, as Mr. Chesser says, that the Commission rather gratuitously, we believe, has offered advice to this committee by way of a suggested amendment to eliminate all of the protection which has become standard under the Urban Mass Transportation Act and the High Speed Ground Transportation Act and confine itself to a part of that section which is section 5(2) (f) of the Interstate Commerce Act.

I do not want to belabor this, but I want to say I completely agree with what Mr. Chesser said to you. This is a rather late date to make a statement about downgrading employee protection. It has become standard. It is perfectly obvious that the authors were using the Urban Mass Transportation and High Speed Ground Transportation Acts.

This does not begin to cover the areas that the remaining portions of this bill cover.

Mr. PICKLE. When you say he recommended the elimination adversely, do you mean you would not want to do that?

Mr. HICKEY. We are in agreement with that amendment. At this point, I was just commenting on the suggestion made by the Chairman of the Interstate Commerce Commission that the employee protection be limited to section 5(2) (f) of the Interstate Commerce Act.

Mr. FRIEDEL. You may proceed with your statement.

Mr. HICKEY. Each of the amendments we propose is shown in the marked copy of the Senate bill, S. 3706, attached to my written statement, copies of which have been made available to the members of this committee. (See p. 138.)

If I may, I would like to refer to that. This statement is an 11-page statement, attached to which is a copy of the Senate bill which is 30 pages, and we have shown each of the amendments that we propose on this by way of deletion by crossing through or the added language has been shown so that you can see exactly what we are talking about in context here.

As I indicated earlier, these amendments are precisely the same amendments on which Mr. Chesser has commented. They arose out of our joint sessions, and there is one correction I have to make unfortunately. In assembling we got the wrong page in and I would like for the record, if I may, to invite your attention to page 25 of the attached Senate bill, to subsection (e) on that page at line 12.

In line 13 the "normally" is struck through. It should not be. That was an earlier draft and we have changed our mind on that.

Coming down to line 17, you will note that the word "shall" is underscored. That word should be crossed through and the word "may" substituted for it.

That is the only correction, Mr. Chairman, and I will be commenting on that particular amendment at a later point in my statement.

As it passed the Senate, S. 3706 indicates that it was the intention of the authors of the bill to provide protection for the interests of all employees affected by actions taken pursuant to its provisions. Analysis of the language of S. 3706, however, discloses that this objective has been incompletely accomplished. For this reason, the majority of the revisions which we suggest are clarifying amendments designed merely to carry out what appears to be the manifest intent of those provisions of the Senate bill which purport to protect the interests of the railroad employees who may be affected by action taken pursuant to terms of the legislation.

In addition to these clarifying amendments, we propose four amendments which provide substantive changes in S. 3706. Each of these is the amendments on which you heard Mr. Chesser testify also. In summary, these changes would require (1) that the Secretary of Transportation confer with representatives of the railroads and their employees prior to final submission of his plan for a national railroad system; (2) the inclusion of an employee representative on the Corporation Board of Directors; (3) a provision granting the representatives of the employees, as well as other interested persons, a means of legal redress for violations of the new law; and (4) a realistic funding program which would insure the accomplishment of the purposes envisioned by the Congress in enacting this legislation.

May we first direct our comments to the substantive amendments and thereafter to the clarifying amendments.

The first substantive change which we suggest be made in this bill is a modification of the terms of section 202 which is the provision dealing with the review of the basic system by the Secretary and his submission to the Congress. We simply request that the Secretary consult with the representatives of the railroads and with the representatives of their employees as a part of his consideration of the basic system before he submits his final report to Congress. There is no requirement or suggestion made that the Secretary adhere to the views expressed by representatives from the industry but it does seem to us strange to have the Secretary of Transportation designate a national passenger rail transportation system without at least consultation with representatives of those who have managed and manned the railroads to be included within the basic system. It would appear logical that the views of the corporations and individuals who will actually operate the system would be of value to anyone charged with the responsibility of constituting that system.

You will further note that the simple amendment we propose at page 5, line 21 of S. 3706 could cause no delay either in the Secretary's submission to the Congress or in the inauguration of the system.

Our second substantive amendment would modify section 303 (a) on page 7 of the Senate bill so as to provide for the inclusion of the Corporation Board of Directors of at least one employee representative. As presently written, the bill provides that the Board of Directors will have representatives from all segments of the interested public except those who actually operate and maintain the system. The decisions made by this board will be policy decisions which will have far-reaching effects upon the railroads, the corporation shareholders, the traveling public and the consumers. These decisions will also have no less impact upon the employees and quite often employees, due to their day-to-day familiarity with the operation of the system, would be able to offer sound advice as to whether a particular policy decision is feasible. Accordingly, it would not only seem fair but also essential to a more effective functioning of the board that at least one of its members be drawn from the ranks of those who actually man the system.

The third substantive amendment we propose would modify the language of section 307 (a) on pages 14 and 15 of the bill so as to provide that any aggrieved party, including employee representatives, could institute legal proceedings for violations of the law.

Now we are talking about the legal sanction section of the bill, Mr. Chairman, and this is the one exception that I have to make in all fairness to the railroads accord with our amendments and to this one they have taken exception.

As the bill now reads, only the Attorney General, except in cases involving a labor agreement, could bring such actions. Moreover, the present language of section 307 makes only the Corporation subject to suit for violations of the act and our amendment would include any railroad which might not discharge all of its obligations under the law. This amendment would also authorize recovery of damages as well as a reasonable attorney's fee in addition to the equitable relief presently provided by section 307. These amendments to section 307 (a) are comparable to the language of sections 8, 9, and 17(11) of the Interstate Commerce Act in providing representatives of the employees affected by violations of law with a direct means of legal redress.

Certainly, railroads taking advantage of S. 3706 to relieve themselves of all responsibility in the area of rail passenger service and the Corporation which is to become a common carrier by railroad should be liable to those whom they injure by violations of S. 3706. That redress should not be restricted as it is under the present language of section 307 but should be broadened as proposed in our amendments to this provision.

The final substantive amendment we propose involves the financial assistance provisions found in title VI and title VII of the bill. We are persuaded that the provisions for grants in section 601, loan guarantees in sections 602 and 701, and the appropriations authorized in section 702 fall far short of the amount necessary to inaugurate a financially sound and efficient national rail passenger system. Moreover, even the increased funds and guarantees proposed by us remain far below those which are available under the Urban Mass Transportation Act and the High Speed Ground Transportation Act for the development and preservation of commuter and intercity corridor passenger traffic. We believe that the increased amounts suggested are realistic and will at least provide a meaningful beginning in this area.

As I indicated at the outset of this statement, the remaining six amendments which we urge be made in S. 3706 are for clarification purposes only and are intended to insure to all employees who may be affected by the enactment of S. 3706 the protections which the framers of the Senate bill obviously intended they should receive.

The first such amendment we proposed relates to section 305 on pages 12 and 13 of the bill. We suggest a modification of the wording of the second sentence in that section so as to include all employees necessary to the operation of a passenger train system. As written, the language of section 305 would appear restricted to employment of only certain railroad employees in those cases where the passenger operations are taken over and performed directly by the Corporation.

Certainly, nonoperating employees (maintenance, clerical et cetera) are as vital to the successful operation of a passenger service as are the operating employees (engineers, trainmen, et cetera). There is no indication from the debate in the Senate as Mr. Chesser pointed out, to support a conclusion that a purpose of S. 3706 was to provide for employment by the Corporation only of the operating employees of the railroad. We believe that such a discrimination was not intended and therefore offer this clarifying amendment to section 305 of the bill.

Section 306(b) of the bill is designed to require the Corporation to be subject to all of the laws affecting its employees as are other common carriers by rail. However, the use of the phrase "dealings with its employees" is somewhat vague to effectively carry out the purpose of the provision. For that reason, we suggest language which will more precisely indicate the areas with respect to which dealings with employees occur.

All the remaining clarifying amendments relate to section 405 on pages 23 to 25 of the bill, which is designed specifically to provide protective arrangements for employees affected by the enactment of this legislation.

Our first suggested amendment is to strike the word "adversely" where it appears in 405(a) and 405(b). This is with reference to the question Congressman Pickle asked me about, and we are in accord with this. Section 405 consists of an adaptation of section 13(c) of the Urban Mass Transportation Act of 1964 and the High Speed Ground Transportation Act of 1965. These laws do not contain the word "adversely" in referring to the protection of the "interests of employees affected" by those laws. To my knowledge no legislation dealing with the protection of the interests of railroad employees, including section 5(2)(f) of the Interstate Commerce Act, has used the term "adversely" in describing the protection to be afforded the employees by the statute. The elimination of the word "adversely" would make section 405 consistent with all other laws which protect the interests of railroad employees affected by congressional acts. Failure to eliminate this term from section 405 might be construed as indicating a congressional purpose to narrow the scope of protection to be afforded employees in the Rail Passenger Service Act of 1970 as compared with the protection afforded employees under section 5(2)(f) of the Interstate Commerce Act and under section 13(c) of the Urban Mass Transportation Act. We think there clearly was no such intent and that therefore the word "adversely" should be removed.

Section 405(a) appears to be designed to protect employees affected by the discontinuance of passenger service by a railroad whether that discontinuance takes place first, because its trains are not a part of the system, or, second, are discontinued because of the contract with the Corporation, or, third, are discontinued subsequent to January 1, 1975, by a railroad which does not wish to participate in the system. However, a comparison of the language of 405(a) with that in 401(a)(1), particularly the proviso contained in the latter provision, might be construed as excluding from protection employees affected by the discontinuance of trains which are not taken over by the Corporation and which the railroad may discontinue merely by posting a 30-day notice of discontinuance. To avoid that result which we believe is unintended, we suggest the addition of language in section 405(a)(1) which requires protection of employees whether they are affected by the discontinuance of trains in the system or excluded from the system.

Section 405(c) on page 24 of the bill is designed to protect employees affected by action taken by the Corporation subsequent to the commencement of the operations under the basic system. The language of the provision, however, is much too general and vague in our judgment to insure such protection. The Corporation may undertake many activities which will affect employees no less seriously than would actual discontinuance of trains. For example, the Corporation could discontinue stops, stations or other types of services without discontinuing a train thereby affecting employees whose interests might be claimed to be unprotected under the present language of section 405(c).

Certainly, there is no indication in the language or legislative history thus far of S. 3706 which would indicate that it is the intent of this legislation to protect the interests of any particular group of employees while denying protection to other groups of employees. But unless the language is clarified as proposed in our amendments to section 405(c), such a result might occur.

Our final modification to section 405(c) would require the Secretary of Labor to certify that fair and equitable protection had been afforded employees before the Corporation could discontinue or change its services, operations, or methods. This certification would be made and applied to the Corporation at the commencement of operations under the basic system just as the protection for employees must be included in a contract prior to a railroad's discontinuance of service under 401(a)(1).

Our concluding amendment relates to section 405(c) on page 25 of the bill. That is the one on which I made the correction at the outset of my statement. That provision as written prohibits the Corporation from contracting out work normally performed by employees if such contracting out "shall" result in the layoff of any employee or employees in such bargaining unit. As written, the Corporation could, in all good faith, contract out certain work which it felt would not result in a layoff but which later did result in such layoff and thereby render itself in violation of section 405(c). Indeed, it is often impossible to tell whether the contracting out of a particular item of work will result in a layoff. It is not, however, as difficult to determine that such contracting out "may" result in such a layoff. Therefore, we urge the

substitution of the word "may" for the word "shall" in the final clause of section 405 (e). Since the intent of section 405 (e) is to preserve for the shopcraft employees the performance of work normally performed by them, we suggest that such purpose should not be defeated or endangered by any language which could unduly restrict the basic intent of the provision. The change which we propose would serve to further the purpose for which this particular provision was designed.

In conclusion, may we say that we are fully cognizant of the critical importance of this legislation to the public as well as the industry. It is not an overstatement to say that this is literally the last chance to preserve intercity rail passenger service in this country. But the legislation must also be workable. We believe that the amendments we have proposed in concert with other railroad labor organizations will contribute to that end and will insure a harmonious and orderly transfer of operation from the railroads to the Corporation.

It is of particular significance, we submit, that the amendments offered today represent the joint position of all railroad labor, are, with one exception, endorsed by the rail carriers, and, to our knowledge are unopposed by any other party in interest before this committee.

Thank you for this opportunity of presenting our views on this important legislation and for your kind attention to my remarks.

(The amendments referred to in Mr. Hickey's statement follow :)

[Editor's Note: For full text of S. 3706 see p. 62. There follows only those pages of S. 3706 where the Railway Labor Executives' Association has indicated a change in the language.]

## 5

1 consider opportunities for provision of faster service, more  
 2 convenient service, service to more centers of population,  
 3 and/or service at lower cost, by the joint operation, for pas-  
 4 senger service, of facilities of two or more railroad companies;  
 5 the importance of a given service to overall system viability;  
 6 adequacy of other transportation facilities serving the same  
 7 points; unique characteristics and advantages of rail service  
 8 as compared to other modes; the relationship of public bene-  
 9 fits of given services to the costs of providing them; and  
 10 potential profitability of the service. The exclusion of a par-  
 11 ticular route, train, or service from the basic system shall  
 12 not be deemed to create a presumption that the route, train,  
 13 or service is not required by public convenience and neces-  
 14 sity in any proceeding under section 13a of the Interstate  
 15 Commerce Act (49 U.S.C. 13a).

16 §202. Review of the basic system

17 The Commission shall, within thirty days after receipt  
 18 of the Secretary's preliminary report designating a basic sys-  
 19 tem, review such report consistent with the purposes of this  
 20 Act and provide the Secretary with its comments and rec-  
 21 ommendations. The Secretary<sup>after consultation with the</sup> shall give due consideration to  
 22 such comments and recommendations. The Secretary shall,  
 23 within ninety days after the date of enactment of this Act  
 24 submit his final report designating the basic system to the  
 25 Congress. Such final report shall include a statement of the

representatives  
 of the rail-  
 roads and with  
 labor organiza-  
 tions duly  
 authorized to  
 represent rail-  
 road employees.

1 consent of the Senate, who shall also serve as the board of  
2 directors for one hundred and eighty days following the date  
3 of enactment of this Act. The incorporators shall take what-  
4 ever actions are necessary to establish the Corporation, in-  
5 cluding the filing of articles of incorporation, as approved by  
6 the President.

7 § 303. Directors and officers

8 (a) The Corporation shall have a board of fifteen direc-  
9 tors consisting of individuals who are citizens of the United  
10 States, of whom one shall be elected annually by the board  
11 to serve as chairman. Eight members of the board shall be  
12 appointed by the President of the United States, by and  
13 with the advice and consent of the Senate, for terms of four  
14 years or until their successors have been appointed and qual-  
15 ified, except that the first three members of the board so ap-  
16 pointed shall continue in office for terms of two years, and the  
17 next three members for terms of three years. Any member  
18 appointed to fill a vacancy may be appointed only for the  
19 unexpired term of the director whom he succeeds. At all  
20 times the Secretary shall be one of the members of the  
21 board of directors appointed by the President and at all  
22 times at least one such member shall be a consumer repre-  
23 sentative/ <sup>and at least one such member shall be an employee representa-</sup> tive.  
24 nually by common stockholders, and four shall be elected  
25 annually by preferred stockholders of the corporation. The

1 and devices necessary to rail passenger operations. The  
 2 Corporation shall rely upon railroads to provide the <sup>employees</sup> ~~the~~ ~~crowds~~  
 3 necessary to the operation of its passenger trains, <sup>and maintenance</sup> ~~to~~ ~~carry~~ <sup>and to the performance</sup> of all service  
 4 out its functions and purposes, the Corporation shall have the <sup>and work inci</sup> ~~the~~ ~~entire~~ ~~responsibility~~  
 5 usual powers conferred upon a stock corporation by the Dis-  
 6 trict of Columbia Business Corporation Act.

7 **§ 306. Applicability of the Interstate Commerce Act and**  
 8 **other laws**

9 (a) The Corporation shall be deemed a common carrier  
 10 by railroad within the meaning of section 1 (3) of the Inter-  
 11 state Commerce Act and shall be subject to all provisions  
 12 of the Interstate Commerce Act other than those pertaining  
 13 to—

14 (1) regulation of rates, fares, and charges;

15 (2) abandonment or extension of lines of railroads  
 16 utilized solely for passenger service, and the abandon-  
 17 ment or extension of operations over such lines of rail-  
 18 roads, whether by trackage rights or otherwise;

19 (3) regulation of routes and service and, except as  
 20 otherwise provided in this Act, the discontinuance or  
 21 change of passenger train service operations.

22 (b) The Corporation shall be subject to the same laws  
 23 and regulations with respect to safety and with respect to <sup>the representation of its employees for</sup> ~~the~~ ~~purposes~~ of  
 24 dealings with its employees as any other common carrier <sup>collective bargaining, the</sup> ~~the~~ ~~handling~~ of dis-  
 25 subject to part I of the Interstate Commerce Act. <sup>putes between</sup> ~~the~~ ~~carriers~~ and  
 their employees, employee retirement,  
 annuity and unemployment systems and  
 other

1 (c) The Corporation shall not be subject to any State  
2 or other law pertaining to the transportation of passengers  
3 by railroad as it relates to rates, routes, or service.

4 (d) Leases and contracts entered into by the Corpora-  
5 tion, regardless of the place where the same may be executed,  
6 shall be governed by the laws of the District of Columbia.

7 (e) Persons contracting with the Corporation for the  
8 joint use or operation of such facilities and equipment as may  
9 be necessary for the provision of efficient and expeditious pas-  
10 senger service shall be and are hereby relieved from all pro-  
11 hibitions of existing law, including the antitrust laws of the  
12 United States with respect to such contracts, agreements, or  
13 leases insofar as may be necessary to enable them to enter  
14 thereto and to perform their obligations thereunder.

15 § 307. Sanctions

16 (a) If the Corporation <sup>or any railroad</sup> engages in or adheres to any ac-  
17 tion, practice, or policy inconsistent with the policies and  
18 purposes of this Act, obstructs or interferes with any activi-  
19 ties authorized by this Act (~~except in the exercise of labor~~  
20 ~~practices not otherwise proscribed by law~~), refuses, fails, or  
21 neglects to discharge its duties and responsibilities under  
22 this Act, or threatens any such violation, obstruction, inter-  
23 ference, refusal, failure, or neglect, the district court of the  
24 United States for any district in which the Corporation or  
25 other person resides or may be found shall have jurisdic-

1 .tion, except as otherwise prohibited by law, upon petition of  
 2 the Attorney General of the United States or <sup>of any person</sup> ~~in a case in-~~  
 adversely affected or aggrieved thereby, including the representatives of the  
 3 ~~volving a labor agreement, upon petition of any individual~~  
 employees or any railroad or of the Corporation, or other  
 4 affected thereby, to grant such equitable relief as may be  
 or as compensation for  
 5 necessary or appropriate to prevent or terminate any viola-  
 6 tion, conduct, or threat, including damages as well as reasonable attorney  
 fees as part of the costs of such action.

7 (b) Nothing contained in this section shall be construed  
 8 as relieving any person of any punishment, liability, or sanc-  
 9 tion which may be imposed otherwise than under this Act.  
 10 § 308. Reports to the Congress

11 (a) The Corporation shall transmit to the President and  
 12 the Congress, annually, commencing one year from the date  
 13 of enactment of this Act, and at such other times as it deems  
 14 desirable, a comprehensive and detailed report of its opera-  
 15 tions, activities, and accomplishments under this Act, includ-  
 16 ing a statement of receipts and expenditures for the previous  
 17 year. At the time of its annual report, the Corporation shall  
 18 submit legislative recommendations for amendment of this  
 19 Act as it deems desirable, including the amount of financial  
 20 assistance needed for operations and for capital improve-  
 21 ments, the manner and form in which the amount of such  
 22 assistance should be computed, and the sources from which  
 23 such assistance should be derived.

24 (b) The Secretary and the Commission shall transmit  
 25 to the President and the Congress, one year following the

1 If the Corporation and the State, regional, or local agencies  
 2 are unable to agree upon a reasonable apportionment of  
 3 such losses, the matter shall be referred to the Secretary  
 4 for decision. In deciding this issue the Secretary shall take  
 5 into account the intent of this Act and the impact of requir-  
 6 ing the Corporation to bear such losses upon its ability to  
 7 provide improved service within the basic system.

8 § 405. Protective arrangements for employees

9 (a) A railroad shall provide fair and equitable arrange-  
 10 ments to protect the interests of employees adversely affected  
 11 by the following discontinuances of passenger service:

12 (1) those arising out of a contract with the corpo-  
 13 ration pursuant to section 401 (4) (1) of this Act, <sup>whether such service</sup> and <sup>is undertaken</sup>  
 14 occurring prior to January 1, 1975; and <sup>by the Corpora-</sup>  
 15 (2) those undertaken pursuant to section 404 (a) <sup>tion or is ex-</sup>  
 16 of this Act. <sup>cluded from the</sup>  
 17 <sup>basic system.</sup>

17 (b) Such protective arrangements shall include, with-  
 18 out being limited to, such provisions as may be necessary  
 19 for (1) the preservation of rights, privileges, and benefits  
 20 (including continuation of pension rights and benefits) to  
 21 such employees under existing collective-bargaining agree-  
 22 ments or otherwise; (2) the continuation of collective-bar-  
 23 gaining rights; (3) the protection of such individual em-  
 24 ployees against a worsening of their positions with respect to  
 25 their employment; (4) assurances of priority of reemploy-

1 mont of employees terminated or laid off; and (5) paid  
 2 training or retraining programs. Such arrangements shall  
 3 include provisions protecting individual employees against a  
 4 worsening of their positions with respect to their employ-  
 5 ment which shall in no event provide benefits less than those  
 6 established pursuant to section 5 (2) (f) of the Interstate  
 7 Commerce Act. Any contract entered into pursuant to the  
 8 provisions of this title shall specify the terms and conditions  
 9 of such protective arrangements.

10 Final settlement of any contract under section 401 (n)  
 11 (1) of this Act between a railroad and the Corporation  
 12 may not be made unless the Secretary of Labor has certified  
 13 to the Corporation that ~~adequately~~ affected employees have  
 14 received fair and equitable protection from the railroad.

15 (o) After commencement of operations in the basic  
 16 system, ~~the substantive requirements of subsection (b) of~~  
 17 ~~this section shall apply to the Corporation, and the certifica-~~  
 18 ~~tion by the Secretary of Labor shall be a condition to the~~  
 19 ~~discontinuance of any trains by the Corporation pursuant to~~  
 20 ~~section 404 (b) of this Act.~~

the Corporation shall provide fair and equitable  
 arrangements to protect the interests of employees  
 affected by the following discontinuances or changes  
 in its service, operations or methods:

(1) those undertaken pursuant to section 404(b)(2)  
 or (3) of this Act; and

(2) those arising out of structural or personnel  
 reorganizations or consolidations or other changes  
 in the management or operations of its service.

Such protective arrangements shall include the substantive  
 requirements in subsection (b) of this section, as determined  
 by the Secretary of Labor. The certification by the Secretary  
 of Labor that the interest of employees affected have received  
 fair and equitable protection from the Corporation shall be a  
 condition to such discontinuances or change.

21 (d) The Corporation shall take such action as may be  
 22 necessary to insure that all laborers and mechanics employed  
 23 by contractors and subcontractors in the performance of  
 24 construction work financed with the assistance of funds re-  
 25 ceived under any contract or agreement entered into under

1 transportation. Two members shall be representatives of the  
 2 Secretary of the Treasury and seven members shall repre-  
 3 sent the public in the various regions of the Nation.

4 § 502. Purpose of advisory panel

5 The advisory panel appointed by the President shall  
 6 advise the directors of the Corporation on ways and means of  
 7 increasing capitalization of the Corporation.

8 § 503. Report to Congress

9 On or before January 1, 1971, the panel shall submit a  
 10 report to Congress evaluating the initial capitalization of the  
 11 Corporation and the prospects for increasing its capitalization.

12 TITLE VI—FEDERAL FINANCIAL ASSISTANCE

13 § 601. Federal grants

14 There is authorized to be appropriated to the Secretary  
 15 in fiscal year 1971, ~~\$40,000,000~~ <sup>\$100,000,000</sup> to remain available until  
 16 expended; for payment to the Corporation for the purpose of  
 17 assisting in—

18 (1) the initial organization and operation of the  
 19 Corporation;

20 (2) the establishment of improved reservations sys-  
 21 tems and advertising;

22 (3) servicing, maintenance, and repair of railroad  
 23 passenger equipment;

24 (4) the conduct of research and development and

1 demonstration programs respecting new rail passenger  
2 services;

3 (5) the development and demonstration of im-  
4 proved rolling stock; and

5 (6) essential fixed facilities for the operation of  
6 passenger trains on lines and routes included in the basic  
7 system over which no through passenger trains are being  
8 operated at the time of enactment of this Act, including  
9 necessary track connections between lines of the same  
10 or different railroads.

11 § 602. Guaranty of loans

12 The Secretary is authorized, on such terms and condi-  
13 tions as he may prescribe, to guarantee any lender against  
14 loss of principal or interest on securities, obligations, or  
15 loans issued to finance the upgrading of roadbeds and the  
16 purchase by the Corporation or agency of new rolling  
17 stock, rehabilitation of existing rolling stock and for other  
18 corporate purposes. The maturity date of such securities,  
19 obligations, or loans, including all extensions and renewals  
20 thereof, shall not be later than twenty years from their  
21 date of issuance, and the amount of guaranteed loans out-  
22 standing at any time may not exceed ~~\$60,000,000~~ <sup>\$100,000,000</sup>. The  
23 Secretary shall prescribe and collect from the lending in-  
24 stitution a reasonable annual guaranty fee. There are au-

1 thORIZED TO BE APPROPRIATED SUCH AMOUNTS AS NECESSARY TO  
2 CARRY OUT THIS SECTION NOT TO EXCEED ~~\$60,000,000~~, <sup>\$100,000,000</sup>

3 TITLE VII—INTERIM EMERGENCY FEDERAL  
4 FINANCIAL ASSISTANCE

5 §701. Interim authority to provide emergency financial  
6 assistance for railroads operating passenger  
7 service

8 For the purpose of permitting a railroad to enter into  
9 or carry out a contract under section 401 (a) (1) of this Act,  
10 the Secretary is authorized, on such terms and conditions as  
11 he may prescribe, to (1) make loans to such railroads, or  
12 (2) to guarantee any lender against loss of principal or in-  
13 terest on any loan to such railroads. Interest on loans made  
14 under this section shall be at a rate not less than a rate deter-  
15 mined by the Secretary of the Treasury, taking into consid-  
16 eration the current average market yield on outstanding mar-  
17 ketable obligations of the United States with remaining  
18 periods to maturity comparable to the average maturities of  
19 such loans adjusted to the nearest one-eighth of 1 per centum.  
20 No loan may be made, including renewals or extensions  
21 thereof, which has a maturity date in excess of five years.  
22 The maturity date on any loan guaranteed, including all  
23 renewals and extensions thereof, shall not be later than five  
24 years from the date of issuance. The total amount of loans

1 and loan guaranties made under this section may not exceed  
 2 ~~\$200,000,000.~~  
~~\$75,000,000.~~

3 § 702. Authorization for appropriations

4 There are hereby authorized to be appropriated such  
 5 amounts not to exceed ~~\$75,000,000~~ <sup>\$200,000,000</sup> as may be necessary to  
 6 carry out the purposes of this title. Any sums appropriated  
 7 shall be available until expended.

8 TITLE VIII—MISCELLANEOUS PROVISIONS

9 § 801. Adequacy of service

10 The Commission is authorized to prescribe such regula-  
 11 tions as it considers necessary for the comfort and health  
 12 of intercity rail passengers. Any person who violates a  
 13 regulation issued under this section shall be subject to a  
 14 civil penalty of not to exceed \$500 for each violation. Each  
 15 day a violation continues shall constitute a separate offense.

16 § 802. Effect on pending proceedings

17 Upon enactment of this Act, no railroad may discontinue  
 18 any passenger service whatsoever other than in accordance  
 19 with the provisions of this Act, notwithstanding the provi-  
 20 sions of any other Act, the laws or constitution of any State,  
 21 or the decision or order of, or the pendency of any proceed-  
 22 ing before, any Federal or State court, agency, or authority.

23 § 803. Separability

24 If any provision of this Act or the application thereof to

**Mr. FRIEDEL.** I want to thank you, too, Mr. Hickey, for a very, very fine statement.

**Mr. Adams?**

**Mr. ADAMS.** On what page does the one exception appear?

**Mr. HICKEY.** Section 307 of the bill. It appears at 307(a)—if you look on page 14 you will note that—

**Mr. ADAMS.** What page of your statement?

**Mr. HICKEY.** Page 5. The only portion that we understand the railroads have objection to and the amendment which we suggest to section 307 is our addition after the word Corporation or any railroad so that the section reads, "If the Corporation or any railroad engages in" and so forth.

**Mr. ADAMS.** Thank you, Mr. Chairman. I have no further questions.

**Mr. FRIEDEL.** Thank you very much. This concludes the hearings. The subcommittee now stands adjourned until 10 a.m. tomorrow morning.

(Whereupon, at 12:05 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, June 4, 1970.)



## PASSENGER TRAIN SERVICE

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THURSDAY, JUNE 4, 1970

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

The subcommittee met at 10 a.m. pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. We will come to order. This is a continuation of the Rail Passenger Service Act hearing. Our first witness will be our colleague, a very valuable member of the committee and the sponsor of one of the important rail passenger bills. Mr. Tiernan.

### STATEMENT OF HON. ROBERT O. TIERNAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. TIERNAN. I certainly appreciate the opportunity to appear before you this morning. As a fellow member of the Interstate and Foreign Commerce Committee and as Cochairman of the Committee for Improved Rail Passenger Service, I share your deep concern about the future of our railroads.

I come before this subcommittee today to speak briefly about my proposal for meaningful rail passenger service.

On May 4, I introduced H.R. 17428, which is identical to the bill Senators Pell and Kennedy introduced in the Senate. Last week I introduced H.R. 17849 in which I have tried to combine the best of both S. 3706 and H.R. 17428 and which meets objections voiced by some quarters to portions of my first bill. It is on behalf of my recent bill that I would like to speak today.

H.R. 17849 would do away with the idea of one national corporation. The Secretary of Transportation would designate urban corridors, taking into consideration levels of demand for passenger service and existing congestion. Within each urban corridor a nonprofit rail passenger corporation would be created. Each corporation would have a board of directors of not more than 21 members, the majority of whom would be appointed by the Secretary in consultation with the Governors of the States involved. Representatives of the rail carriers and the traveling public would also be on the boards.

In order to obtain a coordinated national rail passenger system, the Secretary or his representative would serve on each board. In addition, section 503 of title V would establish a National Rail Passenger Promotion and Coordination Advisory Board to promote the coordination of passenger services and the sharing of facilities among

the corporations. Thus we would have a decentralized system of management tied together.

H.R. 17849 would also insure the coordination of regional transportation policies. Secretary Volpe has rightly spoken out again and again of the need for a coordinated system of transportation. My bill encourages this objective. With the appointment of local personnel to each regional board, the management of rail passenger trains would be coordinated with State and local transportation agencies and a balanced regional transportation policy would result.

I strongly believe that, if we are ever to effectively revitalize our passenger trains, we have to approach the problem on a regional basis. We have to put the trains where the people are. According to the Corridor Task Force Report of the Office of the Assistant Secretary for Policy Development, Department of Transportation, June 12, 1968, 76.5 percent of the urbanized population and 11.3 percent of the land area of the United States is located in the set of 15 corridors identified by DOT. In addition, 67 percent of all passenger trips are made between distances of 50 and 500 miles.

The need for this emphasis on urban corridors was seen as far back as 1961 when the Senate Commerce Committee received an extensive study of national transportation policy known as the Doyle report. One of its principal findings was as follows:

We believe that there will be an important demand for a rail passenger system within the large urban regions developing in the United States. This requirement is ten to twenty years in the future.

Please note the emphasis on "large urban regions."

Tuesday Secretary Volpe testified that our aim should be to provide intercity passenger service on an economically self-sustaining basis. It is my contention that the creation of nonprofit corporations is more economically viable than the creation of one national corporation. The former would not be required to provide long distance service, yet they would be established under the same basic financial arrangements as the national corporation, with the exception of stock offerings, and, as nonprofit corporations, they would be eligible for State and local grants.

Dr. Robert Nelson, first director of high speed ground transportation has said that—

The least economical rail passenger service today is over the long inter-regional and transcontinental routes where air transport has a very great competitive advantage in trip time.

Even airlines have admitted it is uneconomical for them to provide passenger travel in our short-haul urban corridors. Subsidies paid by the Federal Government to short-haul airlines are evidence for that claim.

I might also add that H.R. 17849 would benefit the railroads and labor more than S. 3706 would. Since railroads would have to buy into the regional corporations only on the basis of their avoidable losses within the urban corridor system, where losses have been low, they would not be required to contribute a sum as great as that for a national corporation which would also assume all long distance service. Labor would also benefit since a greater number of corridor trains could be run if the money could be reinvested in each region rather than being put into costly and unneeded long distance service.

In summary, the advantages of H.R. 17849 over S. 3706 are numerous:

First, it would be more responsive to regional requirements within a national context by providing for the establishment of a national rail policy without the need for a national bureaucracy.

Second, it would be given authority to develop new and improved modes of high-speed ground transportation;

Third, it is more economically viable;

Fourth, it "puts the trains where the people are." and

Fifth, it provides a better deal for the railroads and for labor.

Mr. Chairman, the situation is urgent and we must act swiftly. But to pass a bill which could conceivably create more problems than it solves would be to sign the final death notice for rail passenger trains in this country. We must pass legislation which will be effective and will provide a long-range solution to the rail passenger crisis.

We cannot hope to develop a break-even operation in the rail passenger field unless we are willing to admit that long distance passenger service must be operated and funded separately from short distance service. Otherwise, we will be left with the same slow, inconvenient, unorganized, and filthy service we have today.

I urge this subcommittee to strongly consider H.R. 17849 and the regional approach to our rail problems.

Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Tiernan. There is no question but that you have put a lot of thought into this very critical situation. I can assure you the subcommittee will take your views into consideration when we mark up the bill.

Mr. KUYKENDALL. It is good to have our colleague here and I have no questions.

Mr. TIERNAN. I would ask permission to submit part of the Congressional Record of May 6, 1970, page S. 6687, which spells out the urban corridors developed by the Department of Transportation and also two additional sheets showing the breakdown in the difference between my two bills, the improvements that were made in the second bill and also the financing under my bill so that it would be part of the record and could be considered by the members of the subcommittee.

(The material referred to follows:

[Excerpt from the May 6, 1970, issue of the Congressional Record, p. S6687]

**2.2 Corridors:** The following 15 corridors are rank ordered according to population in urbanized areas:

	[Population]
1. Northeast .....	27, 327
2. Southern Great Lakes.....	18, 007
3. Texas .....	3, 639
4. Ohio-Indiana .....	3, 612
5. Northern California.....	3, 486
6. Central Southeast.....	2, 927
7. Missouri .....	2, 589
8. Upstate New York.....	2, 523
9. Florida .....	1, 849
10. Northwest .....	1, 731
11. Oklahoma .....	1, 384
12. Southern California.....	1, 325
13. Gulf .....	1, 306
14. Arizona .....	779
15. New Mexico.....	518

The rank ordering changes if population density within urbanized areas is used as a ranking criteria, the order becomes the following:

[People per square mile within urbanized areas]

*Corridor*

1. Northeast .....	5,500
2. Upstate New York .....	4,520
3. Southern California .....	4,450
4. Missouri .....	4,280
5. Southern Great Lakes .....	4,170
6. Ohio-Indiana .....	4,160
7. Northern California .....	3,760
8. Northwest .....	3,380
9. Florida .....	3,150
10. Central Southeast .....	2,760
11. New Mexico .....	2,710
12. Gulf .....	2,630
13. Arizona .....	2,300
14. Oklahoma .....	2,070
15. Texas .....	2,000

H.R. 17428

Urban corridors of 500 miles or less  
Incorporators and directors on the  
boards appointed by the President  
Compensation of \$300 for each meeting  
for board members  
Sec. contract for long distance service.

Financial Advisory Panel

Financial differences

Brock Adams was interested in three specific areas which are all covered in your bill:

1. Funds: your bill provides \$125 million more than S.3706.
2. Discontinuance of service: section 405 (pg. 18).
3. Adequacy of service: section 403 (pg. 17).

H.R. 17849

No limitation, up to the Sec.  
Both appointed by the Sec.

Compensation of \$50

This is not needed since there is no  
mle limitation—can have corridors  
criss-crossing or whatever  
This plus a National Rail Passenger  
Promotion and Coordination Advi-  
sory Board (coordination and shar-  
ing facilities) made up of the presi-  
dents of each nonprofit corporation

FINANCES

[In millions of dollars]

	H.R. 17428 and S. 3706	H.R. 17849
Volpe: Initial capitalization .....	200	200
Initial appropriation .....	40	175
Guaranteed loans .....	60	150
Total .....	300	425

1 If 15 corporations, then could be \$5,000,000, per corporation.

ROADBEDS

Both Dingell and Pickle have been asking questions concerning who would pay for any improvements which may have to be made in roadbeds. The answer is in Section 402 (pg. 16) of your bill: each corporation will contract with the railroads concerning this, and if nothing could be arrived at, the IOC would make a decision.

Our bill is better than S. 3706 in this regard also:

- (1) There will be less track to deal with since we have cut out long distance service;
- (2) Each track has its own problem (depending on how many passenger and freight trains run on it) and therefore it would be better to deal with this by regions.

Mr. FRIEDEL. Next we shall hear from another one of our members of the full committee. Mr. John M. Murphy of New York has a statement he would like to present to us this morning. Welcome, Mr. Murphy.

**STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. MURPHY. As most of us living in New York and New England realize, there is no transportation system existent in the United States today. Rather, there are a thousand transportation happenings, each of which we have had the misfortune to sample on one occasion or another.

Unless something is done and done immediately, metropolitan east coast areas will lose their attraction as a place in which to both live and work.

For 7 years, the battle of the New Haven Railroad raged first in New York, Connecticut, and Massachusetts, and then in the Nation's Capital. Still, there was no great stir. No panic, no national headlines. In a national sense, we were only talking about one mode of transportation, rail, in one small section of the country, specifically, the area from New York to Boston. Only recently did the problem acquire the necessary credentials to be branded a crisis and to make it a national issue when the Penn Central Railroad filed for bankruptcy.

Those of us in Government who had spent 7 years in the minor leagues of the New Haven conflict were well prepared to take the field in the big-time expiration of the Penn Central. But instead of "I-told-you-so's," let me say this:

If we spend all the money that we have spent on transportation in the last 50 years and we spend it in the same way, then we can expect that after today's transportation crisis is surmounted, in 50 years, cars will again be bumper-to-bumper on the highways, railroads will again be bankrupt, and planes will again be stacked in holding patterns all over the skies. I think the time has come to recognize the why's of our present predicament.

As to the railroads, they have suffered from a lack of Government assistance even when all other modes of transportation were given enormous assistance. Secondly, railroad management itself has long been comfortable in the role of crybaby seeking handouts rather than in the role of business seeking customers. And lastly, State and Federal regulatory agencies have spent their energies solely in the area of rates and politics rather than in areas of service and transportation.

H.R. 17849 offers hope. It provides that the Congress finds that improved, modern, efficient intercity railroad passenger service coordinated with other modes is a necessary part of a balanced transportation system. It asserts that the public convenience and necessity require the continuance and improvement of such service to provide fast, safe, and

comfortable transportation between crowded urban areas and in other areas of the country.

This omnibus measure authorizes creation of a nonprofit Rail Passenger Corporation, financed by \$75 million in fiscal 1971, to initiate innovative operating and marketing concepts so as to develop fully the potential of modern rail service. And it authorizes the Commission to prescribe such regulations as it considers necessary for the comfort and health of intercity rail passengers.

These are steps that must be taken if we are to not only save, but expand for the good of all, our vital rail transportation system as part of a coordinated national transportation network.

Mr. FRIEDEL. Thank you, Mr. Murphy, for sharing your views with us this morning.

Mr. MURPHY. Thank you, Mr. Chairman, it has been a pleasure.

Mr. FRIEDEL. Our first witness is Mr. W. Graham Claytor of the Southern Railway System.

You may proceed, Mr. Claytor.

**STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT,  
SOUTHERN RAILWAY SYSTEM**

Mr. CLAYTOR. I am W. Graham Claytor, Jr., of the Southern Railway System, with offices at 920 15th Street, N.W., here in Washington. The Southern Railway System operates some 10,000 route miles of track in 13 States, including all of those in the Southeast with the exception, I am sorry to say, of the State of West Virginia, together with Ohio, Indiana, and Illinois. On the basis of railway operating revenues, we rank as the eighth railroad in size in the United States.

I am deeply grateful for this opportunity to appear before this important subcommittee of the Interstate and Foreign Commerce Committee—a subcommittee which has a most important jurisdiction and controls the vital lifelines of America and the American transportation system.

I am testifying this morning in general support of the rail passenger service bill, S. 3706, and, in particular, in support of the very important proposed amendments to that bill suggested yesterday by Mr. Thomas Goodfellow, president of the Association of American Railroads. My testimony will be given from the standpoint of a passenger-carrying railroad, and one that is trying to furnish the highest possible quality of passenger service.

Over 2 years ago, shortly after I became president of Southern, I reported to a group of Southern newspaper editors and correspondents meeting here in Washington that, even though I foresaw no real possibility that much if any of our long-distance passenger service could be operated profitably, it would be Southern's policy to provide the best possible service to our customers on all passenger trains that we continue to operate. That has been and still is Southern's policy. In furtherance of that policy, early in 1968, I purchased a dome-parlor car from another railroad for use on one of our daytime trains in Georgia between Savannah and Atlanta, and have been operating it there ever since. I believe this is the only dome car in year-round service on any train in the Southeast.

The flagship of our railroad is a train we call the "Southern Crescent" from Washington to New Orleans via Atlanta and Birmingham. This train is normally made up exclusively of stainless steel equipment and carries all-room sleeping cars, reserved seat coaches, unreserved seat coaches, a full dining car over the entire distance, and a club car. We are proud of this train and I am prepared to stack it up for quality against any in the country.

Although even the "Southern Crescent" operates at a loss, we do try to use it as well as our other passenger trains as a symbol of Southern Railway service to the people who ride with us on it. With your permission I would like to submit for the record a sample group of letters that our passenger customers have spontaneously written to me over the last year or so commenting on the service offered on this and some of our other trains. Included with these letters are a promotional release and sample advertisements we have run and are running in our on-line newspapers, advertising our passenger service.

Mr. FRIEDEL. If there are no objections, that material will be included in the record following your statement.

Mr. CLAYTOR. Thank you, Mr. Chairman.

In addition, we have recently instituted a major promotional program in connection with our three principal long-distance trains, the Southern Crescent, the Piedmont, and the Birmingham Special. We call this "Operation Southern Hospitality," and it involves an awards program to those of our passenger service employees who turn in an exceptional performance, distribution of a packet of materials about our trains and our railroad to all passengers, and little gifts for all the children. I do not think it appropriate to include these materials in the record but I would like permission to submit them for the subcommittee's files.

Mr. FRIEDEL. We will be glad to receive them.

(A press release dated May 18, 1970, with copies of advertisements to be used in the Southern Railway System's "Operation Southern Hospitality" program may be found in the committee's files.)

Mr. CLAYTOR. In spite of this effort, the combination of the speed of the jet plane and the convenience of the private automobile have caused our passenger patronage to decrease every year, and we operate even our best trains at a substantial out-of-pocket loss. We accordingly support the proposed bill and believe it is very much in the public interest if nationwide long-distance passenger service is to be continued. I would like, however, to address myself briefly to several very important amendments that I think are needed to make the bill both fair and workable. While I support all of the amendments that were proposed yesterday by Mr. Goodfellow, I will take the subcommittee's time now to talk about only three of them:

First, the tax amendment;

Second, the amendment to sections 401(a)(1) and 404(a) of the bill to make clear that if without any fault of its own a railroad is not given a chance to join up with the Corporation it will not have all of its existing passenger service frozen without possibility of change or discontinuance for a 5-year period; and

Third, an amendment to section 404(a) which I call the "freedom of choice amendment," and which is designed to give a railroad that is willing to run quality passenger service within the

basic system the right to do so without suffering prohibitive penalties.

I recognize that the tax amendment falls within the jurisdiction of the Ways and Means Committee, and we are working closely with the Treasury Department staff and representatives of that committee to make certain that the language we have proposed is acceptable. I think it important, however, that the members of this subcommittee understand the extremely serious nature of the problem which the bill in its present form poses in this regard.

Section 401(a)(2) of the bill, on page 17, provides specifically that the very substantial payments required to be made to the Corporation by passenger-carrying railroads as a condition of joining up are "in consideration of being relieved" of the responsibility of performing passenger service. These payments are, under the bill, measured by passenger losses incurred by the particular railroad in the year 1969. When these amounts are paid into the Corporation, the particular railroad is to be issued common stock of the Corporation in proportion to the amount so paid in.

The justification for requiring these payments is that the railroad will be relieved of the passenger losses by which the payments are measured. These passenger losses, of course, are fully deductible business expenses. As the bill is now written, however, payments made to the Corporation, measured by these losses, are not deductible at all. For taxpaying railroads such as Southern and many others, the effect of this is to double the monetary burden of joining the Corporation, without in fact, providing the Corporation any additional funds.

Let me give an example. Under one of the alternative methods of computing the payment required, it looks as if the various component companies of the Southern Railway System could be required to pay the Corporation a total of about \$11 million as the price of joining up. This \$11 million is derived from losses on all passenger service operated by Southern System companies in 1969. Because Southern is in the 50-percent tax bracket, however, the actual burden of this loss amounted to only \$5½ million. A nondeductible payment to the Corporation of \$11 million is, therefore, double the actual burden which is being avoided by Southern.

Putting it another way, a nondeductible payment to the Corporation of \$11 million would be the equivalent of a deductible passenger loss to Southern of \$22 million. This would be an intolerable burden and in my opinion a wholly unfair one.

The proposed tax amendment submitted by Mr. Goodfellow would provide very simply that amounts paid into the Corporation in consideration of being relieved of passenger service may at the option of the particular railroad be deducted as ordinary and necessary business expenses, just as passenger losses are. If they are so deducted, any proceeds received by the railroad from the later sale or redemption of this common stock would have to be treated as ordinary income in the year in which the distribution is received. In this way there is no loss of revenue to the Government and no income escapes tax at the full corporate rate, but the tax-paying railroads are not visited with, in effect, a double assessment as the cost of joining up.

I turn now to the second major problem I would like to discuss. Mr. Goodfellow's amendments to sections 401(a)(1) and 404(a) of the

bill are necessary if what I believe is an unintended result is to be avoided and one that would be truly catastrophic even to a relatively prosperous railroad like Southern. Sections 401(a) and 404(a), as now drafted, provide that unless a railroad has actually entered into a contract with the Corporation on or before March 1, 1971, it may not discontinue any passenger service whatever for a period of years thereafter. This means that if, through no fault of a railroad, the Corporation is either unable or unwilling to execute the necessary contract the railroad is automatically frozen into its present position with respect to operation of passenger trains for a period of up to nearly 5 years. The amendments that have been proposed would provide that the Corporation is required to tender a contract to any railroad requesting it and, if the railroad is not so tendered a contract and so has no opportunity to sign up, it is relieved of any freeze or moratorium and is free to go to the ICC or the State commissions under existing law to seek discontinuance of those money-losing passenger trains not required by the public interest to be continued.

The third and last problem I want to discuss is also embodied in Mr. Goodfellow's amendment to section 404(a). The purpose here is to provide that if a railroad is willing itself to operate the service designated by the Secretary for inclusion in the basic system, it is to be permitted to do so and is freed of any moratorium or freeze on other passenger service that is not included in the basic system. It seems to me that such a provision is fully consistent with continued operation of our railroads as private enterprise systems and at the same time fully consistent with the objectives sought to be accomplished by the bill.

The existing language of section 404(a), although in form giving the railroad the option of whether or not to sign up with the Corporation, as a practical matter, gives the railroads no option whatever. No railroad having any significant amount of passenger service can afford, as a price of not signing up with the Corporation, to accept an unconditional and rigid obligation to continue to operate all the passenger service it presently runs for a period of nearly 5 years without any possibility of relief regardless of circumstances or change in circumstances. As drafted, therefore, the bill in fact requires every railroad to join up.

Some of us who today operate really good passenger service that will probably be included in whole or in part in the basic system would like to have the option to continue to operate that service over the period until January 1, 1975, instead of having to turn its operation over to a Government corporation. To do this, I would be prepared to agree to continue at our own expense to operate such service in accordance with the basic service characteristics designated by the Secretary.

The Corporation is going to have quite a problem on its hands in taking over by contract or otherwise the operation of the very substantial basic long-distance passenger system to be designated by the Secretary. If some railroads are willing to provide this operation themselves, to the same quality of service standards that the Secretary designates for operation by the Corporation, it should make the Corporation's very difficult task that much easier. I see no reason in the world for denying this type of freedom of choice to any railroad that

thinks it can afford to undertake this obligation and wants to do it.

Mr. Goodfellow mentioned yesterday that I would submit an alternate draft of amendment to accomplish this in lieu of the language he suggested. Such a draft is included in my prepared testimony. My substitute amendment is as follows:

On page 21 of S. 3706, strike lines 7 through 19 and insert the following:

(a) No railroad which has been formally tendered a contract with the Corporation pursuant to section 401(a) of title IV of this Act and has failed or refused to enter into such contract with the Corporation may, prior to January 1, 1975, discontinue any intercity rail passenger service whatsoever unless it provides or agrees to provide, until such date, intercity rail passenger service between those points between which the Secretary, under sections 201 and 202 of title II of this Act, has specified that intercity passenger trains shall be operated within the basic system, which service shall have the basic service characteristics specified by the Secretary in accordance with said sections 201 and 202 of title II of this Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, a Federal or State court, agency, or authority to the contrary notwithstanding. In the event such railroad so provides or agrees to provide such service within the basic system, other intercity rail passenger service operated by such railroad between said points or otherwise may be discontinued under the provisions of applicable State law or section 13a of the Interstate Commerce Act. On and after January 1, 1975, intercity rail passenger service operated by such railroad may be discontinued under the provisions of applicable State law or section 13a of the Interstate Commerce Act. Upon filing by such railroad of a notice, application, or petition of or for such discontinuance, the Corporation may undertake to initiate passenger train operations between the points served.

The principal difference in my amendment is that I have included not merely the requirement that a railroad electing not to join the Corporation must continue to provide existing rail passenger service between points in the basic system designated by the Secretary, but that this passenger service must, in addition to operating between those two points, have the basic service characteristics specified by the Secretary in accordance with sections 201 and 202 of the act. As spelled out in section 201, these service characteristics are very specific and will take into account "schedules, number of trains, connections, through car service and sleeping, parlor, dining and lounge facilities." I included this additional requirement to meet the objection that the service furnished by a nonjoining railroad might not be up to the standard required of the Corporation.

In other words, my proposed substitute amendment would impose upon a railroad electing not to join the Corporation the obligation to provide basic system service meeting the quality and quantity standards laid down by the Secretary in his required designation. In addition, of course, if some further improvement in that service should later be considered called for, it could be required by the ICC in accordance with the provisions of section 801 of the bill.

Finally, I want to emphasize again that under either Mr. Goodfellow's amendment or mine, a railroad electing not to join the Corporation gets no benefit whatever from this bill—it merely avoids being subjected to a freeze or moratorium on continued operation of other passenger service not included in the basic system—passenger service that should be automatically discontinued if the railroad joined the Corporation. If it does not join up, it gets no automatic right to discontinue any service—it must still meet the standards imposed by existing law and go through the required administrative procedures before it can get permission to discontinue any passenger service.

As stated at the outset, other amendments suggested by Mr. Goodfellow are important for purposes of clarification or fair administration and I fully endorse them. They have been fully presented, however, and I will not take the subcommittee's time to discuss them further.

Mr. Chairman, I appreciate the opportunity of appearing before this subcommittee on this extremely important legislation. Thank you for considering my comments and suggestions.

(The letters referred to in Mr. Clayton's statement follow:)

[LETTER TO MR. CLAYTON]

POMPANO BEACH, FLA.  
June 1, 1970.

It was my pleasure to ride the Nancy Hanks from Atlanta to Savannah, Ga., last Monday evening, May 25. This train arrives at midnight at one station and since I was continuing on to Florida, I had to make connections with the Seaboard Coast Line train at another—the Union Station.

All of the crew of the Nancy Hanks were very courteous and friendly, but especially the conductor who on learning that I had to transfer to the Union Station, kindly drove me there in his car. I am sorry I neglected to get the name of the conductor. I thought, however, this was such a nice and thoughtful gesture that you would like to know of it.

MISS IRENE STRICKLAND.

MERIDIAN, MISS., May 28, 1970.

Mr. W. GRAHAM CLAYTON, Jr.,  
President, Southern Railway System,  
Washington, D.C.

DEAR MR. CLAYTON: I was a passenger on the Southern Crescent passenger train from Meridian to New Orleans on May 23, 1970. I had such an unusual experience on this trip I feel that it is not only a pleasure but in fact a duty to nominate Mr. A. C. Fornea for one of your "Hospitality Pins," and in my judgment anything less than a one or two carat genuine blue-white diamond would fail to express my appreciation and admiration for Mr. Fornea and my gratitude for his kindness and the way that he handled my problem.

As soon as the train arrived in Meridian I boarded the train and took my seat. I had been then seated but a few minutes and while the train was still standing in the Meridian Station when I realized that in my haste and hustle to begin this trip to Acapulco, Mexico, that I had left my pocket book with most of my travel funds on my dresser at home, so despite the fact that I had hotel reservations and a confirmed flight the next morning I hastily got off the train with my bags.

Mr. Fornea asked me why I was getting off and I told him—he may have known me but we were not personally acquainted—first he said go ahead and stay on I'll help you or some such. I told him that I was beginning an extended trip not just to New Orleans. He then suggested that I take a taxi and go back home and get the purse which I did; and despite the fact my home was at least two miles from the depot and to go there required more time than they could wait and when I got back the train had left but some kind gentleman saw me drive up and asked if I was the one that went for the pocket book and when I told him yes he said that the train had had to go on to the yard office but that if I would hurry there (in my taxi) perhaps I could catch them while they took on fuel and that he would telephone them that I was on the way. I hastened to the yard office. Mr. Fornea was waiting and I reboarded ahead of time.

I will always be grateful to Mr. Fornea and to the Southern Railway for this wonderful help and kindness. I am also grateful to your railroad for the truly excellent train service both to New Orleans and New York including Pullman and dining service. The meals are excellent and the fine on time—no nonsense service is simply wonderful.

So while I am grateful to the railroad, please don't overlook the hospitality pin with the nice size diamond for Mr. Fornea.

Yours truly,

FRED D. TEMPLE.

[LETTER TO MR. CLAYTOR]

CLAYMONT, DEL., *May 15, 1970.*

I have recently had the opportunity to ride your "Southern Crescent" from Atlanta to Wilmington, Del., and I would like to congratulate you on maintaining this fine train. It was clean, the food was good and it ran on time. It was a refreshing change after many rides on the northern lines which are terrible. I sincerely hope that you are able to justify the continuation of this great service. It is a real buy for the traveling public—comfortable and less expensive than flying.

I would like to submit the name of Mr. Hansford A. Little, Porter, Southern Railroad as a candidate for your Hospitality Pin award. Mr. Little has 29 years service with your road and is one of the most courteous and friendly people I have met in some time. His consideration and conversation helped to make this a memorable trip. In June I will be taking my family to Atlanta and back via the Southern Crescent and I hope that chance delivers us into the hands of Mr. Little.

Thank you again for your consideration. I am looking forward to additional trips on your Southern Crescent and I hope to see Mr. Little wearing his Hospitality Pin.

JAMES W. DUROSS.

[LETTER TO F. H. BOONE, ATLANTA, GA.]

JONESBORO, GA., *May 7, 1970.*

The Clayton County Commissioners would like to express to you our sincere appreciation for your cooperation and very capable assistance which helped to make the Clayton County School Patrol's recent visit to Washington, D.C., a very successful and enjoyable trip.

We feel that our boys and girls really achieve great benefits from these annual trips, and we appreciate the untiring time and effort which you spent on their behalf.

S. S. ABERCROMBIE,

*Chairman, Clayton County Commissioners.*

[LETTER TO SOUTHERN RAILWAY]

CHATHAM, N.J., *April 30, 1970.*

We have just returned from a trip to Louisiana, and I wish to compliment you on your fine train service. We were delighted with the courtesy extended, and the excellent food.

We would also like to commend Mr. White and very particularly Mr. Davis (car S-41), who anticipated our every need.

Mr. WILLIAM B. WILSON.

[LETTER TO MR. CLAYTOR]

THE RAILWAY GAZETTE NEWS,  
*Greenwich, Conn., April 24, 1970.*

From what I have seen and heard about the Southern Railway and the Southerner, it makes me deeply regret I have never ridden it. The director of Steamtown USA commented to me that the dining and sleeping car services on the Southerner were superb. Mr. W. K. Viekman also informed me that you once wrote to Trains magazine in response to a published letter or rumor that there was no New York-New Orleans Sleeper on trains #47 & #48, informing such parties that the Southern, indeed maintained such a service.

The spotless cars that left New York on the Southerner when I was in Penn Station several months ago certainly typifies a railroad purposely trying to win patronage by providing good service, thereby maintaining the important trains that must take a part in a balanced transportation system.

GREGORY L. THORSON.

[LETTER TO MR. CLAYTOR]

CLIFTON, N.J., *April 20, 1970.*

I couldn't help but write to you and express our appreciation of the excellent treatment we received on the Greensboro to Asheville Special No. 15-16. I must say the scenery and ride were superb, and we had very kind and courteous consideration in seeing that we were made comfortable to enjoy our trip. All of the crew particularly Mr. F. J. White, the conductor, Mr. C. W. Campbell, flagman, and Mr. J. W. Reid, baggage, has our appreciation on the willingness to make our trip an enjoyable one. We shall never forget it and hope to make many more trips South on it. The ride, the scenery, and hospitality was the best, and we feel that Southern is the only way to travel and we appreciate it.

MRS. HELEN NIERADKA.

[LETTER TO PULLMAN CO. PULLMAN CO. RESPONDED TO MRS. MCKENNEY, GIVING COPY OF L. G. SAK]

WILMINGTON, DEL., *March 31, 1970.*

This is a letter to compliment one of your Pullman porters, Edward Davis. He was very pleasant, and very helpful on our trip March 29th from Hattiesburg, Miss., to Wilmington, Del., coach S-41, Southern R.R. and Penn Central. Mr. Davis was very interested in the comfort of everyone and always had a smile on his face.

MRS. C. R. MCKENNEY.

[LETTER TO MR. CLAYTOR]

CHARLOTTESVILLE, VA.,

*February 5, 1970.*

During the past fifteen months, I have been involved in a lawsuit which required many trips to New York City. On several occasions, I was unable to give reasonable notice to your people; and this was equally true covering a corresponding number of return trips to Charlottesville.

Mr. Claude Smith in New York and Mr. McIvor here in Charlottesville, in their anxiety to be helpful, performed the impossible, reflecting credit not alone on themselves but on the entire Southern Railway System; and I am truly grateful.

MR. DAVID AUSTIN.

[LETTER TO MR. CLAYTOR]

ALTA VISTA, KANS.,

*January 28, 1970.*

Due to the fact I used your railroad from Anniston, Alabama to New Orleans, La., January 20th 1970, I would like for you to know my trip was a most pleasant one on Southern Train No. 47.

From the time leaving Anniston and arriving at New Orleans I found the train crews (all) so very polite to all on the train and they rendered every possible courtesy to those on this train.

I do want to congratulate you on having three fine men on Dining Car #3307 in this train who made it possible for everyone to enjoy lunch and dinner. Steward G. L. Bressler, Waiter H. Willis and Chief A. G. Thompson did a fine job in serving a delicious lunch and dinner to all and were very polite to everyone entering the diner. These men are deserving a well earned comment.

W. J. PEYCKE,  
*Retired Signal Maintainer,  
Rock Island Lines.*

[LETTER TO MR. H. F. DAVENPORT OF THE ILLINOIS CENTRAL WITH COPIES TO MR. J. R. GETTY, SCL. AND MR. W. F. GEESLIN, SRS]

DOWNERS GROVE, ILL.,

*January 23, 1970.*

The morning of the 15th of January I boarded your train "The City of Miami" for a trip to Orlando, Florida. I enjoyed the trip sufficiently for me to return on the same train, leaving Orlando 19 January and arriving in Chicago on the 20th.

In general, the trip was a fine one, and I am writing primarily to allow you to thank those responsible.

Beyond a comfortable place to sleep and work, the best feature of the train is its excellent food and service in the dining car. I took five meals on the way down, four on the return, and all tasted good, were reasonably priced considering their quality, and were courteously served.

All personnel were courteous: the sleeping car porters, train conductors, passenger representatives, as well as dining and lounge car waiters. Incidentally, I had car CM-35 both ways.

The point is that actually your railroad, and the other two, are among the most progressive and innovative in the country, and the operation of any of your passenger trains, singly or together, should project this attitude.

In any case, my main reason for writing is the real thanks I have for the comfort, food, service, and courtesy on this train.

Mr. DAVID L. KLEPPER.

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[LETTER TO MR. CLAYTOR]

HARVARD UNIVERSITY,  
January 20, 1970.

In August of 1969 a friend and I travelled from New Orleans to Washington on the *Southerner*, and without doubt it was one of the most pleasant train trips I have ever had. The crew members were gracious and friendly, the dining service was excellent, the equipment was well cared for and showed a company pride much too rare these days.

Because I know the railroad situation pretty well, perhaps it means even more to me that the Southern maintains its fine traditions.

ROBERT FICHTER.

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[LETTER TO GRATTAN PRICE WHO SENT COPY TO MR. CLAYTOR, JANUARY 12]

WAYNESBORO, VA., January 10, 1970.

A trip on the Penn Central during the holiday season is enough to make anyone give up their religion and take a bus. I was never so glad to get back on the *Southerner*—which was running in a separate section from the *Crescent* that night.

Thanks also for the article on the Southern, Grattan, which I missed . . . You might tell Graham Claytor that I thoroughly enjoyed the diner on the *Southerner* last Sunday, even though I had to wait nearly an hour to get into it because it was so crowded. Yet, with all that crush of people the diner remained clean and cheerful and I was served in enough time to eat and get back to my seat before Charlottesville. That crew in the dining car did a marvelous job of taking care of people. If anything dining cars on the Southern are nicer and serve better food than they did 15 years ago. Probably not many railroads for which you can say that.

WILLIAM E. WORDEN, Jr.

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[LETTER TO SOUTHERN RAILWAY]

TAUNTON, MASS., January 10, 1970.

I should like to commend Charles H. Loveless, a porter on your railroad for his courtesy, efficiency and friendliness. He was most helpful on our trip from New York to Tuscaloosa, Alabama. You are fortunate to have such a person in your employ.

Mrs. CHARLES MCMANUS.

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[LETTER TO MR. CLAYTOR]

WESTFIELD, N.J., January 7, 1970.

Once again my wife and I have had the pleasure of traveling on a Southern Railway passenger train. Once again I must compliment your company on providing excellent, comfortable and convenient service.

Mr. WALTER A. APPEL.

[LETTER TO MR. CLAYTOR]

NEW HAVEN, CONN.,  
December 30, 1969.

In my job I travel extensively and have done my share of complaining. There have also been times when I have been treated as a traveler would expect, but never have I encountered a more conscientious individual than your Mr. Claude B. Smith. I do not know in what specific category Mr. Smith serves your railway, but serve it he did. I am not sure whether or not you have a "above and beyond the call of duty" award, but if you do I would like to recommend that Mr. Smith receive it. Here is the story:

On Tuesday, December 16, my brother-in-law mailed four reserved seat tickets to us in Hamden, Connecticut for your "Southerner" to Charlottesville, Virginia for Tuesday, December 23. They did not arrive in the one mail delivery on the 22nd. I therefore, called the Southern Railway System office at 500 5th Avenue to see what could be salvaged. Mr. Smith handled the call, and after checking with Charlottesville, he instructed the Penn-Central to reissue the tickets prepaid to my wife here in New Haven. The exercise was successfully completed and I was to return the tickets to him. End of mission.

Not so! When my wife arrived with our children at the appropriate car in New York, your Mr. Smith was there waiting for her in case there was any problem. The word "incredible" is inadequate to describe my delight when I learned of this after their safe arrival.

Mr. DANIEL H. SISE.

[LETTER TO MR. CLAYTOR]

CANDIS O. RAY & ASSOCIATES,  
Washington, D.C., December 19, 1969.

As one of Southern Railway's steady customers over the years, I feel that it is time that I wrote you commending the efficiency and courtesy of Southern's personnel.

It is always a pleasure to go into Southern's Ticket Office on 15th Street, for it is completely astounding to me that no matter that it has been many months since using your service your clerks remember me immediately by name and the specific type of service which I like (and can easily start making the ticket out without talking to me!). It is indeed heart-warming to find that kind of friendliness and assistance in the fast moving world in which we move today.

Just this morning, after more than a year away from the city without the need for your service. I telephoned your ticket office to ask about the change in a schedule not deeming it necessary to give my name, and immediately Mr. James Allen, who answered the phone, said "Yes, Miss Ray." Now, I must say without any reservations that in my opinion that response and friendly attitude of Mr. Allen establishes the ultimate in good public relations which reflects the best asset a company could possess in attaining the public image it desires.

CANDIS O. RAY, *Director*.

[FROM THE NEWARK (N.J.) SUNDAY NEWS, DEC. 7, 1969]

(Walter Appel, Newark News Special Writer)

Traveling on a Southern Railway passenger train is always a pleasure. Whether you are going to New Orleans, or just on an overnight hop to Atlanta or Lynchburg, the service is always first class.

Clean stainless steel greets passengers when they are ready to begin their journey. Car interiors are equally clean, and there is always a friendly porter, trainman or conductor to lend a hand with any problem that may arise.

The Crescent from New Orleans to Newark was just such a train on Nov. 8, 1969. Though the writer and his wife only rode it from Lynchburg to Newark, it could not have been a smoother trip.

[LETTER TO MR. ALLEN, PASSENGER AGENT'S OFFICE]

CHARLOTTESVILLE, VA.,  
November 24, 1969:

Back on August 22 you did us a great favor and I want to tell you how grateful my wife and I were, and still are, for it.

My daughter is a mentally handicapped young woman and is being taken care of in a school-hospital near Philadelphia. She was sent home for a vacation on August 22 in a roomette on the Southerner (SR42—roomette 9).

Those were the days just after the Nelson County, Va., flood. Tracks of the Southern Railway had been washed out and trains could not come through Charlottesville. So your Pullman conductor, on arrival in Washington, sent a porter with our daughter to your office. She called us on your phone. She was not upset as she might have been. You gave her such care and kindness that she was able even to consider the experience something to laugh about.

I believe you went with her to supper. I know you took her to the bus station and sent her on to Charlottesville. When we met her about midnight she had a story to tell that was to her quite exciting.

For your instantly recognizing that the girl needed care and for your shepherding her till she took the bus, we are most grateful.

ATCHESON L. HENCH;  
*Emeritus, University of Virginia.*

[LETTER TO MR. CLAYTOR]

CANADA DEPARTMENT OF AGRICULTURE,  
*Ottawa, Ontario, Canada, November 14, 1969.*

Mrs. Ferrier and I would like to tell you how much we appreciate the kindness recently shown us by one of your company's conductors, Mr. O. L. Fisher.

On a visit to your country last month, we travelled on the Southern Railway Company lines from Washington, D.C., to Roanoke, Virginia. Shortly after we boarded the train, we found that we had left two fairly valuable cameras in the hotel room where we had been staying in Washington.

When Mr. Fisher came to collect our tickets, we explained our problem to him, and asked him if he would send a wire to the hotel, at our expense, to confirm that the cameras were still there. We also gave him our names, and the names and address of the persons with whom we would be staying in Roanoke, and asked him to have the hotel send the cameras to us by air express.

This was all we felt justified in asking someone to do for two complete strangers. However, Mr. Fisher responded to our problem as though we were personal friends. Rather than sending a wire at our expense, he called the hotel at his first opportunity to have them check to see whether the cameras were still in the room.

Before he left the train, he told us that he would phone the hotel again, see whether the cameras were there, and leave a message for us with the Roanoke station agent. When we got to Roanoke, the message was waiting for us, to the effect that the cameras had been found, and that they would be mailed to us in a day or two by the hotel. They arrived in Roanoke on schedule, safe and sound, much to the relief of both of us.

Except for our names, Mr. Fisher had no idea who we were or where we were from. The personal interest he took in our problem was not, therefore, we are sure, because he wanted to impress visitors with his consideration of them. He did not know, and will not until we tell him so, that we are Canadians. His was the helping hand of friendship extended to someone in difficulty—regardless of who he is or where he is from. It is this concern for another's difficulty that we want both you and him to know we appreciate.

GORDON H. D. FERRIER.

[LETTER TO WHOM IT MAY CONCERN]

CLEARFIELD, PA.,  
November 1, 1969.

My object in writing this letter is to let you know that on October 17, 1969, I had a reservation Roomette 6, Car S-41 from Birmingham, Ala., to Baltimore, Md., and it was a memorable trip for me—especially because of the voluntary

service rendered on the entire trip by your porter—a black man—whose name is now misplaced by me. He is a very unusual employee—and your *patrons*—and *you* are fortunate to have him today. I feel that the service he rendered—not only to me—but to others close to my roomette—was far beyond the requirements of his job. He is thoughtful, kind, very polite and was deeply interested in all the passengers as to their comfort, etc.

This is the first time I have had such a pleasant experience riding by train (I've never gone by plane), and I assure you if I have the opportunity to travel again—it surely will be by Pullman car—(roomette).

Mrs. FRANK E. KIRCHNER.

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[LETTER TO MR. CLAYTOR]

HIGH POINT MEMORIAL HOSPITAL, INC.

*High Point, N.C., August 2, 1969.*

This spring while travelling in search of a new position, I had opportunity to travel several times by Southern Railway passenger trains (not being from this part of the country). In all cases I was pleased with the service, and was happy to find a railroad which is still concerned with providing high quality passenger service to the travelling public.

I have now settled on a position in High Point. I will continue to travel by Southern Railway both for business and pleasure, and will encourage others to do the same, as long as you continue to provide the high quality of passenger service that you now do.

Thank you for continuing to make excellent passenger service available to us in this area.

Mr. PAUL R. CORY,  
*Director of Nursing.*

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[LETTER TO MR. CLAYTOR]

HARRISONBURG, VA., *June 2, 1969.*

Knowing your continuing and genuine interest in maintaining superior passenger service on your main line trains, I believe you will be interested in a brief report of the pleasant trip Mr. and Mrs. Harry P. Cavendish, Kitty and I had between Washington and New Orleans using Train 47 out of Washington on May 16.

We would like to particularly commend Mr. H. C. Cecil, our steward from Atlanta to New Orleans. Mr. Cecil is, without doubt, one of the best ambassadors of goodwill the Southern Railway has. He was cheerful, courteous and could not do enough to make us feel at home. In the same vein, we were most pleased with the good services rendered by waiters A. Chisholm and Price Erwin. At all four meals the food was excellently prepared and tastefully served.

Mr. C. GRATTAN PRICE.

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[LETTER TO MR. E. L. FRAPART]

WASHINGTON, D.C., *May 1, 1969.*

This letter is to express appreciation for consideration shown me and my small daughter by Mr. James J. King, porter on car 28 of the northbound Crescent on April 30. Never have I met a more friendly, courteous, and thoughtful porter. May I compliment the Southern Railway System for hiring such a fine man.

I look forward to traveling often on Southern trains in the future.

Mrs. EDWIN L. HARPER.

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[FROM THE EDITORIAL PAGE, THE INDEX-JOURNAL, GREENWOOD, S.C., APR. 22, 1969]

We traveled by day travel with reclining chairs, leaving Greenville at 6:45 a.m. Wednesday arriving in New Orleans at 7:00 p.m. We had every convenience with the nicest and cleanest facilities, Dining Car, Club Car; also there were Pullman Cars of bedrooms and roomettes. The food was superb, the services from the Dining Car Manager, the waiters and conductors couldn't have been

any better. The trip was very scenic and educational and the many questions asked were answered by the conductors very graciously and with both smiles and sometimes a little wit mixed. We could not have had a more pleasant trip travelling to and from New Orleans.

Mrs. WILLIAM M. ARNOLD, Sr.

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[TO THE SOUTHERN RAILWAY]

GLEN ROCK, N.J., April 2, 1969.

I've written many letters to railroads in my time  
 To find fault with their schedules; the tasteless food and grime;  
 But since I've traveled "Southern" I sing a different song.  
 I finally had a train trip where not a thing was wrong!  
 Our comfortable compartment had ashtrays clean as new.  
 Our window pane, like crystal, gave us a pleasant view.  
 The seats were all upholstered in my favorite shade of green.  
 The porter was most helpful, and his uniform was clean!  
 Efficiently the waiter served our delicious meal  
 On spotless table linen set with flowers for appeal.  
 We engaged in conversation with a pleasant man indeed,  
 Who was one of your employees. The evening passed with speed.  
 And to top off this saga in my amateurish rhyme,  
 The train raced on toward Newark, and it arrived on time!

CONSTANCE B. ARTHUR.

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[LETTER TO MR. SPICUZZA, DISTRICT MANAGER, PASSENGER SALES, NEW ORLEANS]

LOUISIANA STATE UNIVERSITY,  
 Baton Rouge, La., March 10, 1969.

Our senior trip to Washington for 1969 was most pleasant. Thank you for every effort you and the Southern Railway System put forth to make our trip so enjoyable and trouble-free.

Your dining car steward, Mr. McKelvey, and his crew were the best I have ever seen, and I feel they deserve every commendation.

JAMES A. MACKAY,  
 Senior Class Sponsor.

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[LETTER TO MR. CLAYTOR]

RICHMOND, VA., February 23, 1969.

My brother-in-law, Mr. George W. Jones, his wife, daughter and granddaughter left Charlotte, N.C., Friday evening the 21st, at 6:30 P.M. on the Crescent for Washington, D.C., on business and mixed in pleasure along with it.

He had the highest praise for the service they received while on their way from Charlotte to Washington especially the dining car service. Told him I thought I'd pass this on to you. Always good to hear something good about Southern.

R. H. PIERCE.

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[LETTER TO MR. E. L. FRAPART]

MARGATE, N.J., January 29, 1969.

This past month my daughter and I had occasion to ride on many trains, from Philadelphia, to Chicago, to San Francisco on down to Los Angeles, and from New Orleans to Philadelphia. After riding on the different railway systems it is very obvious that all of them could take a lesson from your train.

We rode the Southerner and found it to be the cleanest, the service the best, and in all ways as one had pictured trains to be. The food in the dining car was quite good with hot crisp rolls, colorful salads, rare roast beef for those who wanted it, excellent service. One had the feeling that the man in charge was truly interested in each diner. In addition, we found the waiters and porters on this train to be most courteous and helpful.

Mrs. JOHN M. DILLON.

Mr. FRIEDEL. Thank you, Mr. Claytor, for a fine statement and your frank discussion.

I notice you have included an impressive number of letters commending your passenger service. Do you also get complaints?

Mr. CLAYTOR. Yes, I guess everyone in the public service business is bound to have complaints. But I am very happy to say that at least for the last year and a half our letters of approval have outnumbered our letters of complaint or disapproval by 25 or 30 to 1. I get 30 good letters for every single complaint. I will admit that when we do find something wrong, we try to do something about it.

Just last week one of our sleeping cars on the Southern Crescent coming out of New Orleans had a total air-conditioning failure after the train left. The weather was warm and the car was uninhabitable. We had to ask the passengers to sit in the coach section until they reached Atlanta. I got rather irate letters from people who said they paid for Pullman service and they had to sit in the coach.

We refunded the sleeping car surcharge for that distance; we apologized, and I can assure you my mechanical people will remember that car for quite a long time, and I am hopeful it will not happen again.

We have those equipment failures from time to time but we are on the whole doing a good job and we expect to continue.

Mr. FRIEDEL. By your testimony it shows that you try to correct problems whenever you hear of them.

Mr. CLAYTOR. Yes, we do.

Mr. FRIEDEL. Does this bill, as amended, give the freedom of choice to the Southern to join the Corporation or not?

Mr. CLAYTOR. I cannot tell yet because we do not know what the basic system is going to be. We do not know what we would be asked to operate and we would not know until the Secretary designates it. We are quite uncertain as to the costs involved either way.

But I would like to say that we want very much to be able to afford not to join. We would much prefer to continue to run our passenger service than to have a Government corporation come in and take it over, with all of the difficulties and complications that may involve for both sides. I think we need the election in order to find out what the relative costs and burdens would be.

It is only fair, I think, to say that if a railroad is going to do everything the Corporation is going to do and do it without cost to the Corporation, it ought to be given an opportunity to do it. This is really my point. Whether we would do it will necessarily depend on what the service is, how much it is going to cost to join the Corporation and other factors which perhaps will not be determined until next spring when the Secretary makes his designation.

Mr. FRIEDEL. Even if you got the tax relief from the Internal Revenue Service, you still do not know whether you would join, Mr. Claytor?

Mr. CLAYTOR. No, sir. But without the tax relief, the real cost to us would be devastating. We might still have to join as the bill is now drafted because not joining is even more devastating. We do feel we have substantial public relations benefit from running quality trains. Even if a train does not meet its costs, the alternative of having a Government Corporation run a part of our railroad is unpalatable to us. We would prefer to do the job ourselves subject to the require-

ment that it has to be done right and has to be done as well as the Corporation would do it.

Mr. FRIEDEL. Thank you, Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. CLAYTOR, I have been privileged to ride on the Southern in recent years and I think you have a very progressive line, perhaps one of the best in the country. I wish you and your system well.

Mr. CLAYTOR. Thank you, sir. I am trying.

Mr. PICKLE. During World War II it was more the woes of a traveling man than it was trouble with the system. You told Mr. Friedel you would not prefer to have any system. Does this mean you are not supporting the bill?

Mr. CLAYTOR. Yes; I support the bill.

Mr. PICKLE. Are there any other railroad lines that would not want this established?

Mr. CLAYTOR. I am not opposing establishing the system. I am saying we ought to have an option not to join the system for individual railroads that will do the job themselves.

I am not trying to stop the system from being set up.

Mr. PICKLE. If we set up this Corporation, do you think it would be practical to allow other railroads to operate independently, a railroad that is in the very heart of the main corridor?

Mr. CLAYTOR. Yes; subject to the provisions written into this bill and the basic service characteristics as designated by the Secretary.

I do not know of any long-distance passenger service in the country that is operated at a profit. There is no effort here and there certainly is not on my part to say let us skin off the profit and leave the Corporation with the losses.

It is all losses. Between a million and a half and \$2 million a year out-of-pocket is what we are losing on our Southern Crescent.

Let us take the Seaboard Coastline, for example; if they are designated to run two services from New York to Miami or one from New York to Tampa, they will want this option, too, because they run a fine passenger service, they are very proud of it and they would like to stay in the business if they can afford to.

If we exercise this option we would not pay into the Corporation a lot of money, but we would relieve the Corporation of at least that much expense because it is going to cost them money to run the train. It will cost them at least as much as it costs us.

Mr. PICKLE. Are there other railroad lines such as Penn Central who would choose not to have the Corporation and would want to operate independently?

Mr. CLAYTOR. I cannot speak for any other railroad. The Seaboard Coastline is one which I know is interested in the option. Like us, they cannot decide which way they will go until the factors are determined.

I believe the Santa Fe would be very much interested in the option, but I cannot speak for them. I do not know about the Penn Central but I can speculate with you. I would be extremely surprised if the Penn Central would not want to join up in any event.

Mr. PICKLE. In your testimony, did you make any reference to your position relative to the two approaches—the national system as recommended by the Senate bill or the regional approach that Representative Tiernan mentioned?

Mr. CLAYTOR. I did not because I have to admit I have not had an opportunity to study in depth Mr. Tiernan's bill. I read it through once and I have not looked at the list of proposed regional corridors, but I am under the impression that there would be no corridors in the territory I serve. We are not a densely populated area. I suspect our particular railroad would not be involved in any of those corridors and I would have to study that to find out.

However, should that bill be substituted for this, I think some of the amendments I have suggested should be made to that bill. The tax amendment should be made and the freedom of choice amendment should be available to anyone willing to operate the corridor.

Mr. PICKLE. Mr. Chairman, I will not take any more time. I would say from a very practical standpoint, I do not see how we can operate a corporation and let one or two or three of the main lines choose not to or to be a part of it. I think it would be difficult but I would certainly want to reserve further opinion until I read the details of these approaches.

I assume one of your other big problems is that of discontinuance, not being frozen in a position where you cannot discontinue.

Mr. CLAYTOR. I think that is an oversight.

Mr. PICKLE. It may be more than an oversight. We have the basic problem of maintaining the basic system. We just cannot allow all of the leaves of the tree to be cut off and leave only the trunk. It just would not live very long if we just cannot keep it together.

Mr. DEVINE. Mr. Chairman, I think your statement is quite good and I think the most important portion appears on page 11 where you say under Mr. Goodfellow's amendment or yours—

A railroad electing not to join the Corporation gets no benefits from the bill—it merely avoids being subjected to a freeze.

I think that is very important to be pointed out here. Your letters of commendation outnumbering the complaints 30 to 1 are quite unique. We, in Congress, receive quite a bit of mail from time to time and usually it is the anti's who write to us.

I am curious as to know whether the fellow who was recommended for the diamond pin did get it.

Mr. CLAYTOR. Actually that is to be awarded next week. This is under the new program. The most recent letters quoted are in part stimulated by this program "Operation Southern Hospitality." But all of the ones prior to the first of May are purely spontaneous.

Mr. DEVINE. I know. Now, I notice you say notwithstanding this promotion you are still operating the passenger business at a loss.

Mr. CLAYTOR. Yes, sir.

Mr. DEVINE. I am not interested in specific figures but are you near the break-even point or are you operating at a substantial loss?

Mr. CLAYTOR. We are operating at a substantial loss. For 1969, the avoidable loss, that is, how much we would have saved if we did not operate any passenger service whatever in 1969, is about \$11 million.

In 1970 it will be less than that. I would like to say I think it will be about \$7½ million, not because more people are riding trains, I am sorry to say, but because a great deal of this very heavy loss was due to secondary trains that no one was riding, and they have been permitted to be discontinued by either the State authorities or the Interstate Commerce Commission. That is going to continue. We

are still running several trains that by any rational analysis should not be continued.

Of course, if this basic system goes through, these trains will be automatically discontinued if we join the corporation next March. Our losses are going down because the hopeless trains are being reduced, but we also have losses on the through trains.

Mr. DEVINE. Thank you very much for your statement.

Mr. KUYKENDALL. It is good to have you with us. On this committee we are rather used to having Southern take a more independent point of view than the other railroads and I am proud to say they have.

I think Southern through its innovations in the past, has been able to make particular areas of the business profitable before the other railroads have, and I am proud of Southern's leadership position.

In a frank discussion between the two of us here, is it not your interpretation of the thrust of this legislation as written that it is just not intended to have any passenger service outside the Corporation?

Mr. CLAYTOR. Let me put it this way. As this concept was first worked up, it was intended to present the railroads with a real choice or option. We were to be given an option, and if we did not wish to provide the service, the Corporation would provide it. This was the original basic concept. There is no valued reason to say, you must operate other secondary or unneeded passenger service unless you go ahead and join the Corporation. As the bill is now written, there is an option in form but not substance. I believe at some stage of the game, someone decided to keep the form, the basic concept that was started with, but to make the option so tough everybody would have to join. That is how this developed.

The thing that I cannot understand is why we do this in view of the fact that we are all trying desperately to keep the railroads operating as private enterprises. If you have one, two, or three—and there probably will not be more than that—that are really willing to perform the service and operate it as a private enterprise to the standards that are laid down by the Secretary, and save the Corporation money by doing it, why in the world shouldn't we be allowed to do this?

Mr. KUYKENDALL. Ever since I have been on this committee, I have warned every railroad executive who has been in that chair, speaking to the subject of passenger trains, that this day was coming and that I bemoaned the fact that it was coming.

Now, I am sure as a member of this committee that I am going to have to bite that dirty bullet so maybe I should just as well bite it all at once and get it over with.

Mr. CLAYTOR. We are talking about a period ending January 1, 1975, under the bill. I can say now that the future of long-distance passenger service is sufficiently dim so that I could not afford to make a commitment to do anything in this field after that time, or into the more distant future.

This is a little less than a 4-year period from March 1, 1971, to January 1, 1975, that we are talking about.

After that the Corporation may liquidate its trains—it is free to do so. We do not know what will happen after that. If, after that, I wish to liquidate my train because I cannot afford to keep going, then the Corporation may take it over, so we are just talking about an interim period.

Mr. KUYKENDALL. Looking at this activity in the point of view of

this committee and the appropriation committee that will have to fund this program, of course, you see when we look at the whole picture we would like to have the good with the bad in this Corporation. In other words if there is such a thing as a railroad that is breaking even, we would like to have it thrown in to sweeten the pot because we are going to have to go to the American taxpayers and ask them to pay the bill.

It occurs to me if we take this step you and I philosophically oppose, we are talking about rescuing a drowning child here really. I do not know whether Mr. Mack was here the other day when the Secretary testified the day before yesterday.

I questioned the Secretary about whether he should be forced to run a train for 5 years that was losing money after 2 years. I shall introduce an amendment with real teeth to allow the Corporation to discontinue 2 years after. I do not want them operating hopeless dogs any more than I want you operating hopeless dogs.

Let me ask you a couple of questions here. Take your loss of \$11 million. Of course, once you are able to divest yourself of that loss, it would not be recurring, so even though there is total credence to your mathematics, the one thing you did fail to consider in your testimony is that it is not a recurring loss if you give it to the Corporation.

I would propose a 5-year payment of the \$11 million or whatever is decided is the right figure, and let you pay it out in a 5-year period instead of making your company do it all in 1 year and showing an asset as a bunch of stock which has no market value whatever. This is one of the things I have looked at as a thurst. What do you think of this?

Mr. CLAYTOR. The bill does provide that payments may be made in 3 years, not all at once.

To talk about the mathematics for a minute, they picked 1969 and my loss in 1969 was \$11 million. But if you did not have any bill, if this just was not here, my loss in 1970 is going to be about \$7 million. My loss in 1971 is going to go down almost to the cost of running the Southern Crescent, and that is of the order of \$2 million. So, I am not having a continuation of this \$11 million deficit. It is reducing on its own very drastically.

Mr. KUYKENDALL. What was it before \$11 million.

Mr. CLAYTOR. The 1968 study was \$14.5 or \$15 million.

Mr. KUYKENDALL. Was it higher the year before?

Mr. CLAYTOR. We did not do an avoidable loss study as such before that. Generally speaking, the losses peaked around 1967 or thereabouts because the passenger trains were still running and the people were leaving them, and then we began to get rid of the trains and that is when the losses started to come down.

Mr. KUYKENDALL. Is your primary concern here the physical structure of this investment? You would possibly be better off to give this money to the Corporation as an assessment and not even get any stock.

Mr. CLAYTOR. The stock of the Corporation is of no interest to us.

Mr. KUYKENDALL. Yet, because you get it, you cannot charge the investment as a loss?

Mr. CLAYTOR. It is not entirely clear that it would be deductible even if you did not take stock, unless there is also a specific provision to make it so.

Mr. KUYKENDALL. If you were given the choice possibly of, in legislation, taking the stocks or the tax loss which would you take?

Mr. CLAYTOR. The tax loss, without question. The common stock of the Corporation gives you a voice in it, and if it is going to contract for some operation on your railroad that would be interesting, but not valuable. I do not foresee there will ever be any distribution on this stock in the form of either income or redemption.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Dingell.

Mr. DINGELL. You have given this committee a very useful statement and we are grateful for what you have to say to us this morning.

Just to follow up briefly the point raised by Mr. Kuykendall, are you able to tell us in making these comments, you are speaking for the whole of the industry or are you just speaking your personal views?

Mr. CLAYTOR. My personal views are those of Southern Railway. In requesting the three amendments, the entire industry is with me. I would not want to bind the rest of the industry to all of the things I have said in answer to questions but the three basic amendments are sponsored by the whole industry.

Mr. DINGELL. With regard to the point you raised in response to Mr. Kuykendall about the stock ownership, do you speak there just for Southern or do you speak for the whole industry?

Mr. CLAYTOR. I am quite certain, if it were given as an option and that would be important, that you either take the stock or the deduction, this would be useful to and welcomed by the whole industry.

Mr. DINGELL. It would be helpful if you would let us know.

Mr. CLAYTOR. I will ask Mr. Goodfellow to do that. He is the spokesman for the industry.

Mr. DINGELL. If you are going to come before this committee with tax matters which we understand has to be done in Ways and Means, we may be able to help you in one fashion and not the other. We could probably draft legislation giving you the option but we would not draft legislation that would give you tax relief. I must tell you I think your prospects of getting tax relief out of work in Ways and Means this session or getting tax sessions this session with a very difficult and busy session and the amount of Ways and Means are very slight, so you should give considerable thought to this matter.

Mr. FRIEDEL. I want to thank you very much, Mr. Claytor.

You have been a very fine witness.

Mr. CLAYTOR. Thank you very much.

Mr. FRIEDEL. Our next witness is Mr. Anthony Haswell.

Mr. PICKLE. I must leave the committee at this point. I will read Mr. Haswell's statement in detail and I will take this opportunity to commend him for the leadership he has given in this passenger service endeavor. He has been one of the real working men who has come forth with practical ideas and I salute him for his leadership and I wanted him to know I appreciated the good work he has done in this area.

Mr. FRIEDEL. You may proceed.

#### STATEMENT OF ANTHONY HASWELL, CHAIRMAN, NATIONAL ASSOCIATION OF RAILROAD PASSENGERS

Mr. HASWELL. My name is Anthony Haswell. I am chairman of the National Association of Railroad Passengers, with offices at 417 New Jersey Avenue SE., Washington, D.C. I appear on behalf of

this association in support of S. 3706, the Rail Passenger Service Act of 1970.

The National Association of Railroad Passengers is an Illinois not-for-profit corporation. Membership is open to users of rail passenger service and to anyone who believes that rail service is an essential part of a truly balanced transportation system. Since our beginning in July, 1967, we have enrolled nearly 7,000 members from all parts of the country. Our specific objective is to obtain modern train service wherever it is needed and useful, whether for commuters, for intercity travelers in densely populated corridors, or for cross-country vacationers.

Our activities in furtherance of these objectives include working for the passage of constructive legislation; opposing selected proposals for train discontinuances before regulatory authorities and the courts when, in our judgment, the overall public interest justifies such opposition; and conducting a continuing educational campaign to acquaint the public with the advantages and benefits of good passenger service, and the underlying economic and political issues of the problem.

NARP enthusiastically supports S. 3706, which would establish a quasi-Government Corporation to operate intercity rail passenger service. We believe that this approach would accomplish the major beneficial objectives of the legislation already before this committee on which we testified in support last November 20. First, rehabilitation and replacement of passenger equipment, provided for in H.R. 13352, would be accomplished by the proposed Corporation as an integral part of its operations. Second, since the basic purpose of the Corporation is to provide the best possible passenger service, it should achieve the result sought by H.R. 13832 and H.R. 14512. These bills would empower the Interstate Commerce Commission to prescribe and enforce adequate standards of service on passenger trains. Third, a thorough restructuring and rationalization of present services and routes, which would be facilitated by H.R. 13832, will be accomplished through the specific provisions of S. 3706 calling for the Secretary of Transportation to designate a basic national system of passenger trains.

Furthermore, S. 3706 will produce benefits considerably beyond those envisioned by the previous bills. A single organization with unified management will facilitate elimination of duplicate functions, particularly in administration, sales, marketing, promotion, and research and development. Most important of all, the operation of trains will be removed from the control of those who want to get rid of them and put into the hands of a management dedicated to giving the best possible service at the lowest possible cost. This, alone, should result in a tremendous improvement in the quality, utility, and economics of passenger service.

NARP has no objection to most of the proposed amendments of the Association of American Railroads. However, we do object strongly to the AAR's proposed amendment to section 404(a). The effect of this proposed change would be to reduce the incentive for railroads to join the Corporation, in that it would allow those who do not join to discontinue under present procedures those trains which are not operated between points specified within the basic system.

We believe that all passenger-carrying railroads should join the Corporation. If the objectives of the bill are to be fulfilled, there must not be any major gaps in the operations of the Corporation. Each railroad that does not join will deprive the Corporation of valuable capital contributions, operating revenues, and operating efficiencies. Therefore, we are opposed to any reduction in the incentive to join.

We disagree with the AAR that a constitutional problem is presented by section 404(a) as presently written. As public utilities, railroads can constitutionally be required to provide passenger service over an indefinite period of time even if it loses money. Accordingly, it seems clear that railroads may constitutionally be compelled to join the Corporation for the price of 1 year's passenger service losses, if in return they are relieved from the obligation thereafter to provide service themselves. Since they may constitutionally be compelled to join, there appears no constitutional problem in requiring them to pay a stiff price if they elect not to join.

If, despite our objections the committee determines that the proposed amendment to section 404(a) should be adopted, the Secretary of Transportation must be given comprehensive powers over standards of service on trains operated by nonjoining railroads which are included in the basic system. We suggest the following amendment to section 401 which would be designated as new paragraph (c) :

The Secretary shall have the power by order to prescribe and enforce standards of service on passenger trains operated between points within the basic system by railroads which have not entered into contracts with the Corporation under subsection (a) of this section, and to require such railroads to provide appropriate connections and through car service in conjunction with trains operated by other such railroads, by the Corporation, or by regional transportation agencies. Orders of the Secretary entered pursuant to this subsection shall be enforced by the district courts of the United States by a writ of injunction or other mandatory process.

In our opinion, provides of the bill as presently written do not clearly grant such power either to the Secretary or to the Interstate Commerce Commission. The Secretary's power to designate basic characteristics of service under section 201 contains no enforcement power on a continuing basis once the basic system is put into operation, nor does it cover standards of service such as cleanliness, on-time performance, and so on. The Interstate Commerce Commission's power to regulate comfort and health matters under section 801 might be narrowly construed either by that agency or by the courts. The ICC has already testified that it does not want to regulate health problems, and the fact that it took 3.5 years to decide that it did not have jurisdiction presently in this general area indicates a pronounced lack of enthusiasm for any responsibility over the quality of train service. Furthermore, since the Secretary of Transportation by this legislation is being given basic responsibility for future intercity passenger service, he should have sufficient power to fulfill that responsibility without the necessity of going to another agency.

We oppose the adding of any restriction to the bill which would in any way affect the Corporation's right to handle mail, including the freedom to set mail rates. Mail revenue is vital to the successful operation of some passenger services. Since the railroads will be relieved of all their passenger service losses upon joining the Corporation,

they are hardly in a position to demand protection from competition for their mail traffic.

We favor the amendments to the Internal Revenue Code proposed by the AAR and the Southern Railway. The price of joining the Corporation is 1 year's losses on passenger service. Unless this tax relief is provided, the price for some railroads might be equivalent to as much as 2 years' losses. This would not benefit the Corporation, and seems contrary to the intention of the drafters of the statute. Under the circumstances, the proposed Revenue Code amendments appear just and reasonable. Moreover, their enactment would give some railroads an additional incentive to join the Corporation.

I am certain that we would have no problem with an alternative solution to this question which may be worked out outside the contours of the revenue code by this committee.

We have no objections to any of the amendments proposed by railroad labor, and will comment very briefly on just two of them. First, in addition to representatives of the railroads and of labor organizations, we believe that the Secretary should also consult with representatives of consumer groups before issuing his final report. Those who will ride the trains have at least as much at stake as the railroads and the labor unions in the routes to be operated and the services to be provided in the basic system. Accordingly, we suggest that amendment No. 1 of the Congress of Railway Unions be modified as follows: "after consultation with the representatives of the railroads, with labor organizations duly authorized to represent railroad employees, and with organizations representing consumers of railroad passenger service."

Secondly, we strongly concur with rail labor's request for additional funding. The Corporation most certainly will not be profitable for the first year or two of its operation. Any money needed to pay operating losses will, of necessity, be diverted from vitally needed capital improvement and modernization projects. Conversely, the more money that is spent initially for such purposes, the quicker the Corporation will reach the break-even point. New and modernized equipment and facilities will both attract increased revenue and reduce operating costs. I need hardly belabor the fact that over the past several decades literally tens of billions of dollars of Government funds have been spent on highway and air transportation, while railroads have received virtually nothing. Truly modern train service will require substantial Federal assistance; we may as well face this reality now.

Again we urge the prompt passage of S. 3706. It is clearly the most comprehensive and imaginative solution to the passenger train problem that has been proposed.

I thank you for the opportunity of appearing before your committee today.

Mr. FRIEDEL. I want to thank you very much, Mr. Haswell. You have always been very helpful to this committee. I have no questions.

Mr. Dingell.

Mr. DINGELL. Mr. Haswell, I wish to commend you for a very good statement.

I am curious to know, is there anything in this bill which requires that there be high-quality service? I am rather reluctant to continue paying a high price for the kind of service I have seen afforded to passengers by some railroads.

Mr. HASWELL. I assume we are referring now to the operations of the Corporation?

Mr. DINGELL. The operation of the Corporation.

Mr. HASWELL. We feel—and we have given this a great deal of thought—that the very essence of this Corporation, of the concept, is to set up an entity whose sole purpose is to run passenger trains. It will receive substantial Federal assistance under a mandate to modernize the railroads. Imagination and innovation are being encouraged.

I feel that it would be unnecessary and inconsistent to, in effect, put a lot of teeth into the hands of some other Federal agency to make sure that the Corporation is ordered to do the very thing that it is being brought into existence to do. This Corporation will not have its attention diverted by having to run freight trains or looking around for juicy investments in real estate, or whatever. Its purpose for being is to run passenger trains. Therefore, I am not concerned about the absence of strong controls or directives and so forth either in the statute itself, enforceable by the courts, or in the hands of some other agency. I am certain, if, after the first year, we are not getting the results that we want along these lines, the Congress will take a very thorough look. The statute requires that reports must be given every year to the Congress. So, I am willing to set this thing up with positive incentive and encouragement and let it go at least for a while.

Mr. DINGELL. What assurances do you have that roadbed standards will be maintained to provide the optimum kind of roadbed for a truly quality, high-speed passenger service?

Mr. HASWELL. That is another question.

Mr. DINGELL. They are very intimately related.

Mr. HASWELL. My previous comments, of course, referred to the operations of trains. Now, track and roadbed are very, very serious problems, with the exception of a few railroads in the country.

First, I should point out that both in the takeover contracts and in the contracts for the use of track and facilities under section 402, provisions can be inserted which will obligate the railroads to provide good tracks for passenger trains. There are some exceptions, but generally speaking, on heavy mainline freight railroads, the weight of the trains has gotten so heavy and the speed has gotten so fast that they simply have to keep that track up to standards sufficient for an 80-mile-an-hour passenger train even if they would only operate freight train, or else they would have their trains all over the landscape and this is admitted by several railroads now in published articles and statements.

For high-speed service in corridors, I am afraid there has to be some more Federal funding to build the roadbeds and the tracks that we need. I do not think that there is enough in this act, certainly not as it is presently written.

The roadbed problem is big enough so that you cannot just order the railroads to provide for high-speed roadbeds. I think that question has to be faced at the Government level and dealt with at that level.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. KUYKENDALL. Thank you for your very good testimony, Mr. Haswell.

Since you have stated flatly that you think that the thrust of the legislation should be there should be no passenger service outside the Corporation, I will question you in that light.

This is a very basic philosophical decision that is going to have to be made by the committee with almost a test vote or two to decide which direction the committee really wants to go.

I am not going to take a position because I have not decided which way I want to go on that one. So, I will question you in the context of your own position.

I started to ask you a question but the first statement I will make is pretty much an assumption. You certainly agree that some, if there is a total takeover of every existing passenger route that exists in the country, there are some who just have no business being in existence for a full 5 years and there will probably be reason to know that fairly quickly, would you not agree?

Mr. HASWELL. I do. We have not taken a position—

Mr. KUYKENDALL. I know you did not.

I would like for your organization to help me draft an amendment which I discussed with Secretary Volpe in that chair Tuesday.

I would like to have an amendment, and I am working on it myself and I would like to have your help, as to certain extreme conditions that would allow the Corporation to discontinue high-loss meaningless routes before 5 years, let us say 2 years, because you know and I know that this Corporation is going to have to go through the taxpayers for money through the appropriation route. You know and I know that the success of this Corporation is going to depend largely upon our ability to keep the taxpayers at least pacified—I did not say happy—at least pacified for a reasonable period of time and I think reasonable steps like this would not only hurt your cause but I think it might help your cause for reasonable passenger service.

So, I am asking for your help in drafting this amendment that would allow the Corporation to discontinue under certain circumstances.

Will you do that?

Mr. HASWELL. Certainly.

(The following proposed amendments were received for the record:)

PROPOSED AMENDMENTS TO S. 3706

AMENDMENTS TO SECTION 404

*DISCONTINUANCE OF SERVICE*

Line 21, page 21 Change "1975" to "1973"

Line 3, page 22 Insert new paragraph (3) as follows:

(3) In at any time after July 1, 1972, the Secretary determines that any train or trains in the basic system in whole or in part whether operated by the corporation or otherwise

have not been significantly patronized since the commencement of operations under the basic system;

have no significant potential for increased patronage in the future;

are not essential to the viability of the remainder of the basic system; and will impair the financial ability of the Corporation to adequately provide other services.

such train or trains

(Here continue with language from line 8 thru line 21 inclusive on page 22)

Renumber present paragraph (3) to paragraph (4)

Renumber present paragraph (4) to paragraph (5)

Line 6, page 22 Insert the word "financial" before ability

Mr. KUYKENDALL. Those of you in the audience here heard the discussion we had with the Secretary about this thing on Tuesday and he agreed that there would be a place for such amendment if it was properly drawn.

I am glad that you have supported the fact that, regardless of what you may think of the past passenger service, that the railroads are put in a very bad position by the tax structure as it now stands. We must do something. I think we are going to have to decide what to do, and the option looks to me like, in the last few moments about the best bet.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Dingell has another question.

Mr. DINGELL. Mr. Haswell, I would like you to turn your attention to title 18 of the bill, the section on adequacy of service.

The Federal Aviation Act section 404(a) provides carriers must provide safe, adequate equipment, service, and facilities. It occurs to me that the language on page 29, lines 10, 11, 12 are rather less than that.

It appears to me about the minimum we could have in that would be the carrier should provide as a minimum, safe, adequate facilities and if he did so, we might be better assured we will get the kind of service, equipment, and facilities necessary. Do you have some comments or suggestions with regard to either the possible change of this to conform to the Federal Aviation Act or whether we ought perhaps to do some other things that might still be better or different?

Mr. HASWELL. Let me say, I guess I can comment on that in several ways.

In the first place, despite my brief comments, if, in the committee's best judgment, there should be more specific language along these lines applicable to the Corporation—

Mr. DINGELL. I am asking you for your judgment.

Mr. HASWELL. We would have no objection. I would agree with you that this language in section 801 is rather vague and more particularly could be construed in a quite limited manner.

Good standards of service language, in my opinion—or better standards of service language, shall I say—are included in my testimony with regard to railroads; the services of those railroads would remain outside the corporation.

That is comprehensive. It does not seem to leave any loopholes, although we can never be sure. In other words, what I am saying is I do agree with you. If you want to put a specific directive of the type you are talking about applicable to the Corporation, then certainly to do it meaningfully, you should do more than what is in section 801. I would like to add that I feel strongly that the powers should reside in the Secretary rather than in the Interstate Commerce Commission.

As I pointed out in my statement, the Interstate Commerce Commission took three and a half years to decide they did not have the power in this area, and they certainly have exhibited no enthusiasm for assuming and carrying out this type of regulation or responsibility. I am speaking from experience now.

As I understand your comment, I would say you are probably right. We would have no objection to more specific and mandatory language put in that section or elsewhere in the bill.

Mr. DINGELL. You are talking about it as part of the certificate of public convenience and necessity that would go to a carrier and also

a fundamental responsibility of the carrier to provide this service.

Mr. HASWELL. I assume we are talking about the Corporation.

Mr. DINGELL. We are talking about the Corporation and also the roads, the railroads, too.

Mr. HASWELL. To the extent that there are railroads outside of the Corporation operating trains in the basic system, which would become a possibility if Mr. Claytor's amendment were accepted, then there is just no question as I indicated in my testimony that there has to be the strongest type of standards-of-service language.

That does not apply to Mr. Claytor's railroad. If they were all being run like he runs his railroad, we would not have any concern.

Mr. DINGELL. I am well aware of how well Southern runs their road. They are almost unique in this business of providing high quality service.

Mr. HASWELL. Right, and that is the unfortunate thing we are faced with.

Mr. DINGELL. Do you want to comment on Mr. Claytor's amendment?

Mr. HASWELL. I commented in my statement that we are basically opposed to the idea of having an option. I think the more railroads that get into this thing, the more unified it will be and the better chance it will have to work, but if the committee feels strongly the other way and feels that there should be a meaningful option, then I feel that Mr. Claytor's language does not go far enough in assuring that the Secretary of Transportation will have the power and authority to require high standards of service.

As you say, the Southern Railway is unique. There are others in the country with whom we have been litigating—I think the committee should be well aware of this—and they operate routes and tracks which are absolutely essential to be included in any kind of meaningful national system. If they are not going to join the Corporation, then we simply must have no question about the power to require them to provide high-quality service.

Mr. DINGELL. Thank you very much.

Before the committee adjourns, I do note there were certain questions submitted by me to the Interstate Commerce Commission and the Secretary of Transportation. I would hope the record would remain open long enough for me to have this material included in this record.

Mr. FRIEDEL. The record will remain open until we have responses to your questions.

The subcommittee is now adjourned. We will try to mark the bill up as quickly as we can.

(The following statement and letters were received for the record :)

STATEMENT OF HON. RAYMOND P. SHAFER, GOVERNOR OF PENNSYLVANIA

Mr. Chairman and members of the Committee on Interstate and Foreign Commerce, as Governor of the Commonwealth of Pennsylvania, I sincerely regret that I am unable to appear before you in person to express our views with respect to the intercity rail passenger service problem, and particularly Senate Bill 3706, the "Rail Passenger Service Act of 1970" which you are presently considering. However, I wish to submit the following statement for your record in the sincere hope that it will assist you and the Congress as a whole in your deliberations on this serious matter and the development and enactment of legislation that will enable this Nation to deal with this crucial aspect of our total transportation problem in a truly effective and realistic manner.

We are all well aware of the alarming decline which has occurred in the quantity and quality of intercity passenger service, as operated extensively for so many years by America's privately-owned railroad industry. We are also cognizant of the serious problems now confronting the railroads, including some of those which have already divested themselves of most or all of their so-called unprofitable passenger service. Clearly, the majority of the carriers still operating intercity service no longer want to be in the passenger business and are determined to end it or to be relieved of it. It is obvious that, if the present course continues and no effective counter-measures taken, the demise of intercity service on all but a few well-patronized, urban corridors is close at hand.

There are many people, both within and outside the railroad industry, who have been saying "The passenger train is dead. Why try to resurrect it?" They argue that it is unused and therefore unneeded; that it is unprofitable and, therefore, an unfair burden upon the private enterprise operating it. They say, "Let it die!"

These arguments, in my opinion, are illogical and short-sighted. They ignore two basic questions:

1. Is it logical to judge the need and profitability of a transportation service on the basis of its prevailing patronage, revenues, and expenses, when these have been measured only during periods of time when the service as operated was increasingly unattractive, generally inconvenient, often unreliable, and inefficient? My answer to that is an emphatic "No". We in Pennsylvania believe that, until an objective, comprehensive appraisal is made of the potential role and capabilities of a top-notch, well-managed passenger service, no one can logically decide rail's future one way or the other.

2. Will we be able to meet our Nation's growing transportation needs, specifically for intercity passenger travel, without the rail mode? My answer, again is "No". The experts in transportation planning are virtually unanimous in saying that our highways and airways systems alone will not be able to fulfill our total needs, and that other, newer technology will not be made available in the near future to fill the gap. It is, therefore, unthinkable that we should allow an existing mode, which may still have valuable potential if properly handled, to be abandoned. Instead, we should be looking for ways to preserve and upgrade it until there are viable alternatives.

Let me emphasize that I am *not* suggesting that we keep in operation a worn-out, unprofitable, poorly-managed form of intercity transportation that would only serve a continually decreasing market and need. I *am* suggesting that the least we must do is to preserve, improve, re-structure, promote, and properly manage essential services on those routes where present or potential needs warrant, and to carry out experiments and collect data on an on-going basis so that valid judgments can be made regarding the potential role of, need for, and profitability of the rail mode in order that we can make sound transportation plans for the future.

As some of you may know, the Commonwealth of Pennsylvania has played a prominent role in protesting before the Interstate Commerce Commission the recent proposal of the Penn-Central Transportation Company to discontinue thirty-four (34) of its intercity passenger trains. This proposal and others pending, if allowed, would virtually eliminate all Penn-Central passenger service west of Harrisburg and Buffalo. I created a Special Cabinet Level Task Force to deal with this matter, not just to seek ICC's denial of the Railroad's petition, but to develop a program for eventually solving the problem. Another step I took was to contact personally the governors of the eleven (11) other states directly affected by Penn-Central's proposal. We have also cooperated with various local governments and organizations in this effort, and have been much encouraged as a result.

We have been particularly encouraged by the progress made at the Federal level, as evidenced by passage of the legislation (Senate Bill 3706) which you are now considering, that would deal positively with the overall problem. We believe this legislation is basically a sound approach, and we enthusiastically support its general concept and provisions. However, we firmly believe that a stronger role for the states must be specifically provided for in amendments or modifications to the Senate's legislation.

Let me digress a moment to explain why we believe this is so vital to obtaining Rail Passenger Service legislation that will be truly effective in meeting the Nation's needs. I think your Committee should be reminded of some of the positive steps that have taken and are taking place at state level which directly relate

to and should be recognized in formulating a viable National Rail passenger program. Naturally, I am most familiar with what we in Pennsylvania have done, but several other states have taken or are contemplating similar steps.

Pennsylvania, as some members of your committee may know, embarked many months ago on the first step of a long-range intercity ground transportation program. The Commonwealth, through its Transportation Assistance Authority, committed \$2.0 million to the purchase of eleven (11) Metroliner cars, similar to those in use by Penn-Central on the Northeast Corridor service. The Commonwealth's cars have been built and are to be used, hopefully, in a four-year Demonstration Project on the Penn-Central between Philadelphia and Harrisburg. As an adjunct to this initial project, the State contracted last year for the first phase of an on-going Market study in this corridor, conducted by Penn State University. The Demonstration Project has been under the direction of our Department of Commerce, and incidentally, no Federal funds are involved in it. One of the main objectives of the Project is to find out the market potential of improved intercity rail service, in order that we can be better informed as to the optimum role of the rail mode and can evolve sound Commonwealth policies and future programs in respect to it.

We have taken an even more significant step recently in Pennsylvania to enable us to deal with Transportation, at State Government level, as a total, coordinated function, rather than by separate modes. Thus, we will establish on July 1, 1970 a Pennsylvania Department of Transportation, embracing highways, rail, mass transit, air and water all in one department. PennDOT, as we will call the new Department, will have as one of its most important tasks the development of a Master Plan for Transportation for Pennsylvania. This will involve collecting a great deal of data about our present system—made up of a variety of privately and publicly owned modes, facilities, and services—and evaluating how well and to what extent these are functioning and being used. It will also determine their physical condition, capacity, and other measures of their present status. At the same time, PennDOT will be endeavoring to forecast transportation *needs*, and then to relate *needs* against *system* in order to identify where there are overlaps and waste, and also where there are gaps requiring additions and improvements. It will also look further into the future at needs and their possible fulfillment with new technology. Already we have a good start on this, even though PennDOT is not yet officially in operation.

Thus, Pennsylvania and other states are becoming intimately involved and informed with respect to the rail systems presently within their borders, and how they relate to the National rail system. More important, Pennsylvania and other states have plans under way for best use of these systems, not only from their individual points of view but also as they connect with the systems in neighboring states and the Nation as a whole. Several states, including Pennsylvania, have established or are considering establishment of Departments of Transportation that will be responsible for the orderly development and restructuring of their rail systems and services, parts of which would obviously comprise the Basic National System contemplated in S. 3706.

Under the proposed Federal legislation, the routes and points of service of a basic National rail passenger system would be determined by the Secretary of Transportation. We strongly urge that the final legislation as enacted should provide to the various states both an opportunity to work closely with the Secretary of Transportation in the determination of the components of the National system, including a role in the decision-making process in view of their more detailed knowledge of the alternatives to be considered. Furthermore, the States should have a voice in the operation and services of the basic system, once it has been defined.

We are pleased that the Senate passed bill, which establishes a quasi-public corporation in order to implement the purposes of the act, provides that "Any State, regional, or local agency may request of the Corporation rail passenger service beyond that included within the basic system." The Corporation is required to initiate such service if the State or other agency agrees to reimburse the Corporation one-half of any losses associated with such services.

While it is premature to make firm commitments that are dependent on the outcome and provisions of the final Federal legislation, we in Pennsylvania are already studying various types of State-regional organizations that would be established to deal with needed rail passenger service requirements not covered by the Basic National System, assuming this important provision is retained in the law as enacted.

I sincerely trust that the views I have expressed as to a stronger role for the states—a role which the states, because of their more intimate knowledge of the problems, the needs and the potentials, must have granted to them if we are to create a meaningful, effective Federal Rail Service Program in our Nation—will be carefully considered and adopted in your deliberations on S. 3706.

Thank you very much for the opportunity to submit this statement for your record.

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,

Washington, D.C., June 9, 1970.

Re H.R. 17428 and S. 3706, bills proposing the Rail Passenger Service Act of 1970.

HON. SAMUEL N. FRIEDEL,

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

DEAR CHAIRMAN FRIEDEL: The National Association of Regulatory Utility Commissioners (NARUC) supports the enactment of legislation to provide Federal financial assistance for the development of adequate rail passenger service which will be responsive to the needs of a growing America. Our testimony on this position was submitted to the Subcommittee on November 18, 1969.

We have doubts as to whether the above referenced legislation is the best solution to the problem of developing an adequate rail passenger system. However, since its enactment in some form appears imminent, we respectfully urge you and your colleagues to amend it in the following particulars.

FEDERAL-STATE COOPERATION IN DESIGNATION OF BASIC NATIONAL RAIL PASSENGER SYSTEM

We request that the above legislation be amended to require the Secretary of Transportation to consult with State representatives in preparing his report and recommendations for a basic national rail passenger system.<sup>1</sup>

The destiny of rail passenger service lies primarily in the densely populated regional corridors and, therefore, the States, being better acquainted with regional needs, will be a valuable source of assistance to the Secretary in arriving at a designation of the basic national system.

STATE REPRESENTATION ON DIRECTORATE OF RAILROAD PASSENGER CORPORATION

Title III of H.R. 17428 provides for the creation of a corporation for each urban corridor to provide passenger service. Each corporation would have a board of directors of not more than twenty-one members to be selected as follows:

(a) A majority shall be appointed by the President of the United States which shall include the Secretary of Transportation and at least one resident of the corridor region to represent the interests of passengers in that region;

(b) One member shall be appointed by the Governor of each State served by the corporation; and

(c) At least two members shall be elected by the rail carriers who have for consideration been relieved of their rail passenger responsibilities within the jurisdiction of the corporation.

We believe that the concept of a corporation for each urban corridor, as proposed by H.R. 17428, is superior to the single National Railroad Passenger Corporation proposed by S. 3706. Rail passenger service in the future will increasingly assume a corridor configuration and, hence, the directorate of a operating corporation should strongly reflect the regional interest. H.R. 17428 satisfies this obvious public need, but S. 3706 does not.

Accordingly, we strongly support this aspect of H.R. 17428 in preference to that contained in S. 3706.

Section 303 of S. 3706 provides that the National Railroad Passenger Corporation shall have a board of fifteen directors to be selected as follows:

(a) Eight members shall be appointed by the President of the United States, which shall include the Secretary of Transportation and at least one consumer representative;

<sup>1</sup> This amendment may be made by striking the comma after the word "departments" in line 18, page 4, H.R. 17428, or line 7, page 4, S. 3706, and inserting in lieu thereof the following: "and the national organization of the State commissions referred to in part II of the Interstate Commerce Act."

(b) Three members shall be elected by common stockholders; and

(c) Four members shall be elected by preferred stockholders.

If the Subcommittee decides to report a bill containing the single corporation concept of S. 3706, we request that it be amended to provide that at least one of the eight Presidential appointees shall be a State representative.<sup>3</sup>

#### STATE JOINT BOARDS IN ICC DISCONTINUANCE AND ADEQUACY-OF-SERVICE PROCEEDINGS

We request that the above legislation contain an amendment to Section 13a of the Interstate Commerce Act (49 U.S.C.A., Sec. 13a) to provide that, in discontinuance and adequacy of rail passenger service proceedings, there shall be a balancing of regional needs, reflected by State joint boards making initial decisions, and of national needs, reflected by the ICC making final administrative decisions on appeal.

More specifically, a State joint board would interact with the ICC as follows. When a railroad proposed discontinuance of an interstate passenger train under Section 13a(1), the ICC would be required to conduct a prompt investigation of such proposal if requested by a majority of the State railroad regulatory commissions of the States in which such train operates. Also, the ICC would be required to conduct an investigation of the adequacy of service provided by an interstate passenger train if a majority of such State commissions so requested.

Within twenty days after the ICC instituted an investigation of proposed discontinuance of adequacy of service of a passenger train, such State commissions could create a State joint board composed of one official from each commission. The ICC examiner would have the primary responsibility of conducting the hearings involved in the investigation, but members of the board could sit with him and assist in the examination of witnesses in the same manner as is now done in cases where the ICC requests the use of State cooperators.<sup>3</sup>

Upon the conclusion of the hearings, the ICC examiner would prepare a recommended report and order and submit it to the State joint board who would promptly convene and issue a decision in such investigation within thirty days after such submission by the examiner. If the board failed to render a decision within such time, its jurisdiction would be vitiated. Within fifteen days after the decision of the board, an aggrieved party could appeal the decision to the ICC for the correction of legal error.<sup>4</sup>

The State joint board would be constituted in a manner similar to the joint boards which are now provided for in Part II of the Interstate Commerce Act involving motor carriers. 49 U.S.C., Sec. 305. The joint board procedure has worked successfully in motor carrier regulation and has significantly strengthened Federal-State relations in this important area of national concern.

#### CONCLUSION

Your support of these amendments will give the people of your State and region a more effective voice in shaping the destiny of rail passenger transportation.

With warm regards and best wishes, I am,

Sincerely yours,

FRANCIS PEARSON, *President.*

#### PROPOSED AMENDMENT TO SECTION 13A OF INTERSTATE COMMERCE ACT

The following provision is hereby added to the end of Section 13a of the Interstate Commerce Act (49 U.S.C.A., Sec. 13a):

"(3) The Commission shall conduct an investigation of any proposed discontinuance or change of operation or service under subsection (1) of this section, or a proceeding to consider the prescription of standards for railroad

<sup>3</sup> This amendment may be made by striking the period in line 23 of S. 3706 and inserting in lieu thereof the following: "and at all times at least one such member shall be a State representative selected after consultation with the national organization of the State commissions referred to in part II of the Interstate Commerce Act."

<sup>3</sup> State commissioners frequently sit with ICC commissioners for the hearing and consideration of proceedings pursuant to the ICC-NARUC Cooperative Agreement reported in the 1964 NARUC Annual Convention Proceedings, pages 557-568. As an example, State commissioners sat with ICC commissioners in Ex Parte 265, 262, 259, and 256 involving applications filed by the railroads for increased freight rates in the years 1970, 1969, 1968, and 1967, respectively.

<sup>4</sup> The State joint board amendment may be made by adding at the end of Title VIII of H.R. 17428 or S. 3706 a new provision in the form shown in the attachment to this letter.

passenger service, when timely requested by a majority of the State railroad regulatory commissions of the States in which such operation or service is performed. Within twenty days after the institution of such an investigation or proceeding, whether or not so requested, such State commissions may create a State joint board composed of one official from each such commission desiring to have representation on the board: *Provided*, That any commission having representation on the board shall not appear as a party in such investigation or proceeding. Any member of the State joint board may sit with the examiner of the Commission and participate in the hearing and examination of the evidence presented. Upon the conclusion of the submission of evidence in such investigation or proceeding, the examiner shall submit a report and recommended order to the State joint board who shall promptly convene and issue a decision in such investigation or proceeding within thirty days after the submission of such report and recommended order, and if no decision of the board is issued within such time its jurisdiction shall be vitiated. Within fifteen days after the decision of the board, an aggrieved party may appeal the decision to the Commission for the correction of any legal error therein. A majority of the members of the board shall constitute a quorum, each member shall have one vote, and the decision shall be by majority vote. A substitution of membership upon such board may be made at any time. The provisions of this subsection shall apply notwithstanding any provision of this Act to the contrary."

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NATIONAL ASSOCIATION OF RAILROAD PASSENGERS.

Washington, D.C., June 1, 1970.

Mr. HARLEY O. STAGGERS.

*Chairman, House Interstate and Foreign Commerce Committee,  
Washington, D.C.*

DEAR Mr. STAGGERS: I urge your strong support of Senate Bill 3706 (Rail Passenger Service Act of 1970).

While I do not feel this Bill is adequately funded, it is a desperately needed first step to save, and then up-grade, rail passenger service for commuter and transcontinental service.

I know legislators are very busy and overworked these days, and do not get back into their districts as often as they might prefer; and we all suffer from such lack of communication. For were you to get closer to the people, you would observe—as we have—that people are anxious (and many even desperate) to have alternatives to the auto which has clogged our cities, created air pollution, and dispossessed many people from their homes. However, in seeking such alternatives, they find no adequate transit systems in our major cities, and either no commuter service, or commuter service with such poor connections as to be meaningless.

We have the concern and commitment, and hope you and your fellow committee members will have a like commitment and concern and pass this bill on to the House for vote.

Sincerely,

Mrs. PAULINE KOCH.

*Advisory Board Member.*

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NATIONAL RAILWAY HISTORICAL SOCIETY.

Philadelphia, Pa., June 5, 1970.

Hon. SAMUEL N. FRIEDEL,

*Chairman, Subcommittee on Transportation and Aeronautics, House Committee  
on Interstate and Foreign Commerce, Washington, D.C.*

DEAR Mr. CHAIRMAN: I am writing to you as President of the National Railway Historical Society on behalf of our nearly 7,000 members represented in 97 Chapters in some 47 States. The N.R.H.S. is composed of persons from every walk of life—with less than five-percent actually employed in the railroad industry.

Collectively and individually we have a vital interest in good transportation and in continued railway passenger service. For this reason we supported, with serious reservations, the Rail Passenger Service Act of 1970. We felt that it was an important step in the right direction, however, after a careful study it was

found to be so deficient in some important areas that it seemed destined to failure.

The proposed amendments to S. 3706 which were supported in your hearings by the Association of American Railroads and the Southern Railway have been carefully reviewed and we feel that if adopted these amendments will enormously improve the chances for success of the Rail Passenger Service Act of 1970, as well as going a long way toward providing a fair, equitable and working arrangement between the Government and the Railroads.

We regard these proposals as essential improvements in the existing Bill S. 3706 and will appreciate it if you will enter upon the Record the support of the National Railway Historical Society for the amendments supported by the Association of American Railroads and the Southern Railway.

Respectfully,

E. L. PARDEE, *President.*

(Whereupon, at 11:35 a.m., the subcommittee adjourned.)

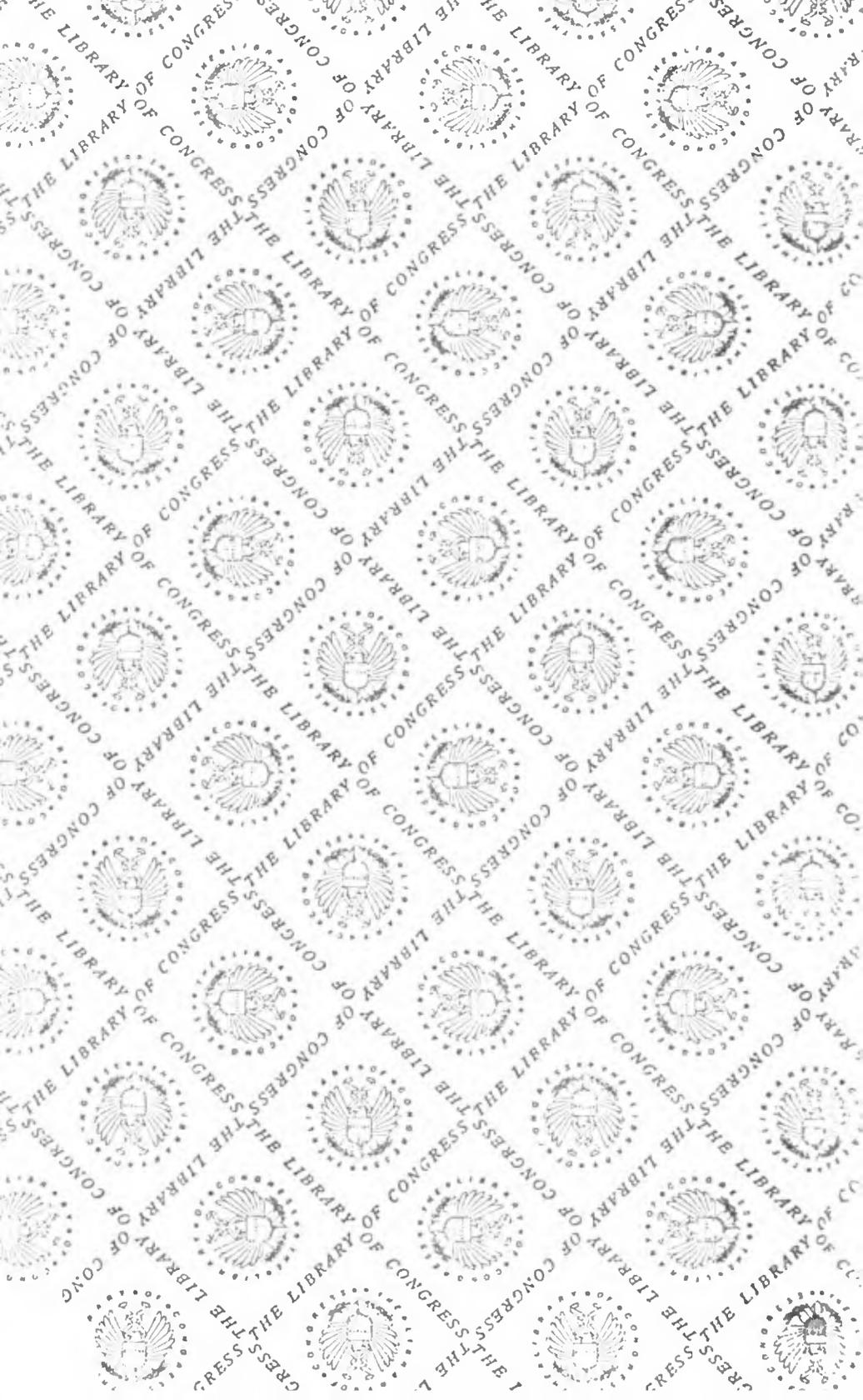


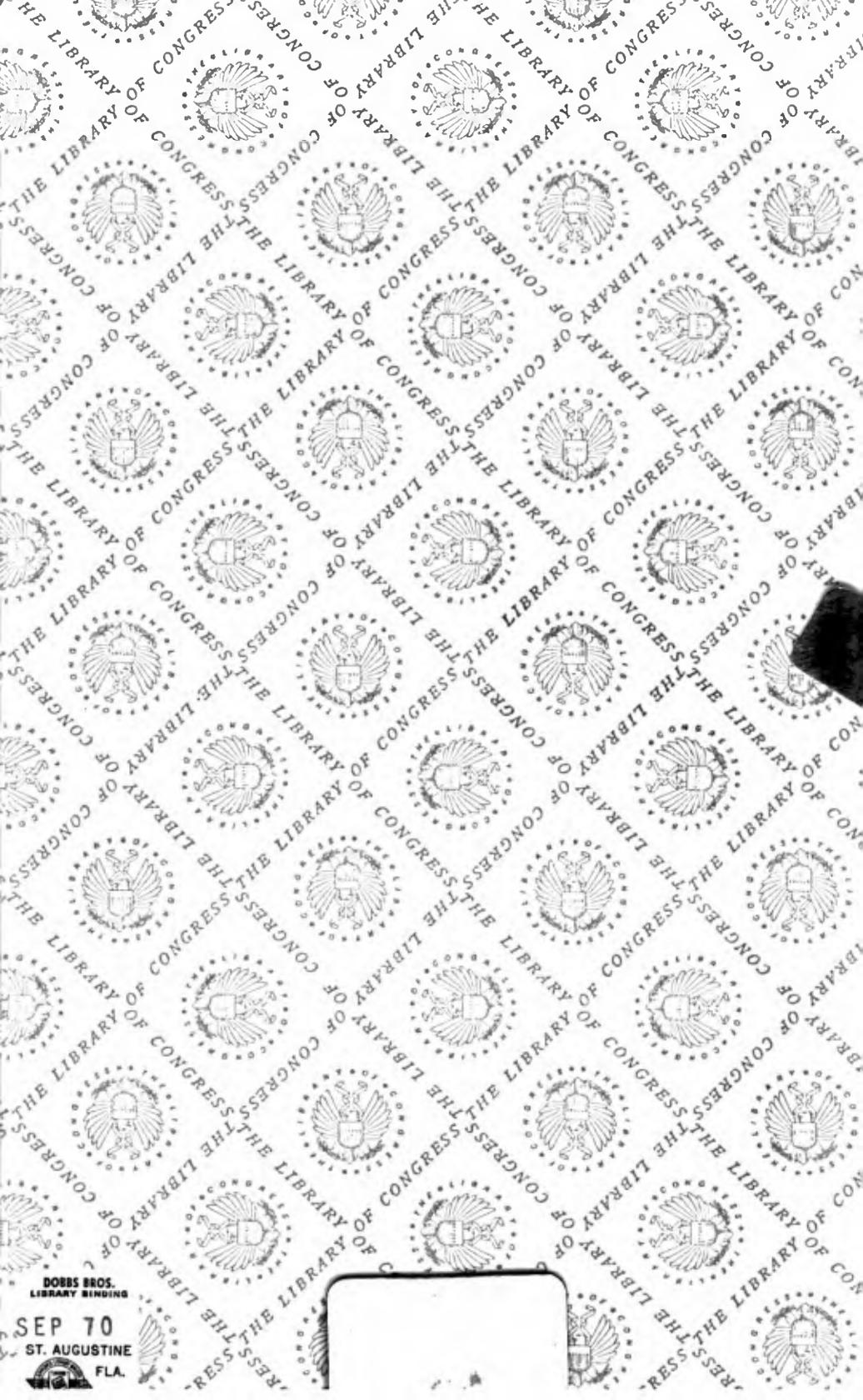
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